



The State vs. the people

**Governance, mining and the transitional regime
in the Democratic Republic of Congo**



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MAP OF THE DEMOCRATIC REPUBLIC OF THE CONGO



i. Recommendations.

A. To the Congolese State: (Parliament and Government)

1. The National Assembly should discuss the Lutundula Commission's findings before the upcoming elections take place.
2. The outcome of the parliamentary debate on the 'Lutundula report' must be made public and any criminal offences should be directed towards the ministry of justice.
3. Work out and publish a strategic vision related to the management of the DRCs natural resources for the coming twenty years, with community based, shared economic growth as a principal guideline. Make it a principle to favour projects that maximise added value within the DRC. Install an oversight mechanism, preferably at the parliamentary level, to follow up on the implementation of the outlined strategy. Disclose the implementation status of the strategy to the public on a regular basis.
4. Publish a list of all private partners of the DRCs mining parastatals. The list should contain the references and titles of all existing joint venture contracts, a description and valuation of the parastatals' contribution to the joint ventures, and a description of the private partners' counterpart and main contractual obligations, including the deadlines for the fulfilment of these obligations.
5. Support a team of Congolese and international legal advisors to take legal action against the mining parastatals' private partners that do not fulfil their contractual obligations.
6. Publish the data of the Mining Registry on the Internet as has been stipulated in the Mining Regulation.
7. Urge politicians and their entourage to make their mining sector related assets and benefits public.
8. Oblige political parties to publish their financial accounts and the sources contributing to the party in order to tackle 'buying in' of political support by companies. Formulate a code of conduct for political party funding.
9. Implement the initiative for a joint mechanism of Congolese officials and international donors to deal with the transparent management of the DRCs natural resources, as was proposed by the UN Secretary General in May 2005.
10. Ensure effective implementation of the bill on the Extractive Industries Transparency Initiative (EITI-bill) including participation of the interested parties and clear mechanisms for transparency and accountability on extracting companies' payments revenues.
11. Protect the rights of miners and communities living near mining areas. This includes encouraging artisanal miners to organise and formalise themselves, in order to improve their standard of living, in collaboration with civil society and industry.

B. To the international community, the EU and its member states:

12. Urge the National Assembly to discuss the Lutundula report before the upcoming elections take place. Urge the Congolese government to act upon the findings of the Lutundula Commission.
13. Condition non-humanitarian assistance to the DRC upon specific measures to curb bad governance and corruption in the politico-economic management of the country.

14. Compose and fund a team of Congolese and international legal advisors to take legal action against the mining parastatals' private partners that do not fulfil their contractual obligations.
15. Implement the initiative for a joint mechanism of Congolese officials and international donors to deal with the transparent management of the DRCs natural resources, as was proposed by the UN Secretary General in May 2005.
16. Make the OECD guidelines on Multinational Enterprises mandatory and applicable to the trade relations of enterprises and urge OECD member countries to prosecute individuals and companies for violating the guidelines in the DRC.
17. Assist the government of the DRC in negotiating treaties with other countries in the region to deal with import/export/transfer issues that concern the DRCs natural resources. The principal guideline of these treaties should be to maximise resource-related added value within the DRC.
18. Work out and fund projects that enhance the capacity of the DRCs institutional apparatus to implement and enforce the Mining Code and the Mining Regulation. The principal aim of such institutional capacity building should be community based shared economic growth.
19. Work out and fund projects that enhance the capacity of civil society in the DRCs to monitor resource exploitation and trade. The principal aim of such capacity building projects should be to enhance transparency in the resource sector.

C. To the World Bank:

20. Make public the audits of the DRCs parastatals that were done by order of the WorldBank.
21. Work out and publish a strategic vision related to the management of the DRCs natural resources for the coming twenty years, with community based, shared economic growth as a principal guideline. Make it a principle to favour projects that maximise added value within the DRC.
22. Evaluate and publish the present-day WorldBank strategy concerning the privatisation of the DRCs mining parastatals and show to which extent the parastatals' partnerships are in accordance with this strategy.
23. Publish the measures taken by the WorldBank to curb bad governance and corrupt practices in the resource sector of the DRC.

D. To companies active in the DRCs resource sector:

24. Conclude joint venture contracts with the DRCs parastatals that are satisfactory to all stakeholders. As a principal, the contribution of the private partner to the joint venture should bear a proper proportion to that of the parastatal.
25. Use the (draft) OECD 'Risk Management tool for investors in weak governance zones' for an assessment on your position and behaviour in the DRC.
26. Contribute – preferably by tax payment - to the implementation of public services without taking over governments' responsibility.
27. Disclose agreements between international mining companies and MIBA and judge these agreements by the principals formulated in the OECD guidelines for Multinational Enterprises.

ii. Abbreviations.

AFDL	Alliance des Forces Démocratiques pour la Libération du Congo
ARC	Alliance pour le Renouveau du Congo
BCECO	Bureau Central de Coordination
CEEC	Centre d'Expertise d'Evaluation et de Certification
CIAT	Comité Internationale d'Accompagnement de la Transition en RDC
CMG	Central Mining Group
COMIDE	Congolaise des Mines et de Développement
COPIREP	Comité de Pilotage de la Réforme des Entreprises Publiques
DCP	DRC Copper and Cobalt Project
DGI	Dan Gertler International
DGI	Direction Générale des Impôts
DGRAD	Direction Générale des Redevances Administratives et Domaniales
DRC	Democratic Republic of Congo
ECOFIN	Economic and Finance Committee
EGMF	Enterprise Générale Malta Forrest SPRL
EMAK	Exploitants Miniers et Artisanaux du Katanga
FARDC	Forces Armées de la République Démocratique du Congo
FDLR	Front Démocratique pour la Libération du Rwanda
FNI	Front des Nationalistes Intégrationnistes
GCMA	Gécamines A
GEC	Global Enterprises Corporate
HRW	Human Rights Watch
ICG	International Crisis Group
IDA	International Development Association
IDF	Institutional Development Fund
IEC	Independent Electoral Commission
IMC	International Mining Consultants
IRC	International Rescue Committee
KCC	Kamoto Copper Company
LRA	Lord's Resistance Army,
MLC	Mouvement de Libération du Congo
MSF	Médecins sans Frontières
NOUCO	Nouvelle Compagnie
OCC	Office Congolais de Contrôle
OFIDA	Office des Droits et Accises
OGEFREM	Office de Gestion du Fret Maritime
PPRD	Parti pour la Reconstruction et le Développement
RCD-G	Rassemblement Congolais pour la Démocratie- Goma
RCD-ML	Rassemblement Congolais pour la Démocratie- Mouvement de Libération
RCD-N	Rassemblement Congolais pour la Démocratie- National
SNCC	Société Nationale des Chemins de Fer du Congo'
TSS	Transitional Support Strategy

iii. Preface.

From Fatal to Fair Transactions in the DRC ?

Throughout history, valuable minerals have been associated with conflict, banditry and violence. Nevertheless, minerals such as gold, diamonds and coltan, as well as other natural resources like timber, can also contribute positively to the daily lives of many people all over the world. They can make their environment more beautiful and luxurious, as well as provide the raw materials for industrial products. When managed well, they play an important role in enhancing economic growth and stability.

Unfortunately, the characteristics possessed by these resources also generate the potential for negatively impacting peace, security and sustainable development. Take, for instance, one of the world's richest countries in terms of mineral wealth, the Democratic Republic of Congo, sometimes called 'a geological scandal'. The vast majority of its population does not profit from the country's wealth. On the contrary. Since colonial times, the Congo has undergone a long history of plunder, culminating in what is now called 'Africa's first World War'. Over the past century, colonial powers, Cold War dictators, neighbouring states, private companies, criminal networks and rebel forces have all taken turns in pillaging the country.

Now, the war in the DRC is formally over. Elections are planned for June 2006. However, fighting in the East continues. In many cases the exploitative networks remain in place, still managing to enrich themselves at the expense of the population. Corruption is rampant. Because of a lack of governance in much of the country, existing rules and regulations are not implemented. Extraction takes place in a situation of anarchy. The rainforest is rapidly disappearing; child labour and forced labour are common, especially in the unregulated, artisanal mining sector. Mining in relatively stable areas in the West threatens both the environment and the livelihoods of communities.

The international Fatal Transactions campaign¹ is dedicated to putting a stop to the fuelling of conflicts over natural resources, and wants resources to contribute in a fair and rightful way to development and sustainable peace. Fatal Transactions believes that the way in which

¹In order to achieve the transformation – from Fatal Transactions towards Fair Transactions – the international Fatal Transactions campaign aims to provide a platform and act as knowledge broker for researchers and campaigners in the North and South. Its members raise the awareness of Western consumers, economic actors and policy makers regarding their responsibilities. The campaign promotes and supports initiatives that enhance the contribution of natural resources to peace and stability. Fatal Transactions is carried out by six European NGOs; Netherlands Institute for Southern Africa (NiZA, The Netherlands), Medico International (Germany), Novib (Oxfam Netherlands), Broederlijk Delen (Belgium), 11.11.11 (Belgium) and Intermon Oxfam (Spain). Associate members are: IPIS (Belgium), BICC (Germany) and Pax Christi (The Netherlands). Southern partner organisations of the FT members actively take part in the campaign.

natural resources are governed in the DRC can make the difference between new conflict or sustainable peace and development. A lot has already been published regarding the role of multinational companies and foreign actors in the pillage of natural resources. However, the way the current ruling powers- and candidates to be elected in the new democratic government- manage the countries' wealth will be of crucial importance for its future.

Therefore, to get an answer to the question how the extractive sector should be governed in a democratic DRC, Fatal Transactions issued IPIS to investigate the relationship between the DRC's political class and the natural resource sector. What have been the views and strategies from the different state and non-state actors in tackling various resource-related problems? Who has profited and who hasn't? What can be identified as some of the root causes of the failure of resources to contribute to development in the DRC so far?

By means of a case study of the situation in Katanga, this report gives a most illustrative analysis of exactly how the efforts to improve the situation of the DRC's population, and transform Congo's 'Fatal Transactions', into fair ones, have been undermined by bad governance practices under the transitional government. The International Fatal Transactions campaign hopes that this report will provide those committed to improve the situation of the DRC's population, with a deeper insight, tools and knowledge to promote just and democratic governance of the DRC's natural resources.

1. Executive summary

Three decades of Mobutism and seven years of war have plunged the Democratic Republic of Congo (DRC) in a deep economic, social, political and humanitarian crisis. Under pressure of the international community, the former belligerents, together with representatives of the unarmed political opposition and civil society organisations, joined a transitional government that has ruled the country since July 2003. The principal objectives of the transition were to re-unify and reconstruct the country, to establish peace, to create an integrated national army and to organise democratic elections. If one makes up the balance sheet of nearly three years of transition, one cannot but conclude that for the most part it has failed. The east of the DRC is still not under government control and is immersed in conflict, the integration of the army is far from achieved and parallel command structures reflect the persistent loyalty of troops to the rebel movements they belonged to during the war. Elections, finally, were postponed with a year and have over the last months been rescheduled numerous times to an always later date.

Much of the transition's failure can be ascribed to bad governance and corruption on behalf of the DRC's current political class. The DRC's history has burdened it with a certain kind of "governmentality" that is the main obstruction in the way of reconstructing the country and adequately addressing the humanitarian crisis it is facing. At all levels of the state apparatus, public office is seen as a means to acquire personal wealth and privileges. For low rank officials, who are underpaid or not paid at all, petty corruption is a strategy for survival. This excuse however is not valid for corrupt practices on behalf of the country's leaders, who bear a grave responsibility for the situation the next government will inherit. Large-scale embezzlement of funds earmarked for military purposes has made the national army inefficient and barely operational. Its inadequately paid soldiers often revert to their guns as a means to scrape a living and pose a security threat to the population that they are meant to protect. The ongoing conflict in the east has a strong economic and resource component to it, and is largely brought about by high-ranking politicians within the transitional government. Finally, one of the major causes for the postponement of the elections is the reluctance of many ruling politicians to step down from their comfortable position in the transitional institutions, and to lose access to the wealth yielded by the nation.

Throughout the transition the leaders of the DRC have paid ample lip service to international donors on the issue of bad governance and corruption. In practice, however, the key principles of good governance – participation, accountability, transparency – have constantly been disregarded. As a result, the Congolese public opinion perceives anti-corruption measures more as a tool to rule out political adversaries, than as a genuine effort to serve the interests of the population. Impunity, instead of accountability, seems to be the rule. For example, a Parliamentary enquiry into governance practices at public enterprises led to the dismissal of many senior officials and six ministers, but was not further scrutinized in court, which could have held the accused officials accountable. Another Parliamentary enquiry, that of the so-called Lutundula Commission, clearly shows that the main political parties have thwarted initiatives aimed at enhancing transparency in the politico-economic management of the country, when such initiatives tended to interfere with their own affairs.

The Lutundula Commission's report provided us with a good basis for an analysis of governance practices in the mining sector, where, because of the DRC's vast mineral

reserves, economic stakes are exceptionally high. In this analysis we focused on mining sector management in Katanga, the province that harbours by far the greatest potential for resource based economic growth. The mining area of Katanga has in recent history not been a war zone and during the war and the transition the central government has retained a solid grip on the province. Over the last decade Katanga's - and the country's - main mining parastatal Gécamines has been most intensively targeted by reform efforts, for which it has received ample assistance of the World Bank since 2001. The interaction between the Congolese government and the World Bank has resulted in an anarchistic and opaque privatisation process that has stripped Gécamines of all its assets. The parastatal company is now bound by countless contracts with, often dubious, private partners that contribute little or nothing to Gécamines or to the national treasury.

As a consequence of the failure to relaunch the most vital part of Katanga's economy, widespread poverty and unemployment have struck the province. These grim socio-economic conditions might very well exacerbate underlying political and ethnic tensions that threaten to lead up to violent conflict in the future. Another consequence of the mismanagement of Gécamines is the phenomenon of artisanal mining. Every day an estimated number of fifty to seventy thousand "creuseurs" invade numerous mining sites in Katanga to dig for heterogenite, an ore that is exceptionally rich in cobalt. These people work in appalling conditions for little more than 1 USD a day. Most of the ore, which they sell through intermediaries to big trading houses, leaves the country unrefined, and this again deprives the DRC of much needed revenue. This report shows that several attempts on behalf of the Congolese authorities to structure the informal sector have failed due to corruption.

This report further contends that the main reasons for the dilapidated state of the Katanga mining sector as a whole are bad governance, corruption and institutional failure. The countless joint venture agreements that Gécamines has entered into, contain numerous anomalies that are all detrimental to the State and to Gécamines. These agreements are usually negotiated by Gécamines' directors, but President Kabila and members of his entourage frequently interfere. The terms of these contracts, deemed by experts to be in most cases stupendously unfavourable for Gécamines, give serious reasons to believe that the officials involved in the negotiations have received kickbacks as a way of "compensation". Our interviews with several international legal advisors who have partaken in joint venture negotiations, confirm that demands for kickbacks on behalf of high-ranking Congolese officials are a recurrent element in such negotiations. Corruption might also explain why the Congolese authorities allow that joint venture contracts are in most cases not properly executed. At the provincial and local level then, institutional controlling mechanisms are absent or inefficient. Public services which are supposed to regulate the mining sector and mineral trade are under-equipped and underpaid, if not unpaid. They take conflicting measures and they are unable to procure reliable export statistics. Their representatives are in some cases paid by Gécamines' private partners themselves, an aberrance of course which gives way to massive tax and export fraud.

The general picture of the mining sector in Katanga drawn by Congolese and international NGO's, journalists and observers, is that it is stuck in a vicious circle caused by corruption, mismanagement and predatory patrimonialism recalling Mobutu times: mining operations hardly generate revenue needed to fund a properly functioning institutional apparatus and, *vice versa*, institutional failure leads to a lack of revenue. The political responsibility for this

situation lies primarily with Kabila's Katanga clan and its power brokers, who have upheld their near-hegemonic position in the province for almost a decade. Hard evidence of corruption is difficult to find, but there is documented proof that Kabila's Parti Pour la Reconstruction et le Développement (PPRD) uses Gécamines as a vehicle for party financing. The company's directors make regular financial contributions and also businessmen or companies engaged in joint venture mining operations provide support to the party.

Regarding this situation also the World Bank has a lot to answer for. For five years now the Bank has been supervising and funding the restructuring of Gécamines, but the analysis in this report of the way Gécamines' giant mining assets of KOV and Kamoto were transferred to private companies, clearly shows that the Bank cannot be unaware of how the mining reforms that it outlines are implemented in practice.

Our analysis of mining sector management in the DRC ends with a case study that reflects the quintessence of this paper's conclusions: throughout the transition, efforts to implement good governance practices related to mining sector management have largely failed due to a lack of political will on behalf of the DRC's ruling elite. In addition to this, the World Bank has not been able or willing to cope with the enormous amount of political obstruction such efforts have met with. The case study in question is that of the Mining Registry, which was a project aimed at introducing non-discretionary criteria procedures for the granting of mining rights. The idea behind this project aligned with one of the key objectives of the new Mining Code, namely to change the government's role from mining operator to mining regulator. From the first day the Registry opened, exactly the opposite happened of what the World Bank had outlined for the project. Less than a year after the Registry opened its doors to the public, it had to be closed down. It took a year to repair the damage.

In short, repeated efforts to improve the situation of the DRC's population after the war by trying to pave the way for sustained development and shared economic growth, have been undermined completely by bad governance practices under the transitional government. What then, can be said about the future? Elections are at hand, but cannot be expected to make any miracles happen. Either – and this is a very likely scenario – the ruling elite (or most of it) will be voted back into power and will thus be endowed with more legitimacy than it has enjoyed before, or either a new political class will arise, which will have a difficult time trying to eradicate deeply-rooted patterns of corruption and patrimonialism. Moreover, any newly elected government will be burdened by the inheritance of the war and the transition, and will be facing enormous challenges. Conflict in North Katanga, the Kivus and Ituri is likely to persist and may even spread to other areas. Major security sector reform efforts will need to be undertaken to create a functional and disciplined army. Also, the Congolese population, of which the greater part is immersed in a grim humanitarian crisis, might lose its patience if elections do not quickly lead up to a tangible improvement of socio-economic conditions. As this report shows, the mining sector could have played an important role in improving those conditions during the transition, but mainly due to mismanagement it has, however, failed to do so. Any new government will need to bring about a radical change of resource management practices, but even under the best conditions, it will still take several years before the mining sector is able to generate substantial revenue and employment. In the mean time, the international community should make good governance of the DRC mining sector one of its prime concerns, so that eventually – finally – the population of the DRC will be able to reap the riches of its soil.

2. Introduction

This paper is the result of a five-month desktop study. Its purpose is to assess the performance of the transitional government of the Democratic Republic of Congo (DRC) in managing the mining sector of the country. The vast mineral reserves of the DRC could, and should, be key to sustained and shared economic growth. This paper starts from the premise that domestic politics is the determining factor in achieving this goal. In the same line of reasoning, the current outlook of the DRC's mining sector is primarily the result of governance practices on behalf of the country's political class. This perspective is particularly relevant now the country is facing elections (to take place before 30 June 2006), in which the Congolese population will make up the balance sheet of its leaders.

The way the mining sector in the DRC has been governed under the transition is a symptom of the current political mores. It is therefore useful, after a short introduction on how the transition came about, to look into aspects that characterize the "governmentality" of the country's ruling elite. After that a chapter is dedicated to an issue that, at the time of writing, is stirring up a lot of commotion on the political scene of Kinshasa. Between April 2004 and June 2005 a Congolese parliamentary Commission, consisting of 17 deputies that belong to all the composing bodies of the transition, carried out an enquiry into economic contracts that were signed before the start of the transition on 30 June 2003. In this chapter we focus primarily on the political context in which the Commission was established and has executed its investigative work. The political imbroglio concerning this parliamentary endeavour to enhance transparency in a great number of economic dossiers, is highly illustrative of current governance practices in the field of economics. Since the Commission's report contains much information on the mining sector and since it also treats the impact of the "war contracts" during the transition, it will enable us to move on to an analysis of mining sector management on behalf of the ruling elite.

Our regional focus in this analysis is mainly on the province of Katanga and for this we have several reasons.² First, of all the DRC's provinces, Katanga harbours by far the greatest potential for resource based economic growth. In addition to this, its mineral reserves lie in the south of the province, which in recent history has not been a war zone: contrary to the eastern provinces, the central government has in recent history retained a solid grip on Katanga's mining area. This implies that the current image of the Katangan mining sector is not distorted by direct conflict, and thus is a fairly good reflection of the ruling elite's mining policy. Another reason for focusing on Katanga is that, in recent years, most mining reform efforts have, under supervision of the World Bank, been directed to Gécamines, which is the DRC's main mining parastatal and once was the mainstay of Katanga's - and the country's - economy. Gécamines, of all mining parastatals, has thus stood the best chance to recover

² Other fairly or very recent NGO reports have been written on the DRC mining sector, which may be of interest to the reader. For the informal mining sector of Katanga, see: *Rush and Ruin. The devastating mineral trade of Southern Katanga*, Global Witness, September 2004. A well-informed analysis of the mining sector in the Kivus and the diamond sector in the Kasai was recently made by Pole Institute: *Digging deeper: how the DR Congo's mining policy is failing the country*, in: *Regards Croisés* n° 15, Pole Institute, December 2005. Also treating the Kivus is: *Under-Mining Peace: Tin - the Explosive Trade in Cassiterite in Eastern DRC*, Global Witness, June 2005. And for the region of Ituri one can revert to: *The curse of gold. Democratic Republic of Congo*, Human Rights Watch, June 2005.

from the ill state the Mobutu regime has left it in. The success or failure of Gécamines' recovery therefore is highly illustrative of the ruling elite's governance practices in general and of its performance in the field of resource management in particular. For all these reasons, a diagnosis of Gécamines' current situation is also an assessment of the elite's political will to achieve the aim of sustained and shared economic growth, an aim that the leaders of the DRC, in interaction with the World Bank, claim to pursue. Such an assessment might provide useful information for the future of the DRC. Of course, it remains to be seen whether the upcoming elections will finally bring peace to the DRC and re-unify the country. But, given it does, there is a possibility that the mining sector outside of Katanga will be modelled on the Gécamines example. This might indeed be the case when the currently ruling elite, or the greater part of it, is voted into power, and this is a probable, if not likely, scenario. Moreover, if this prediction comes true, the election results will enhance the legitimacy of the political leaders that are responsible for the current state of affairs of the mining sector in Katanga.

To conclude our analysis, we focus on a project that was initiated by the World Bank and that concerns the DRC's whole mining sector. In the last chapter we discuss the case of the central Mining Registry in Kinshasa, a public service that is supposed to correctly process demands for mining licenses. Through the new Mining Code, which was drafted at the instigation of the World Bank and promulgated in 2002, the Registry was endowed with much of the competence over the granting of mining rights. The analysis of the Registry project again is highly revealing of how the DRC's mining reform strategy, outlined by the World Bank and executed by the Congolese state apparatus, is implemented in practice.

3. Historical Background.

When Laurent Kabila's Alliance des Forces Démocratiques pour la Libération du Congo (AFDL) seized Kinshasa in May 1997, it filled in the political vacuum three decades of Mobutu rule had left. Mobutu's predatory state had started crumbling at the pace of the ever worsening economic recession that struck the Congo in the seventies. The dictator's power resided in his presidency being a receptacle for the wealth yielded by the nation, and a patrimonial system of redistribution was used to buy the political, military and commercial elites' loyalty to the regime. Finally, as the economic recession worsened, and still dragging along the collapse of the formal economy, the glue that kept the system together dried up. The ever-shrinking state budget made it impossible for the country's institutions to fulfil their primary functions, and though the government and its public services formally remained in place, its functions were taken over by private actors such as churches and NGOs, but also warlords and political-commercial elites.³

Kabila's initial monopoly to power was not long-lived. His formal request to Rwanda and Uganda to withdraw from the Congo ignited a conflict in August 1998 that would come to be known as Africa's first World War. A series of UN reports drew the attention on the central role of the DRC's abundant natural resources in the perpetuation of the conflict.⁴ During the war, Laurent Kabila's government, backed by Angola, Namibia, Zimbabwe and Tchad, occupied about half of the national territory (i.e. the provinces of Bandundu, Bas-Congo, part of Kasai Occidental and Oriental, of Equateur and of Katanga). Of its foreign allies, mainly Zimbabwe was involved in resource exploitation through mining concessions in Katanga and the Kasai.⁵ Jean-Pierre Bemba's Mouvement de Libération du Congo (MLC) rebellion, backed by Uganda, held part of Equateur and Province Orientale, where it controlled gold, diamond and timber production.⁶ Azaria Ruberwa's Rassemblement Congolais pour la Démocratie-Goma (RCD-G) was backed by Rwanda and Burundi and held the provinces of South Kivu and Maniema, and parts of both Kasai, North Kivu, Province Orientale and Katanga. The RCD-G rebellion was involved in trade and production of diamonds, gold, coltan, timber and cassiterite.⁷ Mbusa Nyamwisi's Rassemblement Congolais pour la Démocratie –Mouvement de Libération (RCD-ML) controlled part of North Kivu and Province Orientale, and derived its funds from coltan and gold production, whereas the Rassemblement Congolais pour la Démocratie-National (RCD-N) of Roger Lumbala, with backing from Uganda, was involved in the trade of diamonds and gold from its stronghold in Province Orientale.⁸

³ For a more detailed account of the historical background to Kabila's advent to power, see: *Rapport fait au nom de la commission d'enquête "Grands Lacs" par mm. Colla et Dallemagne, II Rapport d'expertise*, Sénat de Belgique, 20 February 2003, p. 14-18.

⁴ List of Reports of the United Nations Expert Panel on the Illegal Exploitation of Natural Resources and other Forms of Wealth of the Democratic Republic of Congo: Interim Report, 16 January 2001 (S/2001/49); Report, 12 April 2001 (S/2001/357); Addendum Report, 13 November 2001 (S/2001/1072); Interim Report, 22 May 2002 (S/2002/565); Report, 16 October 2002 (S/2002/1146); Addendum, 20 June 2003 (S/2002/1146/Add. I); Report, 23 October 2003 (S/2003/1027).

⁵ Julien Vandeburie, *La genèse des conflits congolais et le rôle des ressources naturelles*, in : *DRC's natural treasures : Source of conflict or key to development ?*, Conference Reader, Brussels, 24 November 2005.

⁶ *Ibidem*.

⁷ *Ibidem*.

⁸ *Ibidem*.

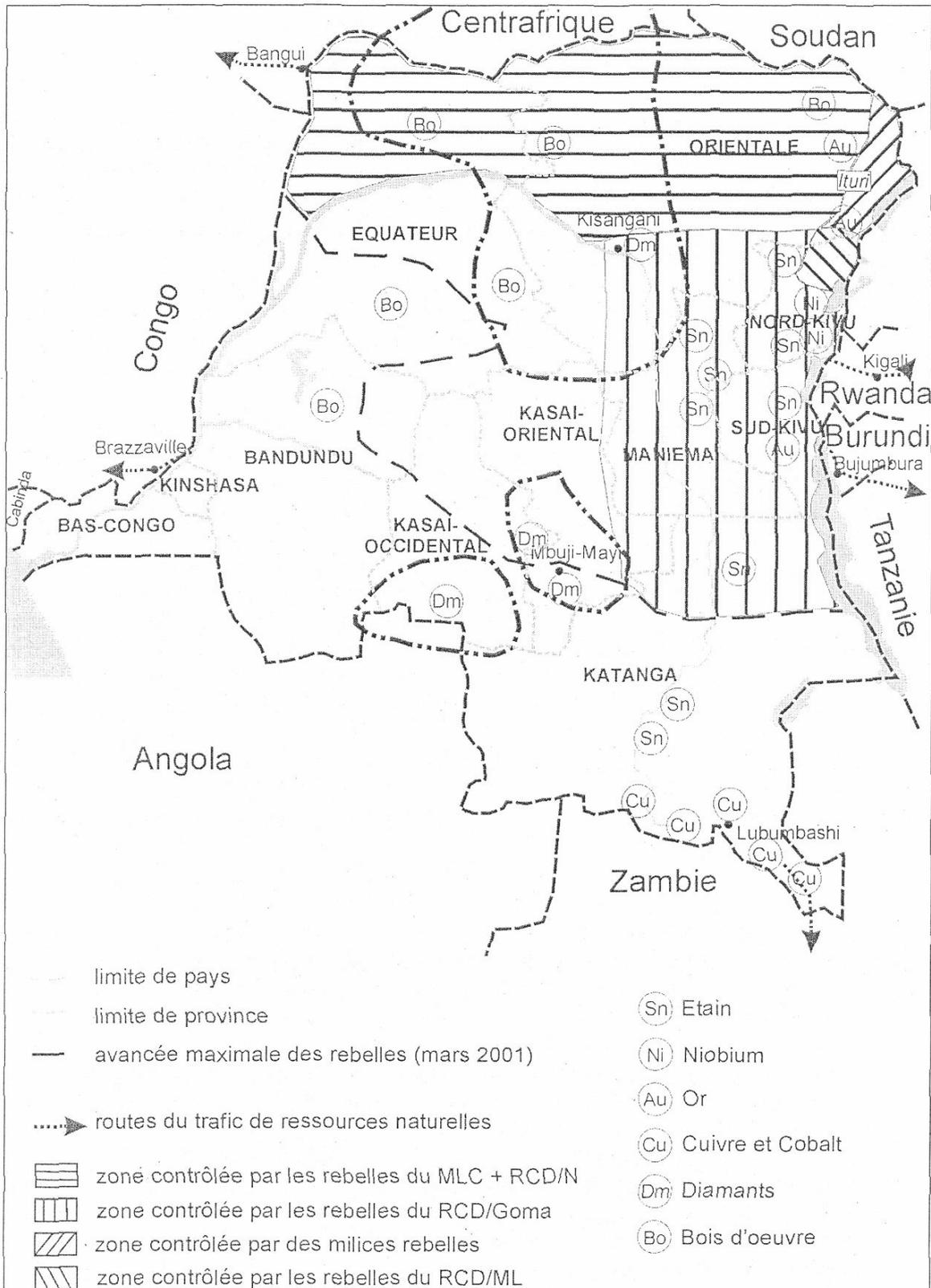


Figure 1. Conflits, ressources naturelles et trafics en République Démocratique du Congo.
 Source : Global Witness, 2004a, Balencie & De la Grange, 2001 & 2005.

Under pressure of the international community, all countries and domestic belligerent groups involved in the conflict signed a peace accord in Lusaka, Zambia between 10 July 1999 and 31 August 1999.⁹ The Lusaka Accord prescribed the cessation of hostilities, the deployment of a UN peacekeeping force (Mission de l'ONU en RDC, or MONUC), the disarmament of foreign militia groups still active on Congolese territory, and the launch of the "Inter-Congolese Dialogue", aimed at the formation of a transitional government.¹⁰ However, the terms of the Lusaka Accord were not respected and new peace accords were signed with Rwanda and Uganda, respectively in July and in September 2002. On 16 January 2001 Laurent Kabila was assassinated and his son Joseph took over the Presidency of the DRC. Joseph Kabila re-opened the stalled Inter-Congolese Dialogue, and from February 2002 onwards, negotiations took place in Sun City, South Africa. The result of the peace talks was a final accord signed by all parties on 2 April 2003.¹¹

⁹ http://www.usip.org/library/pa/drc/pa_drc.html

¹⁰ DRC: Summary of Lusaka Accord. See: http://www.africa.upenn.edu/Hornet/irin_72299c.html

¹¹ Inter-Congolese Political Negotiations - The Final Act. See: <http://www.reliefweb.int/library/documents/2003/ic-drc-2apr.pdf>

4. The transitional government.

The April 2003 accord endorsed and ratified the Global and Inclusive Agreement on the Transition in the DRC (signed in Pretoria on 16 December 2002), which was a power-sharing agreement between the government of the Democratic Republic of Congo (DRC)¹², the main rebel movements (RCD-G, MLC, RCD-ML, RCD-N, Mai Mai), the main parties of the political opposition, and civil society organisations. The agreement envisaged an equitable allocation of posts within the transitional institutions, notably the Presidency, the Government, the National Assembly, the Senate, and the courts and tribunals.¹³ In order to satisfy all negotiating parties, a large number of posts needed to be created. The result was a heavy –and also costly– administration comprising:

- The Presidency: a President and 4 Vice-Presidents (often referred to as the “1+4” formula), respectively chairing a Political Committee, an Economic and Finance Committee (ECOFIN), a Committee for Reconstruction and Development, a Social and Cultural Committee.
- 36 Ministers and 25 Deputy Ministers
- 500 National Assembly Deputies
- 120 Senators
- An independent juridical apparatus as set out in the constitution of the transition
- A number of institutions to support democracy, such as the Committee on Ethics and the Fight against Corruption, or the Independent Electoral Commission (IEC). The presidents of these committees receive ministerial status.¹⁴

The principal transition objectives were to re-unify and reconstruct the country, establish peace, create an integrated national army and organise democratic elections.¹⁵ On 30 June 2003 the transitional government was installed. In August 2003 the main commanders of the Congolese National Army (FARDC) were appointed to their posts along the transition’s principle of equitable distribution.¹⁶ At the provincial level, 11 governors and 33 vice-governors (3 per province) were appointed in May 2004.¹⁷

The end of the transition was to be marked by democratic legislative and presidential elections within a period of 24 months after the government’s installment. Article IV of the Global and Inclusive Agreement, however, foresaw an extension of maximum 6 months,

¹² The outgoing government of Joseph Kabila joined the transition as one of its composing bodies, namely Kabila’s Parti pour la Reconstruction et le Développement (PPRD).

¹³ Inter-Congolese Dialogue. Political negotiations on the peace process and on transition in the DRC. Global and inclusive agreement on transition in the DRC. Art. III and V. See: <http://www.reliefweb.int/library/documents/2002/gov-cod-16dec-02.pdf>

¹⁴ For the list of posts and parties, as agreed by the Inter-Congolese Dialogue, see Appendix I of this report: Political negotiations on the peace process and on transition in the DRC. Global and inclusive agreement on transition in the DRC, Annex 1. See: <http://www.reliefweb.int/library/documents/2002/gov-cod-16dec-02.pdf>

¹⁵ *Ibidem*, Art. II.

¹⁶ For the list of army commanders and their political affiliation, see:

http://64.233.179.104/search?q=cache:piniCnh_mPcJ:www.actucongo.com/congo_acteurs_institutions_trans_rdc.htm+intellectuel+au+cursus+irr%C3%A9prochable&hl=nl&gl=be&ct=clnk&cd=1&client=firefox-a

¹⁷ For a list of governors, see:

<http://64.233.179.104/search?q=cache:H8GarEG7fGJ:www.geocities.com/bureaupolitiquedsd/new10.html+gouv+erneys%2Brdc&hl=nl&gl=be&ct=clnk&cd=9&client=firefox-a>

renewable once for another 6 months, if logistic problems related to the organisation of legislative and presidential elections would arise. During the year 2005 it became clear that the original deadline would not be met. Elections now are to take place before 30 June 2006.

5. Security and humanitarian situation.

Despite MONUC's presence and the formal ending of the war, in the east of the DRC armed conflict has persisted throughout the transition. The main hotbeds are the Ituri and Haut Uélé districts in the northeast, the Kivu provinces and the north of Katanga. In Ituri the control over the district's vast gold deposits lies at the heart of armed strife.¹⁸ Between 2002 and 2004, the ethnic Lendu Front for National Integration (FNI) fought five battles with the Hema Union of Congolese Patriots (UPC) over mining concessions in Mongbwalu.¹⁹ To date, these and other armed groups, such as the Ugandan Lord's Resistance Army (LRA), continue to pose a major security threat on the region.²⁰ The UN estimates that the conflict in Ituri alone has claimed the lives of 50.000 people since 1999.²¹

In the Kivus, a conflict between the circle around Joseph Kabila and the RCD-G triggered a series of clashes that in May and June 2004 resulted in a devastating battle for South Kivu's capital Bukavu.²² Dissident forces, led by general Laurent Nkunda, still regularly engage in armed combat with FARDC troops.²³ The ongoing presence in the Kivus of some 10.000 fighters of the Democratic Forces for the Liberation of Rwanda (FDLR: armed Hutu rebels) has been providing RCD-G hardliners and Rwanda with a pretext for pursuing their objectives in the east of the Congo.²⁴ In 2005 there have indeed again been threats by Rwanda to invade the Congo, repeating the old argument that the Hutu rebels are threatening Rwanda's national security.²⁵ Meanwhile, the FDLR, that depends on looting and extortion for its livelihood, continues to abuse civilians in the Kivus on a large scale.²⁶ The ongoing conflict in the Kivus has a strong resource component to it, which has been clearly demonstrated by several NGO reports. For example, a December 2005 report by Pole Institute concludes: "*Lack of attention to the resource question and to the particularities of conflict in Eastern Congo are major stumbling blocks to the success of the peace process in the DRC.*"²⁷ and Global Witness in June 2005 reached a similar conclusion in its analysis of the link between the cassiterite trade and violence in the Kivus.²⁸

Also in the north of Katanga province armed rebels continue to cause havoc. These Mai Mai militias were created during the war by Laurent Kabila, who used them to fight against rebels backed by Rwanda. The Mai Mai from the north of Katanga were not integrated in the army and were left out of the Global and Inclusive Agreement. According to International Crisis Group these militias, counting 5.000 to 8.000 troops commanded by 19 warlords, are now the

¹⁸ *The curse of gold. Democratic Republic of Congo*, Human Rights Watch, June 2005, p. 21.

¹⁹ *Making gold a blessing, not a curse, for the citizens of Congo*, in : *DRC's natural treasures : Source of conflict or key to development ?*, Conference Reader, Brussels, 24 November 2005.

²⁰ On 23 January 2006 eight Monuc soldiers were killed and five injured by the LRA in the Garamba Park of Haut Uélé district. See: <http://www.monuc.org/News.aspx?newsID=9716>

²¹ <http://www.irinnews.org/webspecials/Ituri/default.asp>

²² *The Congo's transition is failing: crisis in the Kivus*, International Crisis Group, Africa Report n° 91, 30 March 2005, p. 7.

²³ *DRC: civilians displaced in renewed fighting in North Kivu*, in: IRIN, 20/01/2006.

²⁴ *A Congo action plan*, International Crisis Group, Africa briefing n° 34, October 2005, p. 6.

²⁵ *Ibidem*.

²⁶ *Ibidem*.

²⁷ *Digging deeper: how the DR Congo's mining policy is failing the country*, in: *Regards Croisés* n° 15, Pole Institute, December 2005, p. 5.

²⁸ *Under-Mining Peace: Tin - the Explosive Trade in Cassiterite in Eastern DRC*, Global Witness, June 2005.

main cause of the displacement of an estimated 310.000 people in Katanga.²⁹ These people sadly join the ranks of the estimated 1,3 million internally displaced in the whole country.

The war had accelerated the dilapidation of the state at an unprecedented pace. The Congo was left in ruins and still today faces a humanitarian catastrophe. A 2004 study of the International Rescue Committee (IRC) estimated the death toll of the DRC conflict at 3,9 million, making it the deadliest since World War II.³⁰ IRC further established that the country's mortality rate is 40 % higher than the sub-Saharan regional level, with 38.000 deaths a month in excess of what is considered to be a "normal level".³¹ An October 2005 report of Médecins sans Frontières (MSF) contains similar, saddening statistics about the humanitarian crisis in the DRC. With one in five new-born Congolese children never reaching the age of five, the country holds the world record for mother-child mortality.³² More than 80 % of the estimated 55 million Congolese live on 0,30 USD a day, and 75 % of the population is considered to be undernourished and has no regular supply of drinking water.³³ Several health indicators draw an evenly grim picture of the population's fate: due to the collapse of the public health system, a series of previously eradicated diseases has re-emerged while nearly two-thirds of the Congolese do not possess the financial means to afford conventional health care.³⁴ The 2004 human development index of the United Nations Development Programme ranks the country 168th out of 177 countries.³⁵

²⁹ *Katanga: The Congo's Forgotten Crisis*, International Crisis Group, Africa Report N°103, 9 January 2006, p. 7.

³⁰ <http://www.theirc.org/news/page.jsp?itemID=27819067>

³¹ *Ibidem*.

³² *Access to healthcare, mortality and violence in Democratic Republic of the Congo. Results of five epidemiological surveys: Kilwa, Inongo, Basankusu, Lubutu, Bunkeya March to May 2005*, Médecins sans Frontières, October 2005, p. 4.

³³ *Ibidem*.

³⁴ *Ibidem*, p. 11.

³⁵ *Ibidem*, p. 4.

6. Governmentality.³⁶

Three decades of Mobutu rule have established deeply-rooted patterns of patrimonialism and corruption in the DRC. Under the transition the country's leaders have paid ample lip service to international donors, but there are numerous indications that the old "governmentality" has not undergone any major changes. According to Transparency International's 2005 Global Corruption Report, the DRC is still among the 15 most corrupt countries in the world.³⁷ The authors meaningfully remark that "*if the number of speeches were a measure of change, there would be real hope for the fight against corruption in the Democratic Republic of the Congo (DRC).*" Further they state that "*the fear of seeing the precarious political equilibrium collapse inhibits initiatives that might be taken to eliminate corruption and related offences.*"³⁸

A first "warning" for the current political elite's taste for personal wealth and privileges dates back to the time negotiations in Pretoria were held. The negotiating parties decided that a technical commission be put up to determine the "logistic needs" of the transitional institutions. The commission concluded that 107 excellencies needed a "special treatment", meaning that 107 residences were to be made available to them, if necessary through expropriation.³⁹ In the case of the four Vice-Presidents and the Chairmen of the Assembly and the Senate, the villa's had to contain three bedrooms and three bathrooms, whereas those of a number of Ministers and Chairmen of political committees had to contain two bedrooms.⁴⁰ The list further contained 405 cars. All Ministers and Vice-ministers were to be provided with a luxury car, and every Vice-President with four cars: a Mercedes, a luxury car, and two cars for escorting.⁴¹ The committee's report concluded that, given the vulnerability of the national budget, financial assistance should be asked to the international community.⁴² Another example of the link between status symbols and public office is that of "Operation Condor". On 20 September 2005 620 four-wheel drives, commissioned by the Chairman of the National Assembly Olivier Kamitatu from the Belgian firm Demimpex, arrived at Kinshasa.⁴³ The cars were to go to the DRC's parliamentarians and stirred up a lot of social unrest, because they infuriated Kinshasa's teachers who had been on strike for months, to demand a salary raise.⁴⁴ For days on end the press speculated on the price of the vehicles and the way they had been paid for, while high-ranking officials were contradicting themselves to explain how Operation Condor had been financed.⁴⁵

The leaders of the transition also have an alarming record as far as budgetary discipline is concerned. In 2004, the Presidency reportedly exceeded its budget by nearly one hundred

³⁶ This chapter was written with the three principal characteristics of good governance, as defined by the United Nations Development Program (UNDP), in mind: participation, transparency, accountability.

³⁷ *Global corruption report 2005*, Transparency International, p. 137.

³⁸ *Ibidem*.

³⁹ 'Congolesse politici azen op auto's en villa's' in: *De Standaard*, 21/12/2002.

⁴⁰ *Ibidem*.

⁴¹ *Ibidem*.

⁴² *Ibidem*.

⁴³ 'Parlement : arrivage à Boma, de 620 jeeps neufs des députés et sénateurs', in : *Radio Okapi*, 20/09/2005.

⁴⁴ '620 jeeps pour députés et sénateurs signalées à Boma', in : *Le Phare*, 21/09/2005.

⁴⁵ http://www.deboutcongolais.info/weblogs/briefing/transition_institutions_de/parlement/

percent (7,9 billion Congolese Francs)⁴⁶; the Vice-Presidency in charge of the Defence and Security Commission, led by Azarias Ruberwa (RCD-G), overran its budget by a similar percentage (736 million Congolese Francs); the Vice-Presidency of Jean-Pierre Bemba (MLC), in charge of the Economic and Financial Commission (ECOFIN), caused an overrun of more than 600 % (5 billion Congolese Francs); the Social and Cultural Commission of Vice-President Zahidi N’Goma (political opposition) swallowed a surplus of 780 million Congolese Francs (100 %); and the Vice-Presidency of Abdoulaye Yerodia (PPRD), in charge of the Reconstruction and Development Commission, exceeded its budget with 263 million Congolese Francs.⁴⁷ The adopted budget for 2005 shows serious aberrances as well. Examples are numerous. For instance, the allocation to the Chief of State reportedly equals 8 times the national health budget, 6 times that of social affairs, and 16 times the budget for agriculture.⁴⁸ In addition to this, throughout the transition there have been numerous financial scandals involving senior officials. In November 2005, for example, a fraud scheme reportedly was uncovered at the Direction Générale des Impôts (DGI), which is the general tax collecting agency, aimed at embezzling a sum of 28 million USD.⁴⁹

Even the current regime’s most highlighted effort to curb bad governance and corruption practices missed its target for the most part. A Parliamentary Commission, led by deputy Grégoire Bakandeja, was set up to carry out an audit of state-run enterprises. In January 2005, the Commission’s enquiries led to the dismissal of six ministers and several high-level public sector executives⁵⁰, but, after the dismissals, the public prosecutor issued no indictments.⁵¹ Because these and similar corruption cases were never scrutinized in court, public opinion often perceives anti-corruption measures as strategic moves in the struggle for political power.⁵² What also did not inspire a lot of confidence in the regime’s political will to tackle corruption was that one of the suspended Ministers, head of RCD-N Roger Lumbala, reportedly replaced himself with his wife.⁵³ Jean-Pierre Bemba, for his part, threatened to leave the transitional government because also Minister José Endundo, his fellow party member and reportedly co-proprietor of his airline company Hewa Bora, had to leave his post.⁵⁴ Bemba’s reaction displayed the most powerful political tool of the former belligerents in the transition, namely the threat to return to fighting. Besides the MLC, also the RCD-G has made ample use of this dubious form of leverage.⁵⁵

As several reports point out, corruption in the DRC has reached such dazzling proportions that it constitutes a threat to the country’s security.⁵⁶ This assertion is most strikingly born out

⁴⁶ Exchange rate on 30 December 2005 : 1 dollar = 425 FC: 7,9 billion FC = 18,5 million USD.

⁴⁷ ‘Pillage budgétaire’ in : *Le Potentiel* , 27/10/2005.

⁴⁸ ‘RDC. Le budget 2005 et ses contradictions’ in : *Le Phare*, 29/08/2005.

⁴⁹ ‘Selon le rapport conjoint Cour des Comptes, IGF-DGI : plus de 28 millions USD des crédits d’impôts fictifs’ in : *Le Potentiel*, 08/11/2005.

⁵⁰ <http://ipsnews.net/fr/interna.asp?idnews=2452>

⁵¹ ‘Médias et bonne gouvernance. Le hold-up de la dernière chance’ in : *Plume & Liberté* n°5, May 2005, Journalistes en Danger, p. 5 ; *Katanga: The Congo’s Forgotten Crisis*, International Crisis Group, Africa Report N°103, p. 15.

⁵² ‘Congo-Kinshasa : une paix bien coûteuse’, in : *Africa Confidential* n° 468, 07/02/2005.

⁵³ *Ibidem*.

⁵⁴ *Ibidem*.

⁵⁵ See, for example: *Elections between hope and fear. The African Great Lakes in transition?*, Clingendael Conflict research Unit, Policy Brief, 4 April 2005, p. 2.

⁵⁶ *Ibidem*; *A Congo action plan*, International Crisis Group, Africa briefing n° 34, October 2005; *Katanga: The Congo’s Forgotten Crisis*, International Crisis Group, Africa Report N°103, 9 January 2006.

by the large scale embezzlement of funds earmarked for paying army salaries.⁵⁷ According to International Crisis Group (ICG) parallel chains of command and extensive corruption make the national army (FARDC) inefficient and barely operational.⁵⁸ Graft has resulted in irregular and inadequate payment of soldiers who often revert to their guns as a means to scrape a living. Human Rights Watch (HRW) adds that by late 2005 only one fifth of former belligerent troops have been integrated in the national army (FARDC), and that Congolese politicians and military leaders have embezzled 30 million USD from the defence budget of the Kivus alone.⁵⁹

The international community is well aware of the problem, but has been acting primarily on the adage 'first stability and then good governance'.⁶⁰ In the UN Secretary General's May 2005 report on the elections in the DRC, he launched a proposal to establish a joint mechanism of Congolese officials and international donors to support the transparent management of state resources, "including revenue from the mining sector."⁶¹ As foreign funding makes up 57 percent of the DRC's national budget, the international community could in theory attach more stringent conditions to the financial aid it provides to the country. However, several members of the Security Council, including China and Russia, have been opposing the initiative. Joseph Kabila, the current President of the DRC, for his part has dismissed the idea and has called it a violation of the DRC's national sovereignty.⁶² He reportedly also has argued that good governance issues are better dealt with during the weekly internal meeting of the Presidential office ("l'espace présidentiel").⁶³

In the mean time, there are strong indications that during the run up for elections the situation has even deteriorated, because the political parties of the transitional government now seek funds for their electoral campaign.⁶⁴ For example, according to a December 2005 HRW report, the number of grants for exploration activities in mineral areas has increased four-fold in the second half of 2005.⁶⁵ International observers fear that these arrangements may involve corruption.⁶⁶ HRW warns that Government officials can profit doubly from corruption at this point: they can line their pockets and they can also spend more to influence the outcome of the elections, whether by increased advertising, by buying votes outright or by bribing electoral officials to favor their party.⁶⁷ HRW adds that corruption has become so extensive that it contributes to instability, threatens the transition, and could skew the elections.⁶⁸

⁵⁷ ICG estimates that a sum of 3,5 to 5,8 million USD is embezzled every month. See: *Katanga: The Congo's Forgotten Crisis*, op.cit., p. 14.

⁵⁸ *A Congo Action Plan*, op. cit., p. 1; The authors of the ICG report even go as far as to suggest that the State itself is the largest security threat to the Congolese people.

⁵⁹ *Democratic Republic of Congo. Elections in sight: "Don't Rock the Boat"?*, Human Rights Watch, December 15, 2005, p. 4.

⁶⁰ *A Congo action plan*, op.cit., p. 4; *Democratic Republic of Congo. Elections in sight*, op.cit. In this context it should however be noted that the European Union and MONUC since 2005 have undertaken efforts to set up a payroll mechanism for the salaries of the FARDC troops.

⁶¹ *Special report of the Secretary-General on elections in the Democratic Republic of the Congo*, 26 May 2005, S/2005/320, p. 8.

⁶² *A Congo action plan*, op.cit., p. 4.

⁶³ *Ibidem*, p. 4.

⁶⁴ *Democratic Republic of Congo. Elections in sight*, op. cit., p. 14.

⁶⁵ *Ibidem*.

⁶⁶ *Ibidem*.

⁶⁷ *Ibidem*.

⁶⁸ *Ibidem*.

Numerous observers also contend that, besides reasons of security and logistics, the postponement of the original election date with a year was caused by the reluctance of the ruling politicians to give up their power and assets, and that many of them have been trying to cash in as much as possible before eventually being voted out of office.⁶⁹ It is probably in this light that we should look at a Presidential decree issued during the first week of August 2005. The decree ratified the distribution of lucrative director seats in as much as thirty of the country's parastatals.⁷⁰ This reshuffle of directors among the parastatal companies was the outcome of a political dispute that had been going on for more than a year, and thus overstretched the original deadline of the transition.⁷¹

⁶⁹ See, for example: *A Congo action plan, op.cit.*, p. 1; 'Congo-Kinshasa: une paix bien coûteuse', in : *Africa Confidential n° 468*, 07/02/2005; 'SP.A haalt keihard uit naar regering-Kabila' in: *De Morgen*, 03/09/2004.

⁷⁰ 'Portefeuille de l'État: analyse des pesanteurs politiques', in : *Le Soft*, 09/08/2005.

⁷¹ 'Kabila forced to share parastatal top jobs, loses access to funds', in: *SouthScan*, 29/09/2005. At the heart of the dispute reportedly lay the PPRD's reluctance to end its hegemony over the public sector. Political analysts considered the reshuffle as a blow for Kabila, whose parastatal CEOs were partly cut off from funds to finance the PPRD's electoral campaign. The main victor of the battle reportedly was the RCD-G, whose Minister of Parastatals, Célestin Vunabandi, immediately announced an audit of all parastatals to determine if the outgoing mandatories were guilty of acts of corruption and bad governance. In his rhetoric he apparently forgot that this endeavour had been undertaken a year before by the Bakandeja commission.

7. The Lutundula Commission.⁷²

The Final Act of the Inter-Congolese Political Negotiations endorsed two resolutions (DIC/CEF/01 and DIC/CEF/04) calling for “*the setting up, by the Transitional Parliament, within the shortest possible time, of a special Commission tasked with assessing the validity of agreements of an economic and financial nature concluded during the wars of 1996 - 97 and 1998.*”⁷³ As with any initiative aimed at enhancing transparency and efficiency in the economy of the DRC, the implementation of these resolutions met with enormous political obstruction. At first, Parliamentaries from the Oppositional (“Composante Opposition Politique”) and Civil Society bodies wanted to exclude deputies belonging to the parties of the former belligerent parties from the Commission.⁷⁴ After lengthy negotiations it was agreed that the MLC, RCD-G, RCD-ML, RCD-N and PPRD could join the Commission, but that they would not be allowed to join missions to the territories they held during the war.⁷⁵ The Commission should have started its enquiries in December 2003, but the Parliamentary resolution needed for its creation was only voted on 24 April 2004 by the plenary.⁷⁶ Kabila’s PPRD reportedly voted negative, fearing revelations that could compromise the party.⁷⁷ After that, another month was needed to appoint the Commission’s members.⁷⁸ It counted four members of the Opposition, four of Civil Society, two of the PPRD, MLC and RCD-G, and one of the RCD/ML, RCD/N and Mai Mai.⁷⁹ Christophe Lutundula, an experienced politician from the opposition, was appointed as chairman and enquiries started at the end of May 2004. Throughout its investigative mission, the Commission’s work was hampered by the slow disbursement of funds by the government, which committed 3.500.000 FC to the project (roughly 8.000 USD, rate on 5 February 2005), and two public services that administered the funds the World Bank committed to the project, namely 443.000 USD.⁸⁰

The period under the Commission’s scrutiny stretched from September 1996 to 30 June 2003, when the transition formally ended the war. The prime objectives of the Commission were to inventory and analyse all contracts from that period, evaluate their financial impact and validate or reject them. The report contains a section on the difficulties it encountered.⁸¹ It was a major obstacle that the Commission had no mandate to interrogate Ugandan and Rwandan officials mentioned in the UN reports on the illegal exploitation of resources in the

⁷² The title of the Commission’s report is: *République Démocratique du Congo. Assemblée Nationale. Commission spéciale chargée de l’examen de la validité des conventions à caractère économique et financier conclues pendant les guerres de 1996-1997 et de 1998. Rapport des travaux. Iière Partie. Fait à Kinshasa, le 26 juin 2005.* It can be viewed at: <http://www.freewebs.com/congo-kinshasa/>

⁷³ Inter-Congolese Political Negotiations - The Final Act. See:

<http://www.reliefweb.int/library/documents/2003/ic-drc-2apr.pdf>

⁷⁴ ‘Congo-Kinshasa: ménage d’après-guerre’, in: *Africa Confidential* n° 461, 25/10/2004.

⁷⁵ *Ibidem* ; *République Démocratique du Congo. Assemblée Nationale, op.cit.*, p. 20.

⁷⁶ ‘Congo-Kinshasa: ménage d’après-guerre’, in: *Africa Confidential* n° 461, 25/10/2004 ; *République Démocratique du Congo. Assemblée Nationale, op. cit.* p. 11.

⁷⁷ <http://businessreport.co.za/index.php?fSectionId=553&fArticleId=2250830>

⁷⁸ *République Démocratique du Congo. Assemblée Nationale. op. cit.*, p. 15.

⁷⁹ *Ibidem.*

⁸⁰ *Ibidem*, p. 21, 25. These public services are the Bureau Central de Coordination (BCECO), an administrative organ that manages projects funded by international donors, and the Comité de Pilotage de la Réforme des Entreprises Publiques (Copirep), an administrative body created in October 2002 to manage public sector reform projects funded by foreign donors.

⁸¹ *Ibidem*, p. 25-30.

DRC. In the east of the DRC then, missions were often hampered by reigning insecurity. But the main hindrance was the lack of collaboration of the PPRD, the MLC and RCD-N, on which the Commission reports as follows:

« (...) le refus des Composantes “Gouvernement” et MLC ainsi que de l’entité RCD-N de collaborer avec la Commission Spéciale. En effet, aucune d’entre elles n’ a daigné de répondre aux demandes d’informations et d’audience lui adressée par la Commission au sujet des conventions et actes de gestion qu’elles auraient signés pendant les deux guerres de 1996-1997 et 1998 ainsi que des engagements pris à l’égard de leurs alliés ou de la population. Jusqu’au moment de la rédaction de ce rapport, ces Composantes et Entité n’ont affiché qu’une indifférence dédaigneuse à l’égard de la Commission Spéciale. »⁸²

On the contrary, RCD-ML co-operated with the Commission in a satisfactory way. RCD-G for its part, provided some information on its business dealings during the wars, but did not respond to a list of questions the Commission sent in June 2005. As far as economic operators are concerned, those of South-Kivu showed most reticence in providing information.⁸³

The first phase of enquiries (May 24-June 15 2004) consisted of gathering information at the relevant Ministries in Kinshasa: Ministries of Mines and Energy, Finance, Post & Telecommunications, Economy, Environment, Agriculture, Transport, Portfolio, Planning, Land Affairs, Industry, and Small and Medium Enterprises.⁸⁴ This preliminary phase also comprised an info-gathering visit to the Belgian Senate, to a number of foreign NGOs and to the UN headquarters in New York (for a consultation of the archives of the Panel of Experts). In a second phase which took about a year, the Commission conducted four investigative field missions respectively to the East and West Kasai, Katanga, North and South Kivu/Maniema/Oriental Province, and Bandundu/Lower Congo/Equateur/Kinshasa. It is important to note that the Commission’s analysis resulting from these missions, includes the impact on the ground of the contracts it scrutinized.⁸⁵ This implies that the Commission’s report presents a state of affairs that goes well beyond 30 June 2003.

Many of the contracts scrutinized pertain to the mining industry and the findings of the Commission’s mission to Katanga will be commented on below. Some of its general conclusions, however, are particularly relevant for an assessment of governance practices under the transitional government:

“En effet, des informations recueillies par la Commission Spéciale pendant les enquêtes, il ressort que le Gouvernement de transition n’a pas fait meilleur que ceux qui ont exercé le pouvoir d’Etat pendant la période des guerres de 1996-1997 et de 1998. Bien au contraire, l’hémorragie des ressources naturelles et des autres richesses du pays s’est amplifiée sous le couvert de l’impunité garantie par la Constitution aux gestionnaires gouvernementaux. (...) En attendant l’application des recommandations de la Commission Spéciale et en vue de préserver le patrimoine national et ceux des entreprises publiques ainsi que des sociétés d’économie mixte, contre la tentation de la prédation et du bradage à la veille des élections, la Commission recommande la suspension par l’Assemblée Nationale de toute aliénation du

⁸² *Ibidem*, p. 27.

⁸³ *Ibidem*.

⁸⁴ *Ibidem*, p. 17-18.

⁸⁵ *Ibidem*, p. 14.

patrimoine national (ressources naturelles en particulier), de ceux de ces entreprises et sociétés par des conventions, contrats ou actes de gestion jusqu' à l'installation des institutions issues de prochaines élections. Il échet de résilier tout contrat minier ou forestier conclu avec toutes entreprises publiques et sociétés d'économie mixte depuis le 30 juin 2003 (...) pour lesquels les investissements promis n'ont connu aucun début d'exécution dans le délai convenu. »⁸⁶

After the report was deposited at the Bureau of the National Assembly in June 2005, the Commission's recommendations were by no means implemented. On the contrary, after June 2005 the government officialized a series of joint venture agreements involving giant mining assets in Katanga and the Kasai. On 4 August 2005, in the same week the previously mentioned distribution of director seats in 30 parastatals was decreed, a Presidential decree ratified two joint venture agreements of private companies with mining parastatal Gécamines, involving the vast concessions of Tenké Fungurumé and of Kamoto in Katanga (see Chapter: Gécamines' reform in practice: cases of KOV and Kamoto).⁸⁷ With another Presidential decree the Kinshasa authorities in October 2005 finally handed out Gécamines' last important assets (see Chapter: Gécamines' reform in practice: cases of KOV and Kamoto) and a month later the government confirmed three Memorandums of Agreement of diamond parastatal MIBA with three private companies (De Beers, DGI Mining and Nizhne-Lenskoye), reportedly concerning mining licenses for a surface area of more than 35.000 square kilometres.⁸⁸

At the time of writing, eight months after the Lutundula report was deposited at the Bureau of the Assembly, its discussion in the plenary has not been scheduled yet.⁸⁹ But mid-February 2006 an unknown source has made it accessible on the internet, an event that coincided with the distribution of the report to the deputies of the National Assembly.⁹⁰ Political analysts see this demarche as a strategic pre-electoral move on behalf of the National Assembly's Chairman, Olivier Kamitatu.⁹¹ Kamitatu, formerly Bemba's right-hand man, was evicted from Bemba's MLC on 23 January 2006 and has recently formed a new political party, the Alliance pour le Renouveau du Congo (ARC), a broad political coalition with several well known politicians among its members, including Christophe Lutundula.⁹² Since the latter's report, as we have seen, discredits the main political parties of the transition, it provides the ARC with a good deal of ammunition to partake in the electoral battle. Typically, Kamitatu's political move has caused Bemba to publicly accuse his former confidant of having embezzled a sum of 300.000 USD during his mandate as Chairman of the Assembly.⁹³ All this political imbroglio will doubtlessly weaken the impact of the Lutundula Commission's

⁸⁶ *Ibidem*, p. 270.

⁸⁷ 'Les plus importantes concessions minières du Congo passent aux mains de juniors', in : *Trends/Tendances*, 22/08/2005.

⁸⁸ 'No new Africa play for Alrosa', in: *Africa Mining Intelligence n° 120*, 16/11/2005; *Les diamants du Kasai: clé et moteur de développement*. Speech held by Gustave Luabeya Tshitala at the conference: *DRC's natural treasures : Source of conflict or key to development*, Brussels, 24 November 2005.

⁸⁹ <http://www.congoindependant.com/une250206.htm>; <http://hrw.org/english/docs/2006/02/20/congo12692.htm>

⁹⁰ *Ibidem*.

⁹¹ <http://www.congoindependant.com/nosconfs250206.htm>; Personal communication of investigative journalist in Kinshasa on 26/02/2006.

⁹² www.digitalcongo.net/fullstory.php?id=64199

⁹³ 'La guéguerre entre JP Bemba et Olivier Kamitatu vire au règlement des comptes par le déballage des dossiers sales', in : *La Prospérité*, 17/02/2006.

analysis, which, thorough and well informed as it may be, will likely be disposed of by the parties and politicians it indicts as a politically biased document.

8. Governance and mining in Katanga.

8.1 Privatisation of mining parastatals: historical background.

Since Mobutu nationalized the economy in 1967, the Congo's main mineral deposits have been held by parastatal companies. The privatisation of those parastatals already started before the advent of Kabila's AFDL to power in 1997. In 1995, in an attempt to curb the downward spiral of the DRC's economy, premier Kengo wa Dondo's government hesitatingly embarked on a privatisation programme that also targeted the mining sector, which had always been the mainstay of the country's economy.⁹⁴ The idea behind the endeavour was to relaunch the formal mining sector that, due to exogenous factors (such as economic recession, price fluctuations on the commodity market, etc.) and bad governance, had nearly come to a stand-still. Negotiations under Kengo resulted in a series of joint venture agreements with junior mining companies. In Katanga, the mining rights on the huge deposits of Tenké and Fungurumé were transferred from Gécamines to a partnership with a Canadian company that was part of the Lundin Group, which was led by the Swedish financier Adolf Lundin.⁹⁵ The exploitation of the copper and cobalt mine of Kasomba was led by Belgian national George Forrest and his group (which now holds the most important mining portfolio in the DRC), who entered in the mining business through an agreement with Gécamines and Belgian Union Minière.⁹⁶ The exploration and exploitation rights over a concession of 13.000 km² on the surface area of the parastatal Sodimico were awarded to Australian junior Anvil Mining.⁹⁷ In the east then, the parastatal Okimo ceded concessions over an area of 2.000 km² to Belgian/Canadian Mindev and an area of 82.000 km² to the Canadian Barrick Gold Corporation.⁹⁸ Rights over the assets of parastatal Sominki in the Kivus were handed out to another Canadian junior, Banro Resources Corporation.⁹⁹

Kengo's attempt to relaunch the mining sector was thwarted by the war that started in September 1996. During the war, all belligerent parties throughout the country negotiated alterations to the existing contracts and new joint venture agreements. The above mentioned UN reports on the illegal exploitation of the DRC's natural resources describe in detail how the business of awarding mining contracts, or access to mining sites and resource trade routs, indeed did serve war purposes and private interests of domestic and foreign belligerents, and of businessmen and politicians who were interlinked in so-called elite networks.

⁹⁴ Eric Kennes, *Le secteur minier au Congo : Déconnexion et descente aux enfers*, in : Reyntjens F., Marysse S., *L'Afrique des grands lacs*, l'Harmattan, 2000, p. 311.

⁹⁵ <http://www.inshuti.org/miniere.htm>

⁹⁶ Anon., Exposé écrit d'un ancien administrateur de la Gécamines à l'attention de la Commission sénatoriale belge « GRANDS LACS » Volet : La GECAMINES et Monsieur Georges Arthur FORREST, p. 15. (see : <http://www.kongo-kinshasa.de/dokumente/divers/gecamines.pdf>)

⁹⁷ *République Démocratique du Congo. Assemblée Nationale. op.cit.*, p. 5.

⁹⁸ *Ibidem.*

⁹⁹ *Ibidem.*

Main mining parastatals in the DRC

- Katanga :
 - Gécamines (concessions over a surface of 30.000 km²) : copper, cobalt, zinc, coal ; Sodimico : copper, cobalt ; Entreprise Minière de Kisenge « Manganèse » : manganese
- The Kivus :
 - Sominki (formerly 72 % private partner, 28 % State of Zaïre; concessions over a surface of more than 11.000 km²): gold, cassiterite, coltan
- Oriental Province:
 - Okimo (concessions over a surface of 83.000 km²): gold
- East and West Kasai:
 - MIBA (concessions over a surface of 78.000 km², 20 % stake for Belgian company Sibeka): diamonds

8.2 World Bank.

Since 2001, the World Bank has supervised the DRC government's mining policy, and this has largely consisted in further privatizing the country's mining parastatals. In the same year, and after ten years of absence, the World Bank resumed lending to the DRC.¹⁰⁰ The World Bank's overall strategy in the DRC has been to spur economic growth through private sector activity, mainly by trying to attract foreign investors.¹⁰¹ Its lending operations are outlined in papers called 'Transitional Support Strategy' (TSS), the first of which was developed in 2001. A second TSS paper, which is to be the "road map" for the Bank's support to the DRC from 2004 through 2006, was developed in January 2004.¹⁰² In this second TSS paper the Bank lists the key structural reforms it has been supervising since 2001.¹⁰³ Up to January 2004, the Bank has supervised the following reforms in the mining sector, which it identified as a driving force for a quick economic recovery: the launch of restructuring key companies such as Gécamines, the promulgation of a new Mining Code in July 2002, and the preparation of a new Mining Registry.¹⁰⁴ In the future, the TSS commits to focusing on continued improvement of natural resource management, by aiming at a country-wide implementation of the Mining Code "with a view to improving both transparency in allocating mining (...) rights and management of the revenues generated in this sector."¹⁰⁵ This fits in with the Bank's proclaimed focus on shared economic growth.¹⁰⁶

The World Bank's resource management policy in the DRC has raised serious concerns among several NGOs and other observers. The Bank has been criticised for several reasons,

¹⁰⁰ <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/CONGODEMOCRATICEXTN/0,,menuPK:349479~pagePK:141132~piPK:141105~theSitePK:349466,00.html>

¹⁰¹ *Reconstruction efforts and governance of natural resources in the DRC*. Friends of the Earth, in : *DRC's natural treasures : Source of conflict or key to development ?*, Conference Reader, Brussels, 24 November 2005.

¹⁰² *Ibidem*.

¹⁰³ *Transitional support strategy paper*, World Bank, Report n° 27751, January 2004, p. 7.

¹⁰⁴ *Ibidem*; A thorough analysis of the DRC's new, "investor-friendly" mining code and regulations, promulgated respectively in July 2002 and May 2003, is to be found in: *Atelier national sur le code minier congolais*, Paper of conference held by NIZA, ASADHO/KATANGA, OCEAN, CENADEP, Lubumbashi, 17-20 March 2005.

¹⁰⁵ *Ibidem*, p. 27-28.

¹⁰⁶ <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/CONGODEMOCRATICEXTN/0,,menuPK:349476~pagePK:141132~piPK:141107~theSitePK:349466,00.html>

among which are its top-down approach that lacks true participation, and its neglect of the role of natural resources in fuelling conflict, despite the guidelines of its own Conflict Prevention and Reconstruction Unit.¹⁰⁷ Also, the Bank has been reproached for neglecting the DRC's lack of institutional capacity to regulate the free market system which the mining sector now finds itself in and which is a result of the privatisation of the parastatals.¹⁰⁸ Another reproach concerns the Bank's downplaying of current bad governance and corrupt practices that stand in the way of an equitable redistribution of benefits from the mining sector.¹⁰⁹

To date the World Bank's most visible "achievement" on the ground has been a 43 million USD "voluntary departure programme" which was carried out as part of its reform strategy of Gécamines and which made 10.500 workers leave the company in 2003.¹¹⁰ In return, the workers received redundancy pay-offs of 1.900 USD up to 30.000 USD.¹¹¹ In a Congolese context these may sound as considerable sums, but existing contracts and social conventions in fact entitled the departing employees to a total sum of 125 million USD, instead of 43 million USD.¹¹² Moreover, many of the workers had not received salaries for years and soon found themselves penniless after having paid their debts, while their departure had deprived them of the little social security services Gécamines still had to offer.¹¹³ In other words, many of these former employees are now immersed in the socio-economic swamp the collapse of the formal mining sector in Katanga has caused.

The following chapters provide more details on how the Bank's mining reform strategy has been implemented in practice.

¹⁰⁷ *Reconstruction efforts and governance of natural resources in the DRC, op. cit.; After the war, the fight for the forest*, The Rainforest Foundation, in : *DRC's natural treasures : Source of conflict or key to development ?*, Conference Reader, Brussels, 24 November 2005.

¹⁰⁸ 'Forrest en de perverse Congolisering', in: *Trends*, 19/09/2002.

¹⁰⁹ *Reconstruction efforts and governance of natural resources in the DRC, op. cit.*

¹¹⁰ *Rush and ruin. Op. cit.*, p. 17; http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2005/12/28/000090341_20051228104558/Rendered/INDEX/34558.txt

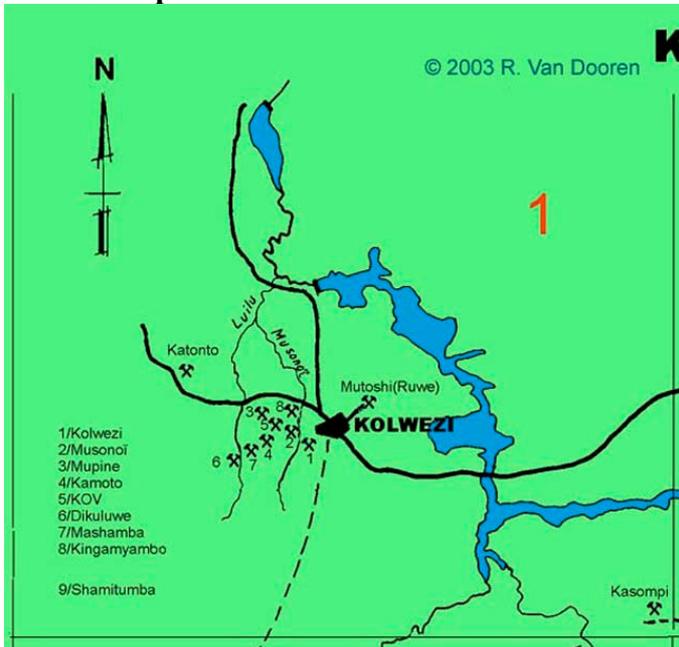
¹¹¹ *Ibidem*.

¹¹² *République Démocratique du Congo. Gécamines. Programme de restructuration. Volet social. Rapport intermédiaire*. Unpublished doc., Lubumbashi 08/10/2002, p. 5.

¹¹³ *Digging deeper, op. cit.*, p. 103; *Rush and ruin, op. cit.*, p. 17; <http://www.reliefweb.int/rw/rwb.nsf/db900SID/ACOS-64CLZY?OpenDocument>

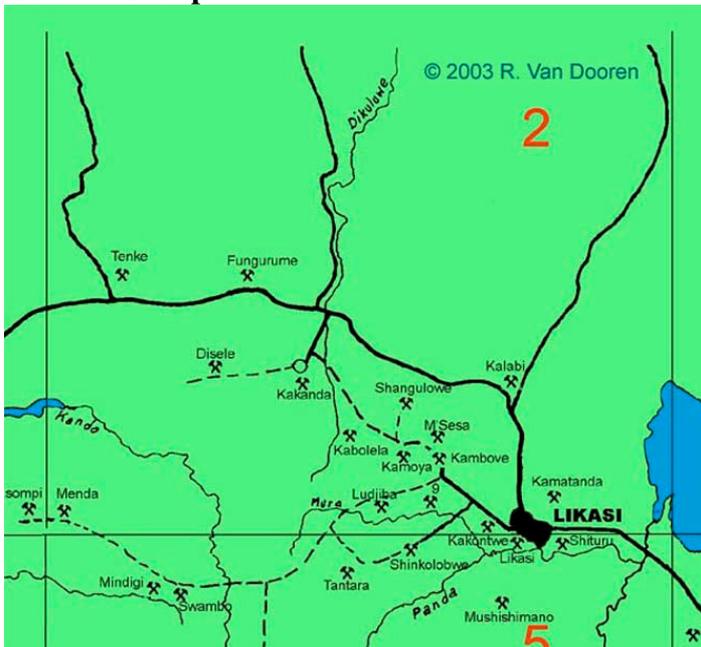
8.3 Basic Facts: Gécamines and Katanga.

West Group:



(Maps of Gécamines mining areas, <http://users.skynet.be/fa418506/mineralogie/Katanga/cartes.html>)

Central Group:



(Maps of Gécamines mining areas, <http://users.skynet.be/fa418506/mineralogie/Katanga/cartes.html>)

East Group:



(Maps of Gécamines mining areas, <http://users.skynet.be/fa418506/mineralogie/Katanga/cartes.html>)

Kabila's home province Katanga covers one fifth of the national territory and inhabits about 5,5 million civilians. In the south of the province vast reserves of copper (Cu) and cobalt (Co) are found in sedimentary deposits along the Central African copperbelt, which stretches along the borders with Zambia and Angola. The copperbelt contains 34 % of the world's cobalt reserves and 10 % of the world's copper reserves.¹¹⁴ Aside from copper and cobalt, the copperbelt also contains minerals such as zinc, germanium, uranium and silver. Mine exploitation started under Belgian rule by the Union Minière du Katanga (UMHK) and was taken over by the giant parastatal Gécamines (and a smaller parastatal called Sodimico) when Mobutu nationalized the Congolese economy in 1967.

Gécamines' concessions stretch out over a surface of 30.000 square kilometres and are clustered round the towns of Kolwezi (West Group), Likasi (Central Group) and Lubumbashi (East Group). They contain estimated reserves of 30 million tons of copper and 3 million tons of cobalt.¹¹⁵ Until the mid eighties, Gécamines ranked among the world's five major copper and cobalt producers, with an annual production of 480.000 tons of Cu (TCu) and 16.000 TCo, yielding a turnover of about 1 billion USD and providing jobs and social services – education and medical care – to 33.000 workers.¹¹⁶ In its refineries Gécamines transformed its minerals into nearly pure metal (99 %).¹¹⁷ In its glory days, i.e. between 1967 and 1985,

¹¹⁴ *Same old story. A background study on natural resources in the Democratic Republic of Congo*, Global Witness, June 2004, p. 24.

¹¹⁵ 'Gécamines: Ils s'étaient partagé la bête' in : *La Conscience*, 05/12/2005. The article contains the full speech former Gécamines CEO Robert Crem delivered at the conference: *DRC 's natural treasures: Source of conflict or key to development?* Organised by Fatal Transactions in collaboration with the Brussels Centre of African Studies – Vrije Universiteit Brussel, 23-24 November 2005.

¹¹⁶ 'Hoop en wanhoop in de mijnen van Congo', in: *Trends*, 23/06/2005.

¹¹⁷ *Ibidem*.

Gécamines accounted for up to 20 to 30 % of the national treasury and for up to 70 to 85 % of the country's hard currencies.¹¹⁸ From 1988 on, however, production steeply declined: by 1995 it had dropped to 34.000 TCu and 4.200 TCo.¹¹⁹

Much has been written elsewhere about the reasons for Gécamines' decline and we will not reproduce the full analysis here.¹²⁰ Besides exogenous factors, also bad management and undue political interference have led to the parastatal's current situation, deemed "catastrophic" by a team of international consultants that audited the company in 2003 (see Chapter: Mining Reforms in practice: the cases of KOV and Kamoto). Throughout most of the Mobutu era, Gécamines occupied a central position in the economy of the DRC – and consequently Gécamines was the main pillar of his regime that was based on predatory patrimonialism. Between 1967 and 1984, for example, Mobutu siphoned off an estimated sum of 4 to 5 billion USD to the detriment of Gécamines, while the Belgian Société Générale, persisting in old colonial patterns, deprived the company of 3 to 4 billion USD.¹²¹

As mentioned above, the privatisation programme of the Kengo wa Dondo government in 1995 also targeted Gécamines.¹²² Negotiations with mainly Canadian and South-African junior mining companies resulted in a number of joint venture contracts that marked the start of Gécamines' random dismantlement.¹²³ The UN reports on the illegal exploitation of the DRC's natural resources describe how during the war a military-commercial network was established in Kabila's stronghold Katanga, in which Zimbabwean interests were closely interlinked with those of the AFDL. The UN reports also list numerous other private actors that appeared on the Katangan mining scene during the war, striking deals with the AFDL that were equally detrimental to the province's industrial patrimony.

A quick glance at some recent statistics points out that, despite the assistance of the World Bank, the continued privatisation of Gécamines under the transition has not curbed its decline. On the contrary, by 2005 Gécamines officially produced less than 15.000 TCu and 1.000 TCo, and today it still staggers under an ever-increasing debt – already 1,7 billion USD in 2003. It is *de facto* bankrupt, seeing it is unable to pay a regular salary to its 12.400 workers and has in 2004 only contributed 0,45 million USD in taxes to the national treasury.¹²⁴

The relaunch of the DRC's most important mining parastatal, which is now reportedly bound by more than 160 contracts with private partners¹²⁵, has thus continued to fail under the transition, and the following chapter discusses the reasons why this is so. The findings of the Lutundula Commission's mission to Katanga provide a sound basis for such an analysis.

¹¹⁸ 'Gécamines: Ils s'étaient partagé la bête' in : *La Conscience*, 05/12/2005.

¹¹⁹ *Ibidem* ; Groupe d'intellectuels de Kolwezi, *La Gécamines : quel avenir ?*, s.l., 1996, p. 43.

¹²⁰ For a historical background of Gécamines' decline, the interested reader can, for example, revert to *Same old story*, *op.cit.*, or to: *Rush and ruin*, *op.cit.*

¹²¹ 'Gécamines: Ils s'étaient partagé la bête' in : *la Conscience*, 05/12/2005.

¹²² Eric Kennes, *Le secteur minier au Congo : Déconnexion et descente aux enfers*, in : Reyntjens F., Marysse S., *L'Afrique des grands lacs*, l'Harmattan, 2000, p. 311.

¹²³ *Ibidem*, p. 312.

¹²⁴ *Republic of the Congo: Selected Issues and Statistical Appendix*, IMF Country Report No. 05/373, October 2005, p. 53, 55; http://www.lepotentiel.com/afficher_article.php?id_edition=&id_article=12707

¹²⁵ *Digging deeper*, *op. cit.*, p. 105.

8.4 Bad governance and institutional failure.

The Lutundula Commission's findings in Katanga corroborate the view that the main reason for the failed reforms of the mining sector in Katanga are bad governance on behalf of the government and the failure of its institutions.¹²⁶ The Commission enquired into the workings of the main public services related to the Katangan mining industry: Office des Droits et Accises (OFIDA: customs), Office de Gestion du Fret Maritime (OGEFREM: maritime transport), Direction Générale des Redevances Administratives et Domaniales/Direction générale des impôts (DGRAD/DGI: fiscal services), Office Congolais de Contrôle (OCC: import/export quality and quantity control), the Provincial Direction of Mines, of Environment and Nature Conservation, of Energy, Urbanism and Habitat, of Land Affairs and of Migration.¹²⁷ The Commission has further inventoried 60 joint venture agreements and management contracts, 40 of which concern Gécamines and 7 of which were entered into on behalf of the smaller mining parastatal Sodimico.¹²⁸ The report further contains 14 case studies of Gécamines and Sodimico partnerships and an analysis of bad governance practices in the informal mining sector.¹²⁹

As noted above, the Commission has limited its investigations to contracts signed before 30 June 2003, but there was a follow-up on whether and how the contracts were executed after that date. Since the Commission's report was deposited at the Bureau of Parliament in June 2005, its conclusions remain valid until at least that date. Furthermore, our chapter on the concessions of KOV and Kamoto (see Chapter: Gécamines' reform in practice: cases of KOV and Kamoto) shows that the report has not contributed to a change of mining policy on behalf of the government.

As a preliminary note it is necessary to describe the role the Congolese government plays in bringing about joint venture agreements with private partners.¹³⁰ The DRC's mining parastatals, as all of the country's public enterprises, are regulated by law n° 78/002 (see below). This law was drafted under Mobutu and deprives the parastatal's directors of any real executive power.¹³¹ The primary political responsibility for the parastatals – and their joint venture agreements – in areas under State control, lies with the President and the Minister of Mines.¹³² The parastatal directors usually do most of the negotiating of the joint venture agreements, but they receive directives from Kinshasa officials, often the President himself or advisors in his entourage, which contributes to a perception of these negotiations as a lengthy and pain-staking process (resulting in Pre-Accords, Memorandums of Agreement, Mining Conventions and amendments).¹³³ A recurrent element in negotiations allegedly is the Congolese officials' demands for kickbacks, which, if granted, evidently lead to conditions that are disadvantageous to the State and the parastatal.¹³⁴ From an investors' point of view the opaque and random procedures that lead up to joint venture agreements contribute to the

¹²⁶ *République Démocratique du Congo. Assemblée Nationale, op. cit.*, p. 83-176.

¹²⁷ *Ibidem*, p. 84.

¹²⁸ *Ibidem*, p. 83.

¹²⁹ *Ibidem*, p. 98-168.

¹³⁰ These agreements define the terms and obligations of the parastatal and the private partner in joint venture companies, which are established under Congolese law.

¹³¹ *Restructuration de la Gécamines*, Draft Phase 2, IMC Group Consulting Ltd, Projet n° M5670C, Unpublished doc., November 2003, p. 7.

¹³² *Rush and ruin, op.cit.*, p. 15.

¹³³ Interviews with three international legal advisors in October 2005.

¹³⁴ *Ibidem*.

perception that the DRC is an extremely difficult country to do business in.¹³⁵ The DRC is indeed currently ranked as the world's worst country to do business in, according to the World Bank's Doing Business classification, which is a bench-mark for measuring countries' business regulations and their enforcement.¹³⁶

The general picture of the mining sector in Katanga drawn by Congolese and international NGO's, journalists and observers, is that it is stuck in a vicious circle caused by corruption, mismanagement and predatory patrimonialism recalling Mobutu times: mining operations hardly generate revenue needed to fund a properly functioning institutional apparatus and, *vice versa*, institutional failure leads to a lack of revenue.¹³⁷ The Lutundula report corroborates this view. It states, for example, that the Congolese State has arbitrarily granted major tax exemptions to several joint ventures for periods of 15 to 30 years.¹³⁸ The State, which according to the Mining Code should have a 5 % stake in the joint venture companies, is sometimes represented by foreign firms incorporated in off shore fiscal paradises.¹³⁹ As a result the State derives no benefit from these partnerships. The Commission also confirms that top officials frequently interfere in joint venture negotiations and joint venture activities.¹⁴⁰ The State moreover authorizes the exploitation and marketing of minerals to joint venture companies without having any controlling mechanism in place, and in addition to this, most of the minerals leave the country unrefined, as a result of which the DRC is deprived of added value.¹⁴¹

The public services in Katanga lack the necessary power to stand up against decisions from the authorities in Kinshasa, who often by-pass them, even when this is against the law.¹⁴² Also, the provincial services that are related to the mining sector lack synergy, and their staff is under-equipped and under-paid.

One of the consequences is that there is no reliable procurement of mineral export statistics. Joint venture companies with private partners Anvil Mining and First Quantum, for example, communicate their production statistics to the relevant services only after having exported their minerals abroad. And since the government fails to allocate enough funds to the provincial services, the officials who are supposed to control the mining companies are in both cases paid by the companies themselves.

Lack of coordination between public services also leads to conflicting measures. An example is the case of Somika. Somika is an Indian run company that installed a hydrometallurgical plant on top of an underground water basin that provides water to 70 % of the population of Lubumbashi. The risk of pollution worries the inhabitants and civil society.¹⁴³ The provincial

¹³⁵ Interviews in October 2005 and on 23-24 November with about 20 twenty mining experts and representatives of mining companies in the DRC.

¹³⁶ <http://www.doingbusiness.org/ExploreEconomies/Default.aspx?economyid=48>

¹³⁷ See, for example, *Rapport préliminaire sur l'exploitation illégale des ressources naturelles en RD Congo. « Le pillage s'intensifie »*, Asadho/Katanga, July 2004, p. 14-15 ; *Rush and ruin*, *op. cit.*, p. 8.; 'Le secteur minier congolais gangrené par la corruption' in: *Le Potentiel* 19/04/2004 ; *Digging deeper*, *op. cit.*, p. 100-105.

¹³⁸ *République Démocratique du Congo. Assemblée Nationale*, *op. cit.*, p. 85.

¹³⁹ *Ibidem*.

¹⁴⁰ *Ibidem*, p. 86.

¹⁴¹ *Ibidem*.

¹⁴² Unless indicated otherwise, this and the following paragraphs are based on: *République Démocratique du Congo. Assemblée Nationale*, *op. cit.*, p. 87-90, 96-98.

¹⁴³ *Rapport préliminaire sur l'exploitation illégale des ressources naturelles en RD Congo, op.cit.*, p. 8.

environmental division gave a negative advice on the grant of the concession, but this was neglected by the cadastral affairs division. Reportedly Vice-President Abdoulaye Yerodia (PPRD), upon receiving complaints from the provincial governor Kisula Ngoy (PPRD), personally intervened in the dossier to the benefit of Somika.¹⁴⁴

Another case is that of the weighbridge ('pont-bascule') of Kasumbalesa, the main exit point from Katanga to Zambia. The OCC (the public service involved in controlling import and export) and a private firm Zatalt, which works in partnership with the Mines Ministry, fight over the competence over the weighbridge. All incoming and outgoing vehicles are obliged to be weighed and are charged 120 USD for this service. A First Quantum staff member who frequently crosses the border states that "*import and export regulations are vague and randomly applied, which leaves a lot of space for "private initiatives" on behalf of the border officials.*"¹⁴⁵

Almost all joint ventures Gécamines (and Sodimico) are engaged in, have failed to contribute to solving any of the parastatals' technical or financial problems.¹⁴⁶ In the Commission's list of case studies, it is mentioned that there is only one joint venture company that brings fresh cash to Gécamines, namely the Compagnie Minière du Sud-Katanga (40% Gécamines, 60 % EGMF of Forrest Group).¹⁴⁷ According to the latest available statistics, mining companies in the copper/cobalt sector, which are mostly joint ventures with Gécamines, have in 2004 paid income taxes of only about 0,4 million USD.¹⁴⁸ The Commission reflects these facts with the understated remark that: "*...la politique définie et conduite par le Gouvernement de la République en la matière n'a pas été des plus adéquates et efficaces.* »

The lack of strategic vision and the government authorities' search for immediate cash, have, according to the Commission, caused the failure of Gécamines' relaunch. Joint venture negotiations have not been based on any kind of strategic model pre-established by the directors or the tutelage. A consequence is that almost all partnerships have been concluded without a preliminary study to determine the value of the assets that Gécamines has transferred, and in most cases these assets have been largely undervalued. Even then, the contractual counterpart of the private partner, which is essentially a commitment to an investment plan (with money borrowed from financial institutions and/or raised on the stock market) and to the transfer of technology, has in many cases not been respected. The Commission further mentions the existence of several conflicting contracts or contracts with partners who lack the financial capacity to engage in industrial mining exploitation.

In this context, it is worth noting that, despite Gécamines' huge copper potential, most of its running joint venture projects are based on the extraction of cobalt, which was formerly produced as a by-product of copper.¹⁴⁹ This phenomenon reflects the private operators'

¹⁴⁴ 'Congo-Kinshasa : une paix bien coûteuse', in : *Africa Confidential* n° 468, 07/02/2005.

¹⁴⁵ Interview with First Quantum staff member on 25/10/2005.

¹⁴⁶ Unless indicated otherwise, this and the following paragraphs refer to: *République Démocratique du Congo. Assemblée Nationale, op. cit.*, p. 91-94, 96-98.

¹⁴⁷ *République Démocratique du Congo. Assemblée Nationale, op. cit.*, p. 121.

¹⁴⁸ *Republic of the Congo: Selected Issues and Statistical Appendix*, IMF Country Report No. 05/373, October 2005, p. 55.

¹⁴⁹ 'Hoop en wanhoop in de mijnen van Congo', in: *Trends*, 23/06/2005; Cobalt has a wide range of applications in the metallurgical industry (superalloys, corrosion resistant alloys,...), the chemical industry (adhesives,

preference for short-term cash yielding projects over a durable development of Katanga's world-class reserves: at current market prices cobalt pays off about ten times more than does copper.¹⁵⁰ A result of the anarchistic privatisation of Gécamines is that its cobalt projects are not attuned to the reality of the global market. In June 2005 the Belgian economic weekly Trends drew up a fairly exhaustive list of Gécamines' main running and planned joint venture projects.¹⁵¹ Adding up cobalt production aims of joint venture projects that had not yet taken off by June 2005, one arrives at a planned production of about 30.000 TCo. Current global demand is about 50.000 tons per year and though the expected trend is a further rise over the next years, it is quite obvious that if all Gécamines' joint venture contracts are duly carried out in the coming years, the global market will not be able to absorb all the extra cobalt.¹⁵² Mining experts therefore agree that a rational and sustainable development of Katanga's reserves should, as was the case until the nineties, be based on copper and not on cobalt production.¹⁵³ Since global demand for copper is currently about 15 million tons per annum, the market offers a lot more opportunities for new copper projects than for projects solely based on cobalt.

Prices and trends on the global copper and cobalt market:

In the eighties and nineties the copper price averaged over 1 USD/lb, but due to increased demand from China and other Asian countries the price has risen to over 1,40 USD/lb today (approximately 3.100 USD/metric ton).¹⁵⁴ In the next few years analysts expect this rising trend to continue.¹⁵⁵ Current global production of copper is about 15 million tons per annum.¹⁵⁶ Although Chile's copper ores on average only grade 1 % against 4-5 % of those in Katanga, the country is now the leading copper producer, accounting for 40 % of the world's annual output.¹⁵⁷

Global demand for refined cobalt has over the past decade grown strongly, which is mainly due to China's economic boom. Estimates suggest that in 2005 Co-demand amounted to more than 50.000 tons and that a further increase should be expected for the next five years.¹⁵⁸ Since hardly any cobalt is fully refined in Katanga, Gécamines in 2004 only accounted for 735 tons of global production.¹⁵⁹ Because Gécamines' partners export cobalt concentrates grading only 8-35 %, most of the added value is made outside of the DRC, which deprives the country of a major source of revenue.¹⁶⁰

catalysts,...) and the ceramics industry (pottery and china). Copper is used for electrical cables, pipes and valves, and has a wide range of applications in the automotive and electronics industry.

¹⁵⁰ 'Katanga: kan de Congolese motor opnieuw aanslaan?' in: *Trends*, 20/02/2003.

¹⁵¹ 'Kobalt- en koperwinning in Katanga', in: *Trends*, 23/06/2005
(<http://www.trends.be/attachments/2005%5C25%5CKatanga.pdf>)

¹⁵² http://www.thecdi.com/cdi/images/news_pdf/Cobalt_News_January_2006.pdf

¹⁵³ Interviews in October 2005 and 23-24 November 2005 with about 20 twenty mining experts and representatives of mining companies in the DRC.

¹⁵⁴ <http://www.auresources.com/copper.htm>

¹⁵⁵ *Ibidem*.

¹⁵⁶ <http://www.safehaven.com/article-4280.htm>

¹⁵⁷ 'Hoop en wanhoop in de mijnen van Congo', in: *Trends*, 23/06/2005;

<http://www.mbendi.co.za/indy/ming/cpr/sa/cl/p0005.htm>

¹⁵⁸ http://www.thecdi.com/cdi/images/news_pdf/Cobalt_News_January_2006.pdf

¹⁵⁹ *Ibidem*.

¹⁶⁰ 'Hoop en wanhoop in de mijnen van Congo', in: *Trends*, 23/06/2005.

Most of China's cobalt production, which accounted for 23 % of global output in 2005, and much of Europe's production, derives from feed materials from the DRC.¹⁶¹ It is also estimated that in 2005 75 % to 90 % of China's import of cobalt ores and concentrates came from the DRC.¹⁶² The price of refined cobalt is very volatile and has fluctuated between 8 USD/lb and 26 USD/lb from the beginning of 2000 to April 2004.¹⁶³ In mid-January 2006 the price was around 14 USD/lb (approximately 31.000 USD/metric ton).¹⁶⁴

8.5 The consequences of failure.

The failure to relaunch the formal mining sector in Katanga is the main cause for socio-economic conditions to have worsened in the past years.¹⁷⁶ One of the most striking illustrations of this is the phenomenon of artisanal mining which an estimated 50.000 to 70.000 people reverted to as a strategy for survival, after the biggest employer of Katanga collapsed.¹⁷⁷ Up to the present day, these "creuseurs" dig for heterogenite, an ore with an exceptionally high grade of cobalt. An estimated 70 % of artisanal digging occurs on the concessions of Gécamines.¹⁷⁸ The DRC contains about one third of the world's heterogenite reserves¹⁷⁹, but since these reserves have not been well studied, no one can predict for how long they will be able to provide the "creuseurs" with an income.¹⁸⁰

Heterogenite occurs as deep as about 15-30 meters below the surface and is extracted under appalling working conditions: "creuseurs" frequently die due to primitive mining methods; some of the ore bodies, like the one of Shinkolobwe, are naturally radioactive and constitute a great health hazard to the miners, and also to the entire region through dust pollution; the artisanal activities imply child labour and cause serious descolarisation; and the miners usually do not earn much more than 1 USD a day.¹⁸¹

¹⁶¹ http://www.thecdi.com/cdi/images/news_pdf/Cobalt_News_January_2006.pdf

¹⁶² *Ibidem.*

¹⁶³ http://www.mineralsuk.com/britmin/cobalt_23Apr04.pdf

¹⁶⁴ <http://platts.com/Metals/News/7216342.xml?p=Metals/News&S=n>

¹⁶⁵ <http://www.aurresources.com/copper.htm>

¹⁶⁶ *Ibidem.*

¹⁶⁷ <http://www.safehaven.com/article-4280.htm>

¹⁶⁸ 'Hoop en wanhoop in de mijnen van Congo', in: *Trends*, 23/06/2005;

<http://www.mbendi.co.za/indy/ning/cppr/sa/cl/p0005.htm>

¹⁶⁹ http://www.thecdi.com/cdi/images/news_pdf/Cobalt_News_January_2006.pdf

¹⁷⁰ *Ibidem.*

¹⁷¹ 'Hoop en wanhoop in de mijnen van Congo', in: *Trends*, 23/06/2005.

¹⁷² http://www.thecdi.com/cdi/images/news_pdf/Cobalt_News_January_2006.pdf

¹⁷³ *Ibidem.*

¹⁷⁴ http://www.mineralsuk.com/britmin/cobalt_23Apr04.pdf

¹⁷⁵ <http://platts.com/Metals/News/7216342.xml?p=Metals/News&S=n>

¹⁷⁶ *Digging deeper, op. cit.*, p. 10; <http://www.reliefweb.int/rw/rwb.nsf/db900SID/ACOS-64CLZY?OpenDocument>

¹⁷⁷ *Unanswered questions. Companies, conflict and the Democratic Republic of Congo*, RAID, May 2004, p. 63.

¹⁷⁸ *Restructuration de la Gécamines, op. cit.*, p. 18.

¹⁷⁹ IMF Country Report No. 05/373, p. 51.

¹⁸⁰ *Restructuration de la Gécamines, op. cit.*, p. 18.

¹⁸¹ *Ibidem; Unanswered questions, op. cit.*, p. 63; *Rapport préliminaire sur l'exploitation illégale des ressources naturelles en RD Congo, op. cit.*, p. 12-13.

The heterogenite is sold to intermediaries (“négociants”), who subsequently sell it to local trading houses (“maisons d’achat”), the biggest of which are Bazano (Lebanese), Chemaf (Indian), and Somika (Indian).¹⁸² Some of the heterogenite is processed by these traders or by small companies operating ovens that are located all over the mining area of Katanga.¹⁸³ The ore is first exported by truck or train to Zambia, then goes further on to South-Africa, from where most of it is shipped to China.¹⁸⁴ Most of the ore leaves the country in its raw form and since, as noted above, the relevant authorities are unable to provide reliable statistics, the magnitude of the loss of added value is hard to assess.¹⁸⁵ Global Witness calculated that in 2004 60.000 tons of heterogenite left the country monthly during the dry season.¹⁸⁶ The UK based consultancy firm International Mining Consultants (IMC) cites an amount of ore that corresponds to a yearly production of 4.000 TCo.¹⁸⁷ At current market prices this represents a turnover of over 120 million USD. Production and other costs need of course be taken into account, but it is quite clear that the DRC misses out on a major source of revenue.¹⁸⁸ Moreover, scraping away the upper layers of mineral deposits heightens the production costs of future industrial extraction and thus jeopardizes the restart of the formal sector.¹⁸⁹

The Lutundula Commission has shown that several attempts on behalf of the Congolese authorities to structure heterogenite mining and trading have failed due to bad governance and corruption.¹⁹⁰ The provincial governor has in 2000 set up a Gécamines’ department (Nouvelle Compagnie: NOUCO) to defend the interests of the artisanal miners. This organisation was supposed to co-operate with the non-profit organisation Association des Exploitants Miniers et Artisans du Katanga (EMAK). NOUCO ceased its activities and left the “creuseurs” it represented with a 1 million USD debt payable to EMAK. NOUCO’s successor Congolaise des Mines et de Développement (COMIDE) now engages in artisanal exploitation for the profit of its directors. Gécamines further engaged in “hand-picking contracts” with the main trading houses (Bazano, Chemaf and Somika), which organize artisanal exploitation on Gécamines’ concessions. These private partners are supposed to cede to Gécamines half of their production, but Gécamines has not installed a controlling mechanism to verify whether this really happens.

The collapse of Gécamines and the failure to relaunch it may well prove to be a threat to security in Katanga.¹⁹¹ In a province which has always been prone to secessionist tendencies, widespread poverty and unemployment, a general feeling of lawlessness and futurelessness, underinvestment in education and health care, and environmental issues serve as a breeding ground for violent conflict. Drawing attention to current fighting by Mai Mai militias in the north of Katanga, a recent analysis by International Crisis Group points out that the province which is potentially the richest of the country harbours several underlying tensions that may prove to be explosive.¹⁹² Laurent Kabila hailed from the north of Katanga and, since he seized

¹⁸² *Rush and ruin, op.cit.*, p. 9.

¹⁸³ *Rapport préliminaire sur l’exploitation illégale des ressources naturelles en RD Congo, op. cit.*, p. 8.

¹⁸⁴ *Rush and ruin, op.cit.*, p. 9.

¹⁸⁵ *Ibidem.*

¹⁸⁶ *Ibidem*, p. 11.

¹⁸⁷ *Restructuration de la Gécamines,op.cit.*, p. 18.

¹⁸⁸ *Rush and ruin, op. cit.*, p. 10.

¹⁸⁹ *Ibidem.*

¹⁹⁰ This paragraph is based on: *République Démocratique du Congo. Assemblée Nationale, op. cit.*, p. 163-166.

¹⁹¹ <http://www.reliefweb.int/rw/rwb.nsf/db900SID/ACOS-64CLZY?OpenDocument>

¹⁹² *Katanga: The Congo’s Forgotten Crisis, op.cit.*

power, an elite of mainly “northerners” has ruled the province, much to the resentment of the “southerners” who feel excluded from the province’s wealth.¹⁹³ The election campaign has also re-ignited conflict between native Katangans and the Luba who originate from the Kasai and who have in the beginning of the nineties endured operations of “ethnic cleansing” that claimed the lives of 5.000 people.¹⁹⁴

8.6 Political responsibility.

The political responsibility for Katanga’s grim socio-economic conditions lies primarily with Kabila’s Katanga clan and its power brokers, who have upheld their near-hegemonic position in the province for almost a decade. As previously noted, in both international and Congolese NGO and press reports, numerous accusations have been made about the ruling elite’s corruption practices. It is very hard though to provide solid evidence for allegations of corruption or for private stakes of government officials in the mining sector. A recent official document, however, does indicate that Kabila’s PPRD uses Gécamines as a vehicle for promoting its interests in Katanga (see Appendix II).¹⁹⁵ The chairman of the Bureau du Conseil Provincial of the PPRD in Katanga on 20 September 2005 wrote a letter to the PPRD general secretary Vital Kamerhe, expressing his thanks for the financial support PPRD Katanga receives from the hierarchy of the party. He further stresses the capacity of the PPRD/Katanga to raise funds and lists a number of Congolese contributors. These contributors are divided into two categories: (i) mandatories of Gécamines and ‘la Société Nationale des Chemins de Fer du Congo’ (SNCC), all making regular payments (“*cotisations*”); (ii) “special contributors”, all belonging to the Katangan clan of Kabila. Without therefore necessarily being exhaustive, the list of names contained in the letter provides good insight in the composition of the elite that rules Katanga:¹⁹⁶

- Gécamines directors:
 - Mukasa Kalembwe: In a December 2005 shift in Gécamines’ management (see below) he was promoted to the post of deputy general manager.
 - Kabamba Twite: Has been chairman of the board of Gécamines throughout the transition. Discarded from his position in December 2005.
 - Nzenga Kongolo: Has been managing director of Gécamines throughout the transition. Discarded from his position in December 2005.
 - Assumani Sekimonyo: Deputy managing director of Gécamines throughout the transition. Now promoted chairman of the board.
 - Kasweshi Musoka: Technical director throughout the transition.
 - Kabondo Umba: Financial director throughout the transition.
- PPRD power brokers:
 - Vital Kamerhe: Is originally from South-Kivu and is co-founder of the PPRD. Was appointed Minister of Press and Information on 30 June 2003, but in July

¹⁹³ *Ibidem*, i.

¹⁹⁴ *Ibidem*.

¹⁹⁵ N° Réf. 036/BPCP/CP-KAT/2005, signed by Dieudonné Mwenze (Rapporteur Général du Bureau du Conseil Provincial) and Richard Muyeje Mangeze Mans (Président du Bureau du Conseil Provincial), dated 20/09/2005. See Appendix II to this report; Reportedly PPRD/Katanga itself receives 15.000 to 30.000 USD a month from PPRD national headquarters. See : <http://www.globalsecurity.org/military/library/news/2006/02/mil-060217-irin04.htm>

¹⁹⁶ The SNCC directors are not listed below.

2004 he stepped down from office to become the Secretary General of the PPRD.

- Augustin Katumba Mwanke: Is from Katangan origins, has co-founded the PPRD and is a key power broker in the DRC mining sector. Mwanke is a former employee of South-African engineering firm Bateman, that belongs to the Global Resources Group of Beny Steinmetz (see below). Steinmetz's Group together with Dan Gertler's DGI Group formed the company GEC Ltd. which acquired rights over Gécamines' KOV mine (see Chapter: Gécamines' reform in practice: cases of KOV and Kamoto). Mwanke introduced Gertler's firm Emaxon to MIBA.¹⁹⁷ In April 2003 Emaxon acquired rights to sell 88 % of MIBA's output. Between 2001 and 2004 Mwanke sat on the board of Anvil Mining, to whom he rents out a compound in Lubumbashi.¹⁹⁸ Anvil now has several mining projects in Katanga (Dikulushi, Mutoshi, and Kinsevere). In 1998 Mwanke put his signature to a joint venture contract that handed out the Central Group of Gécamines to Ridgepointe Overseas, a firm of Zimbabwean businessman Billy Rautenbach.¹⁹⁹ Mwanke was governor of Katanga from April 1998 to April 2001, after which he was in charge of the State Portfolio in Laurent Kabila's government. The UN Panel of Experts named him as a key player in the plunder of the DRC's resources and he was subsequently removed from government (November 2002). However, in July 2003 he was appointed secretary general of the transitional government, and in January 2004 Joseph Kabila gave him a position as roving ambassador. Today he is still one of Kabila's closest advisors.
- Jean Mbuyu Luyongola: Hails from Katanga and was Kabila's special security advisor, until he was appointed Minister of Industry and Small Enterprises in October 2003.
- Evariste Boshab: Is originally from Kasai Occidental and is co-founder of the PPRD. He was appointed Secretary General of the government in 2001 and Chief of the President's cabinet in 2002. He resigned from office in November 2004 after his alleged involvement in a financial scandal. The allegation was that he had pocketed 1,6 million USD brokering a debt reduction of the Republic of Congo's electricity parastatal to that of the DRC.²⁰⁰
- Ghislain Chikez Diemu: Joined the AFDL in 1997 and was appointed Vice-Minister of Interior by Joseph Kabila and later Secretary General of the PPRD. Currently he is Vice-Governor of Katanga, in charge of economic affairs.
- Théodore Mugalu: Is from Katangan origins and is a founding member of the PPRD. On 30 June 2003 he was appointed "Chef de la Maison Civile du Chef

¹⁹⁷ *République Démocratique du Congo. Assemblée Nationale, op.cit.*, p. 51.

¹⁹⁸ <http://www.abc.net.au/4corners/content/2005/s1386467.htm>

¹⁹⁹ 'Victor Kasongo', in: *Africa Mining Intelligence* n° 23, 10/10/2001 ; Billy Rautenbach was named in the above mentioned UN reports as a key private actor in the plunder of Gécamines during the war. He was appointed as CEO of Gécamines from November 1998 to March 2000. Rautenbach had in October 1997 obtained a contract for his firm Ridgepointe Overseas, that operated the Kababankola mine near Likasi in a partnership with Gécamines. In November 1998 all assets of the Central Group were transferred to Rautenbach's Central Mining Group. When Rautenbach was discarded from Gécamines' management in March 2000, he was stripped of his mining assets, but part of them were granted to his country-fellow and arms dealer Arnold Bredenkamp. Later Rautenbach re-appeared on the Katanga mining scene through stakes in mining operations owned by his holding company Shaford Capital.

²⁰⁰ 'La démission du professeur Evariste Boshab : fuite en avant ou élégance politique ?', in : *La Référence Plus*, 30/11/2004.

- de l'Etat". This institute takes care of the personal matters of the President and his family. Its head administers the public funds allocated to the President.
- Nestor Diambwana: Joined the AFDL in 1997 and was appointed Vice-Governor of the « Banque Centrale du Congo » in the same year. He holds this position up to today.
 - Aimé Mukena: Born in Katanga and founding member of the PPRD. He is a former employee of Gécamines and became Governor of Katanga in November 2001. In May 2004 Kisula Ngoy replaced him.
 - Kisula Ngoy: Hails from Katanga and is a member of the PPRD. Governor of Katanga since May 2004.
 - Kikaya Bin Karubi: Is originally from Maniema and is a co-founder of the PPRD. Appointed ambassador to Zimbabwe in 1998 and Minister of Press in April 2001. He left the government on 30 June 2003 and was named special Secretary of the President of the Republic in January 2004.
 - Viktor Kasongo: Born in Maniema and member of the PPRD. Reportedly very close to Katumba Mwanke.²⁰¹ Since October 2001 he was general director of the Centre d'Expertise d'Evaluation et de Certification (CEEC), a key institute in the diamond sector, until he was appointed general director of mining parastatal Okimo in August 2005. President of FC Lupopo, a soccer team in Katanga, that received a sponsoring cheque of 10.000 USD from heterogenite trader Chemaf in July 2005.²⁰²
 - Moïse Katumbi Chapwe: PPRD member and influential businessman in Katanga. President of soccer club TP Mazembe. He reportedly has links with Anvil Mining.²⁰³

Further research into mining sector related assets and benefits of the above listed individuals is strongly recommended.

The said letter further lists a number of foreign businessmen that are active in Katanga and states that they: “(...) *se sont intéressés à notre parti.*” The persons in question are: Mr. Simon (Société East China), Mr. Gonzalo (Marc Rich RSA), Mr. Chetan and Mr. Hitech (Somika). And the letter continues: “*Souignons que Mr. George Arthur Forrest et son Groupe sortent du lot, pour nous avoir accompagné, pas à pas, dans la campagne d'implantation du Parti.*”

²⁰¹ 'Victor Kasongo', in : *Africa Mining Intelligence n° 23*, 10/10/2001.

²⁰² <http://www.katanganews.com/loisirs14.htm>

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<http://www.omct.org/base.cfm?page=article&num=5568&consol=close&kwrd=OMCT&rows=13&cfid=954776&cftoken=283209&SWITCHLNG=FR>

8.7 Gécamines' reform in practice: cases of KOV and Kamoto.²⁰⁴

Abstract- This chapter contains an analysis of the way Gécamines' giant mining assets of KOV and Kamoto were transferred to joint venture companies. It clearly shows that the World Bank cannot be unaware of how the mining reforms that it outlines are implemented in practice. The Bank funded an independent audit carried out in 2003 by consultancy firm IMC. IMC strongly advised against the existing agreements concerning Kamoto and private company Kinross-Forrest, worked out a detailed business plan for the exploitation of KOV within the framework of a rapid restart strategy for Gécamines, and recommended to dismiss all of Gécamines' directors. Some of the directors were indeed dismissed but this happened only two years after the audit, namely in December 2005. In the mean time the Congolese authorities, neglecting both the IMC recommendations and those of the Lutundula Commission (also funded by the World Bank), had officialized the KOV and Kamoto deals, thereby burying the IMC rapid restart strategy and stripping Gécamines of its last assets of any importance. After the IMC audit, the World Bank for its part funded a legal audit of Gécamines, which was carried out by law firm Duncan & Allen and is said to be finished by now, but which will, in accordance with common practice, not be disclosed to the public. Since December 2005 a foreign consultant (a French firm called Sofreco) is co-managing Gécamines, again with funding from the World Bank. Due to political obstruction Sofreco's involvement was deferred for more than a year, and it has found Gécamines as an empty shell. The consultancy firm is currently engaged in the fourth round of partnership auditing in three years time. Its project leader has publicly stated that his team will not bring up the joint ventures contracts for discussion and will limit itself to see to it that the partnerships respect their engagements.

Chronology

- October 2001: Mines Minister Simon Tuma-Waku sends a report to President Joseph Kabila about the plan of Kinross-Forrest (K-F) to establish a joint venture company with Gécamines to exploit the Kamoto mine and related assets. The report concludes that in comparison with the estimated 200 million USD the private partner plans to contribute, the equity stake of 30 % proposed to Gécamines in the joint venture is unacceptable.
- November 2001: Union leader Jean-Louis Tasinda visits President Joseph Kabila to plead against the planned joint venture.
- 3 June 2003: K-F holds a meeting with Mines Minister Jean-Louis Nkulu, who replaced Tuma-Waku in November 2002, and sends a seven page Memorandum of Agreement related to the joint venture to Twite Kabamba and Nzenga Kongolo, respectively Chairman and CEO of Gécamines. The Memorandum concerns the same assets as mentioned in the Tuma-Waku report. The estimated contribution of K-F is still 200 million USD, but the proposed equity stake of Gécamines is diluted to 25 %.
- 23 June 2003: Kitolo Bwanga, the director of the "Division de Gestion des Contrats" of Gécamines, sends a letter to Kabamba and Kongolo with the October 2001 report of Tuma-Waku attached to it. Bwanga proposes to prepare a draft agreement that contains a detailed description of Gécamines' contribution to the project. He also remarks that the

²⁰⁴ This chapter is largely based on official documents that were available to the authors for perusal only.

Kamoto mine is already subject to an agreement with South-African mining company Iscor.

- 24 June 2003: Kongolo, Kabamba, Malta David Forrest (son of Georges Forrest) and Arthur Ditto (chairman of K-F) sign a nine page Preliminary Agreement containing no significant alterations of the 3 June 2003 Memorandum of Agreement.
- 25 June 2003: Nkulu approves of the Preliminary Agreement in a letter written to Kabamba.
- 30 June 2003: Start of the transition. Nkulu is replaced by the new Mines Minister Diomi Ndongala, who hails from the opposition.
- September 2003: International Mining Consultants (IMC), a UK based firm, presents an action plan to reform Gécamines to the interministerial Economic and Financial Commission (ECOFIN) in Kinshasa. The plan is based on an audit of Gécamines, commissioned by the World Bank, that IMC carried out in the course of 2003. IMC strongly advises against the K-F deal related to Kamoto, and classifies the agreement with Iscor regarding Kamoto as an exemplary model for future negotiations. IMC further recommends that all Gécamines' directors be dismissed immediately and that a team assisted by international experts renegotiate all of Gécamines' partnerships, starting with the major ones (Kamoto, Tenké Fungurumé, etc.). At the ECOFIN meeting IMC also presents a detailed rapid restart strategy for Gécamines. This strategy aims to valorize the assets of Gécamines that have not yet been subjected to joint venture agreements. The most important of these assets are the mine of KOV and related concentrators and refining facilities.
- 13 November 2003: Samba Kaputo, the Deputy Chief of Cabinet, sends a letter to Kongolo instructing him to suspend all ongoing negotiations between private partners and Gécamines. A copy of the letter is transmitted to President Kabila and the main members of ECOFIN.
- February 2004: Nzenga Kongolo, Twite Kabamba, Malta David Forrest and Arthur Ditto sign a joint venture agreement entitled « Convention de joint venture entre la Générale des Carrières et des Mines et Kinross-Forrest Ltd. relative à l'exploitation de la filière Kamoto (mine)-Dima-Kamoto concentrateur-usines hydrometallurgiques de Lulu ».
- 5 May 2004: A Preliminary Agreement concerning the KOV mine and related assets is signed. The parties to the joint venture contract are Global Enterprises Corporate (GEC) of diamond tycoon Dan Gertler and Gécamines.
- August 2004: Contracts for new audits of Gécamines, commissioned by the World Bank, are awarded to Ernst & Young (financial audit) and Duncan & Allen (legal audit). The legal audit is again supposed to scrutinize Gécamines' partnerships. The French consultancy firm Sofreco wins a contract to co-manage Gécamines. This project is also funded by the Bank.

- 9 September 2004: Kongolo, Kabamba and Dan Gertler sign a joint venture agreement entitled « Convention de joint venture entre la Générale des Carrières et des Mines et Global Enterprise Corporate Ltd. relative à l'exploitation de la mine à ciel ouvert de KOV et des gisements de Kananga et de Tilwezembe ».
- June 2005: The Lutundula Commission deposes its report at the Bureau of the National Assembly. The IMC recommendation concerning KOV and Kamoto is echoed in the report: ongoing negotiations on Kamoto, KOV and related assets should be stopped. For an unknown reason the report of the Commission does not mention the Preliminary Agreement on Kamoto, although this contract was signed before the transition.
- 19 July 2005: The Council of Ministers decides to amend the contract with Sofreco and approves the joint venture agreements of Gécamines with GEC, K-F, and Lundin/Phelps Dodge (involving the Tenké Fungurumé deposits). The agreements, together with that on KOV, concern 70 % of Gécamines' reserves and all strategic industrial assets in the West Group around Kolwezi.
- 4 August 2005: The President ratifies the Tenké and Kamoto agreements by decree. Also in the first week of August another presidential decree ratifies the appointment of new directors in 30 parastatals.
- 13 October 2005: A Presidential decree ratifies the KOV agreement with GEC.
- 30 December 2005: More than two years after the IMC audit the President issues the decree necessary to change Gécamines' board of directors. Kongolo and Kabamba are dismissed, but three other directors are promoted. Through this decree Sofreco is finally allowed to co-manage Gécamines, which by now has been stripped of all its assets.
- 21 February 2006: A coalition of NGOs sends a memorandum to the DRC government, to the Comité Internationale d'Accompagnement de la Transition en RDC (CIAT) and to Paul Wolfowitz, the President of the World Bank. Annexed to it is an analysis by Canadian law firm Fasken Martineau Dumoulin of the GEC and K-F joint venture agreements with Gécamines. The memorandum contains the following summary of the analysis: « Ces contrats transfèrent ou louent au secteur privé des actifs de grande importance faisant partie du patrimoine national de la RDC sans évaluation et sans assurance que le pays sera rémunéré de façon adéquate ». Fasken Martineau estime plausible que GEC et KFL « auront été totalement remboursés en capital et en intérêts de tous prêts et avances et auront tiré des bénéfices substantiels du contrôle qu'ils exercent sur les opérations des joint ventures avant que la Gécamines ne reçoive quelque rémunération que ce soit pour ses apports » et que les royalties et loyers payés à la Gécamines sur la durée du projet « seront minimaux, s'il y en a. »
- 22 February 2006: In a public statement Forrest Group alleges that one of its main competitors (First Quantum) is a client of the Canadian law firm. Forrest Group further states that the agreement is satisfactory to all stakeholders.

In 2002 the Bureau Central de Coordination (BCECO), a Congolese public service that manages projects funded by international donors, issued an invitation to tender for a study of Gécamines entitled *Project for Restructuring Gécamines*.²⁰⁵ The project, valuing 645.000 USD, was financed by the World Bank in the framework of an International Development Association (IDA) grant.²⁰⁶ BCECO awarded the contract to the UK firm International Mining Consultants (IMC) and it was signed in September 2002. IMC produced a twofold study, consisting of an audit of the then current state of affairs of Gécamines (phase I of the study, concluded in March 2003 and approved by the Congolese government in June 2003) and of a strategic proposal for a rapid restart of the company's production (phase II, finalized in January 2004).²⁰⁷

Following usual procedure with audits commissioned by the World Bank, the IMC report was never disclosed to the public, though apparently it does circulate among several journalists and researchers.²⁰⁸ Our presentation of the IMC analysis is based on a draft that IMC sent to the relevant Congolese institutions in November 2003.²⁰⁹ The document contains a summary of the audit (phase I) and a detailed description of the strategic plan IMC envisaged to restart Gécamines' production (phase II). The diagnostic part of the IMC study (phase I) was, to say the least, highly critical. Its key points of criticism are a prelude to the conclusions of the Lutundula Commission, which indicates that the IMC audit did not lead to a better management performance of Gécamines. Some key points of criticism can be summarized as follows:

- At the organisational level, all effective implementations of a strategy to rectify the “catastrophic” situation of Gécamines' are made impossible by the juridical framework that regulates the company's management.²¹⁰ The law in question, n° 78/002, as noted above, deliberately voids Gécamines' (and in fact all public enterprises') management of executive power. The real director general therefore is the Minister of Mines, who has the final say in every managerial decision. This situation, IMC concludes, “*organizes the irresponsibility of Gécamines' management*” (own translation). It must be noted, however, that in March 2003 President Kabila decreed the creation of a Permanent Committee for the Restructuration of Gécamines²¹¹, which is just three months before a member of the opposition would, in accordance with the Global and Inclusive Agreement, replace Kabila stalwart Jean-Louis Nkulu as the Minister of Mines (see Chapter: Mining reforms in practice: case of the Mining Registry). The decree formally transferred the “administrative” tutelage of Gécamines to the President. According to the specialized

²⁰⁵ In October 2002 a new Congolese administrative body was created to manage public sector reform projects funded by foreign donors, including the DRC's mining parastatals. This body is called Comité de Pilotage de la Réforme des Entreprises Publiques (Copirep).

²⁰⁶ <http://www.digitalcongo.net/acp/BQ230-181202.pdf>

²⁰⁷ *République Démocratique du Congo, Lettre à Monsieur James Wolfhenson, Président du Groupe de la Banque Mondiale*, Kinshasa, 21/01/2004.

²⁰⁸ It is for example referred to by Erik Bruyland, senior writer for the Belgian economic weekly Trends. See: 'Hoop en wanhoop in de mijnen van Congo' in: *Trends*, 23/06/2005. The UK based NGO Rights & Accountability in Development mentions the IMC report in: *Unanswered questions, op.cit.*, p. 59-62.

²⁰⁹ *Restructuration de la Gécamines, op.cit.*

²¹⁰ *Ibidem*, p. 7.

²¹¹ http://www.lepotentiel.com/afficher_article.php?id_edition=&id_article=11181;

<http://64.233.179.104/search?q=cache:62T6ivhMQboJ:www.recim.org/rec/rec0603.htm+%22comite+permanent+%22%2Brestructuration%2Bgecamines&hl=nl&gl=be&ct=clnk&cd=2&client=firefox-a>

newsletter Africa Mining Intelligence this demarche was meant to avoid that the application of the Global and Inclusive Agreement would deprive the Kabila clan of its powers over the country's main mining parastatal.²¹²

- Gécamines has concluded numerous joint venture agreements with private partners.²¹³ These agreements form the legal basis of operational companies in which Gécamines and the private partners hold an equity stake. The agreements contain numerous anomalies, all to the detriment of Gécamines, which are the result of negotiations led by members of the management and of the government who were primarily aimed at generating quick cash instead of a sustained and rational development of Gécamines' patrimony. Gécamines has transferred most of its mining rights and industrial assets to joint venture companies. The counterparts the private partners commit to are production and investment schemes that usually aim far below the exploitation potential of the mineral deposits concerned. As a result, many of Gécamines' assets are frozen. Moreover, the private partners all invest with borrowed capital that must be reimbursed by the joint venture company, before Gécamines touches any dividend. To obtain the necessary loans from financial institutions, the private partners give Gécamines' assets in pledge. Since they usually have their social seat in off shore fiscal paradises, the private companies can easily be dissolved in case any legal problem, e.g. related to the eventual bankruptcy of the joint venture, should arise.

In September 2003 the auditors presented their plan for a rapid and sustained restart of Gécamines' production to the Congolese interministerial Committee on Economy and Finances (ECOFIN), chaired by Vice-President Jean-Pierre Bemba.²¹⁴ The meeting took place in the presence of Bemba, the member ministers of ECOFIN, a number of other high-ranking Congolese officials, and several World Bank officials.²¹⁵ The plan of IMC consisted of six steps of action that needed to be taken urgently.²¹⁶

1. All current members of the board of directors and trustees need to be immediately replaced. To the new board of trustees must be added three internationally reputed managers familiar with the mining industry. The new management must no longer be harassed by the constant interference of political authorities.
2. Joint venture agreements must be extensively analysed before (re-) negotiation. The principal objective is to optimise State revenue by (re-) establishing an equitable relationship between the State and private investors. Future negotiations will be carried out by a technical structure composed of Congolese and international experts and will be supervised by ECOFIN and a political structure. All partnerships need to be re-examined, in priority the ones related to the most important projects (Tenke Fungurumé, Kolwezi tailings, Kamoto, Luiswishi, Kipushi,...).
3. A new 100 % subsidiary of Gécamines must be established. This new company called Gécamines A (GCMA) will be debt-free and will receive all mining assets of Gécamines. Its primary objective is to implement the rapid restart strategy laid out by IMC. Three internationally reputed managers must be added to the board.

²¹² 'Not much meat for new Mines Minister' in: *Africa Mining Intelligence* n° 66, 23/07/2003

²¹³ This paragraph is a synthesis of : *Restructuration de la Gécamines, op. cit.*, p. 13-15, 55-100.

²¹⁴ *Restructuration de la Gécamines, op. cit.*, p. 28.

²¹⁵ Interviews with senior DRC officials in October 2005 and on 23-24 November 2005.

²¹⁶ The following list of measures is based on : *Restructuration de la Gécamines, op. cit.*, Annex II.

4. The rapid restart strategy consists in the development by GCMA of three industrial entities, the only ones not yet subjected to existing joint venture agreements: (i) the mine of KOV and/or Kamoto, the DIMA concentrator and the Luilu hydrometallurgical refinery in Gécamines' West Group; (ii) smaller mines such as Tilwizembe and Kananga, the KZC concentrator and part of Luilu in the West Group; and (iii) smaller mines (Kambove, Kamoya,...), the Kambove concentrator and part of the Shituru refinery in the Central Group. A business plan worked out by IMC determined that with an initial investment of 60 million USD, and a working capital of 40 million USD, GCMA could, within about three years, produce 100.000-150.000 tons of copper and 4.000-6.000 tons of cobalt. This production level represents a conservatively estimated yearly turnover of 150-200 million USD.
5. Gécamines has up to 30 June 2003 accumulated a debt of 1.630 million USD. This debt should be restructured along a plan worked out by IMC.
6. The artisanal extraction of heterogenite has an important socio-economic function since it provides an income to ten thousands of diggers. The ore should be treated in the ovens of Katanga to maximize the value added in the country. Artisanal activities should be restructured for environmental and security reasons.

As a way of assisting Gécamines in the implementation of the proposed strategy, the World Bank funded another series of studies through the Comité de Pilotage de la Réforme des Entreprises Publiques (Copirep), that sent out invitations to tender for new audits. More than a year after the official meeting between ECOFIN and IMC, Africa Mining Intelligence announced which consultancies had won the contracts: the accounting firm Ernst & Young would carry out a financial audit of Gécamines, law firm Duncan & Allen a legal audit, and IMC a technical audit.²¹⁷ By the same time – around August 2004 – the French consultant Sofreco had won a contract to take part in Gécamines' management for a period of 18 months in order to provide technical assistance for reforming the parastatal.²¹⁸ Sofreco's actual involvement however kept being deferred: as late as 19 July 2005 the Congolese Council of Ministers, chaired by President Kabila, decided to amend the contract.²¹⁹ It finally took until December 2005 before the President issued the decree necessary to install the parastatal's new management.²²⁰

In other words, the Kinshasa authorities waited more than two years to implement IMC's recommendation to "immediately replace all members of Gécamines management". In the mean time the two highest-ranking officials, chairman of the board Twite Kabamba and managing director Nzenga Kongolo, had remained in office. Three former board members remain in place in the "new" board: Assumani Sekimonyo who is the former deputy general manager of Gécamines replaces Kabamba; Mukasa Kalembwe becomes deputy general director, and Mwema Mutamba holds the position of technical director.²²¹ As noted above, all three make regular financial contributions to the PPRD. It also remains to be seen if and when Sofreco's involvement will bring about any real changes. In a January 2006 interview Paul Fortin, the new CEO of Gécamines delegated by Sofreco, declared that, despite the existence

²¹⁷ 'Gécamines new advisers', in: *Africa Mining Intelligence* n° 94, 13/10/2004.

²¹⁸ 'Franse consultant voor Gécamines', in: *Trends*, 05/08/2004.

²¹⁹ 'Conseil des ministres du mardi 19 juillet 2005', in : *Le Potentiel*, 21/07/2005.

²²⁰ *Décret n° 05/185 du 30 Déc.2005 portant nomination des membres du conseil d'administration d'une entreprise publique dénommée Générale des Carrières et des Mines, en sigle « Gécamines ».*

²²¹ *Ibidem.*

of all the above mentioned audits, his team will re-analyse all joint venture agreements during the first three months of activities.²²² Further he added that his team would not (own translation) “bring the contracts up for discussion (...) but will see to it that the partnerships respect their engagements.”²²³

If this new phase of partnership scrutiny is duly carried out, it will also include the joint ventures through which Gécamines lost its rights over the only assets still available at the time when IMC devised its rapid restart strategy. Our analysis of what happened to Gécamines’ major assets in the West Group – those of KOV and Kamoto – after the September 2003 meeting of IMC and ECOFIN shows how the reform of Gécamines works in practice.

Before we analyze how the KOV and Kamoto deals came about, it is necessary to point out that not only the World bank, but also the President’s cabinet seemed to be well aware of the gravity of Gécamines « catastrophic » situation. On 13 November 2003 the Deputy Chief of Cabinet, Samba Kaputo, sent an official letter to Gécamines CEO Nzenga Kongolo containing this single statement: “*Sur instruction de la Haute Hiérarchie, je vous demande de suspendre jusqu’à nouvel ordre, toutes les négociations en cours portant sur les accords de partenariat entre les opérateurs privés et la Gécamines.*”²²⁴ The dossiers of GEC and the mine of KOV, and of Kinross-Forrest and Kamoto, show that Kaputo’s request was to no avail.

8.7.1 Global Enterprises Corporate and KOV.

On 9 September 2004 an agreement was signed between Gécamines and a company called Global Enterprises Corporate Ltd. (GEC), transferring all key assets related to the open mine of KOV plus the Kananga and Tilwezembe deposits to a joint venture called ‘DRC Copper and Cobalt Project’ (DCP).²²⁵ In its Preamble, the agreement refers to an “Accord Préliminaire” (N° 641/6733/SG/GC/2004) signed on 5 May 2004²²⁶, but since such joint venture negotiations are usually a lengthy process, it is very likely that talks between Gécamines and GEC had been going on for quite some time before that date. Even if this is not the case, it remains a fact that eight months after the IMC/ECOFIN meeting and Kaputo’s ensuing letter, the “Accord Préliminaire” buried IMC’s rapid restart strategy.

The signatory to the joint venture contract on behalf of GEC was the Israeli diamond tycoon Dan Gertler. Gertler’s activities in the DRC go back to 1998, when he set out to cultivate strong ties with Laurent Kabila.²²⁷ In August 2000, Laurent Kabila granted a monopoly on

²²² ‘Nieuwe doorlichting van partnerships Gécamines’, in: *Trends*, 26/01/2006.

²²³ *Ibidem*.

²²⁴ Réf. CAB/PR/DCA/SK/CPEF/0266/JMK/2003. Unpublished doc., signed Kinshasa 13/11/2003. Copy transmitted to: the President, the chairman of ECOFIN (Bemba), the Ministers of Mines (Diomi Ndongala) and Portfolio (Vunabandi), the chairman of the Gécamines board (Kabamba). Samba Kaputo is now security advisor to the president and is, as part of the “Katangan clan”, widely recognized as one of the major power brokers in the DRC. This document was available to the authors of this report for perusal only.

²²⁵ N° 656/6755/SG/GC/2004. Convention de joint venture entre la Générale des Carrières et des Mines et Global Enterprise Corporate Ltd. relative à l’exploitation de la mine à ciel ouvert de KOV et des gisements de Kananga et de Tilwezembe. Signed by Nzenga Kongolo, Twite Kabamba, and Dan Gertler on 09/09/2004. This document was available to the authors of this report for perusal only.

²²⁶ *Ibidem*, p. 2.

²²⁷ ‘Gertler rides back from sunset’, in : *Africa Mining Intelligence* n° 72, 05/11/03.

diamond sales from the DRC to Gertler's company International Diamond Industries (IDI).²²⁸ Gertler's dealings in the DRC during the war led an advisor to the Ministry of National Infrastructure of Israel, a person named Yossi Kamisa, to file a suit against him in February 2004.²²⁹ Kamisa claimed that in July 2000 members of the Israeli Foreign Defence and Defence Export Organisation connived with Gertler to train the Congolese army in exchange for diamond concessions.²³⁰ A February 2004 press report describes the allegations as follows: "*The lawsuit claims that the Congolese president accepted Kamisa's offer to establish the Congolese army. Kamisa said he made his assistance conditional on Gertler obtaining a diamond mining franchise in the Congo. The same day, an agreement was signed granting Gertler a diamond mining franchise worth 800 million-1 billion USD. Kamisa alleges in the lawsuit that he was present during Gertler's trips when he bribed Congolese government officials and Angola Army generals who commanded Angola Army troops protecting the Congo capital Kinshasa, and who were associates of the Congo president. Kamisa alleges that the Israel Ministry of Defense did not allow him to arrange meetings between the Congo Army deputy chief-of-staff and Israeli defense industries, but only with civilian industries. The lawsuit claims that four months before Kamisa joined Gertler, Gertler tried to bring the Congo Army deputy chief-of-staff to Israel illegally, describing him as an earthworks contractor. The Israel Ministry of Foreign Affairs discovered the deception, and notified Gertler that it was considering filing a complaint against him with the Israel Police.*"²³¹ In July 2004, however, the Tel Aviv district court judge granted Gertler's motion to dismiss Kamisa's claim and ruled that Kamisa had signed a final waiver of all demands and claims, and had been paid NIS 1,4 million.²³²

After the death of his father, Joseph Kabila revoked the IDI deal in April 2001, reportedly under pressure of the IMF and the World Bank.²³³ But on 13 April 2003, two months before the transition, another Gertler company, viz. Canada based Emaxon, acquired sales rights over 88 % of diamond parastatal MIBA's output for a period of four years.²³⁴ As noted above, the report of the Lutundula Commission states that it was Katumba Mwanke, one of Kabila's closest advisors, who introduced Emaxon to MIBA to strike a deal that the Commission considered to be detrimental to MIBA.²³⁵ Mwanke is a key negotiator of mining deals on behalf of the government (see above) and is a former employee of Bateman, a South-African engineering firm owned by another diamond tycoon, namely Beny Steinmetz.²³⁶ GEC reportedly is a joint venture of Dan Gertler International (DGI) with Steinmetz's Global Resources group, which holds stakes in mining operations in several African countries.²³⁷ We do not, however, have any records of Mwanke's possible involvement in the GEC deal. But

²²⁸ http://www.jewishsf.com/content/2-0-/module/displaystory/story_id/16578/edition_id/325/format/html/displaystory.html

²²⁹ <http://moneyweb.iac.iafrica.com/economy/empowerment/381155.htm>

²³⁰ *Ibidem*; The Defence Export Organisation is a service of the Israeli Ministry of Defence that assists the Israeli defence industries in their export activities.

²³¹ <http://www.globes.co.il/serveen/globes/printWindow.asp?did=772481>

²³² 'Yossi Kamisa lawsuit against Dan Gertler dismissed', in: www.globes.co.il, 04/07/2004. NIS = Israeli Shekel, rate on 9 February 2006: 1 USD = 4.69 NIS.

²³³ 'Gertler rides back from sunset', in: *Africa Mining Intelligence* n° 72, 05/11/03.

²³⁴ 'MIBA-Emaxon deal set to change', in: *Africa Mining Intelligence* n° 70, 08/10/2003.

²³⁵ République Démocratique du Congo. Assemblée Nationale, *op.cit.*, p. 51, 55-57.

²³⁶ http://www.afrol.com/Countries/DRC/documents/un_resources_2002_govt_zim.htm

²³⁷ 'Simon Tuma Waku', in: *Africa Mining Intelligence* n° 124, 18/01/2006; 'Beny Steinmetz's secret strategy', in: *Africa Mining Intelligence* n° 126, 15/02/2006; 'Gertler & Steinmetz vs. Forrest in Katanga', in: *Africa Mining Intelligence* n° 104, 09/03/05; <http://www.polishedprices.com/columns/printer.asp?ID=1000000852>

another political figure also appears to be involved. Reportedly, former Mines Minister Simon Tuma-Waku has served as an advisor to the GEC project from the outset.²³⁸ In January 2006 Tuma-Waku was named President of the GEC/Gécamines joint venture (DRC Copper and Cobalt Project).²³⁹

In February 2006 three NGOs, namely 11.11.11, Broederlijk Delen and RAID, and the Belgian monthly Mo*, asked the Canadian law firm Fasken Martineau DuMoulin (Pty) Ltd. to analyse the Joint Venture Agreement (JV Agreement) of 9 September 2004 between Gécamines and GEC. On instructions of the NGOs, the firm has centred its analysis on how the JV Agreement's provisions generally resemble the provisions normally found in joint venture agreements of a similar nature.²⁴⁰

Fasken Martineau DuMoulin (Pty) Ltd. concludes its analysis as follows:

- *The JV Agreement relates to extensive assets, part of the national wealth of the Democratic Republic of the Congo, which are being transferred or leased for use by the private sector without an evaluation and assurance that the country will be appropriately remunerated for the conveyed or leased assets.*²⁴¹ *It is worth noting that the Parties' contributions have been determined before the completion of the Feasibility Study.*²⁴²
- *One can truly question the methodology or lack of it used in the allocation of the share capital among the Parties to the JV Agreement.*²⁴³
- *It is reasonable to assume that GEC will have been totally reimbursed in capital and interests of all loan and advances and will have derived substantial benefits from the control exercised on the operations, prior to Gécamines receiving any remuneration on its contributions.*²⁴⁴
- *It is reasonable to assume that the royalty paid over the duration of the Project will be minimal, if any.*²⁴⁵
- *It is reasonable to assume that available cash for dividends will be minimized as it will be more advantageous for GEC to be fully remunerated through contracts and payments for services rather than share the remaining available cash with Gécamines.*²⁴⁶
- *It is reasonable to assume that the dividends and royalties to be paid to Gécamines under the JV Agreement will not be sufficient to reimburse the Loan and that Gécamines is therefore more heavily indebted for having signed this JV Agreement compared to the situation if it had not entered into the JV Agreement.*²⁴⁷

²³⁸ 'Simon Tuma Waku', in : *Africa Mining Intelligence* n° 124, 18/01/2006.

²³⁹ *Ibidem.*

²⁴⁰ Fasken Martineau DuMoulin (Pty) Ltd., *Analysis of the Joint Venture Agreement dated 9 September 2004 between La Générale des Carrières et des Mines and Global Entreprises Limited for the exploitation of the open pit mine of KOV and the Kananga and Tilwezembe deposits*, 19 février 2006, 10 p.

²⁴¹ *Ibidem*, p. 8.

²⁴² *Ibidem*, p. 8

²⁴³ *Ibidem*, p. 9

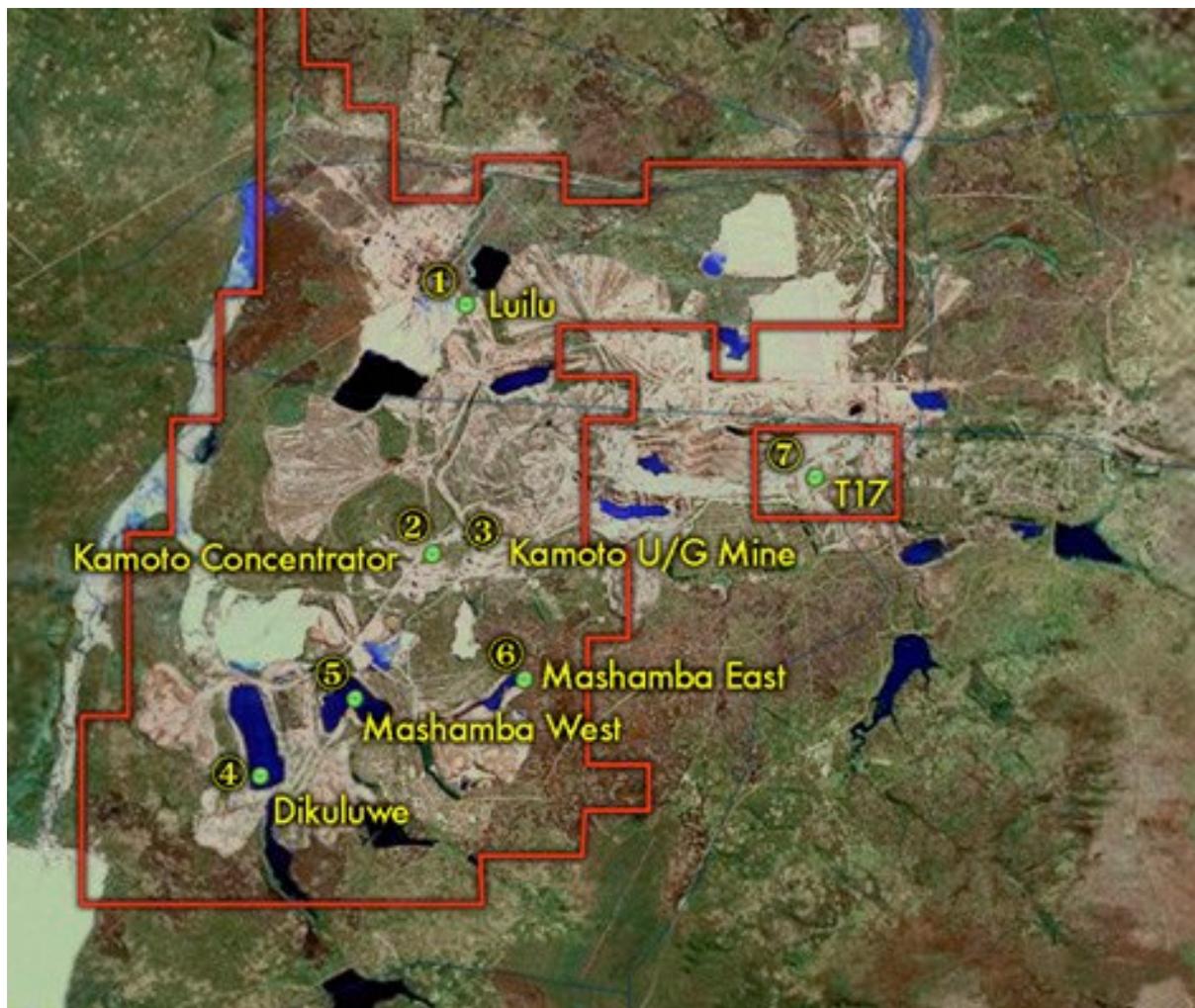
²⁴⁴ *Ibidem*, p.10

²⁴⁵ *Ibidem.*

²⁴⁶ *Ibidem.*

²⁴⁷ *Ibidem.*

8.7.2 Kinross-Forrest and Kamoto.



(“Kamoto and related assets”, www.katangamining.com)

Also the Kamoto file illustrates how resource management in Katanga works in practice. In its November 2003 report IMC analysed the existing agreements concerning Kamoto and stated that it would have preferred to include the mine of Kamoto and related industrial assets in its rapid restart plan, but that the rights over the assets were subject to a legal dispute.²⁴⁸ The parties involved in this dispute were a South African steel producer called Iscor (later renamed Kumba Resources), and a company registered in the British Virgin Islands, namely Kinross-Forrest (K-F). K-F was established in 2001 by the Canadian company Kinross (60 %) and Forrest George International SA (40 %) of Belgian businessman George Forrest.²⁴⁹ Having looked into the agreements Gécamines/Iskor and Gécamines/K-F, IMC strongly advised in favour of the former.²⁵⁰ Even more so, IMC classified the Iscor contract as an exemplary model for future negotiations.

²⁴⁸ Restructuration de la Gécamines, *op. cit.*, Annex II.

²⁴⁹ <http://www.forrestgroup.com/fr/infos32.html>

²⁵⁰ Restructuration de la Gécamines, *op. cit.*, p. 68-69.

Iscor's project consisted in exploiting 30 % of the known reserves of Kamoto and in rehabilitating a concentrator (KTO2) and part of the metallurgical plant of Luilu, a key strategic asset for mining operations in the West Group.²⁵¹ The main difference with most other projects in Katanga was that Iscor's proposal concerned a "*contrat de gestion*", meaning that Gécamines would not transfer its assets but would let Iscor work with the assets and rehabilitate them for a period of ten years, after which Gécamines could again fully dispose of them in a state of rehabilitation.²⁵² Contrary to most other private partners, Iscor would not charge extra interests on the funds it would borrow for investments (150 million USD), nor would it charge any other fees for services.²⁵³ After reimbursement of the loan, benefits would be partitioned with a 70 % stake for Gécamines and 30 % for Iscor.²⁵⁴ The IMC report further stated: "*Nous n'avons pas compris les raisons pour lesquelles ce projet n'est pas encore en fonctionnement.*"²⁵⁵

According to IMC, the K-F project concerned the "exclusive disposal" of most of the West Group deposits, the concentrators of KTO and DIMA and the entire metallurgical plant of Luilu for a period of 20 years, twice renewable for ten years.²⁵⁶ As a counterpart K-F would invest an estimated 200 million USD, also on loan.²⁵⁷ IMC concluded as follows:

"Ce projet n'aurait besoin que de 1/10ème des gisements demandés pour réaliser ses engagements. Il gèle donc une énorme quantité de réserves, quasiment indéfiniment.

*Nous déconseillons formellement ce projet Kinross-Forrest sur le « Groupe Ouest ». Il bloque d'énormes réserves, sans production correspondante. Il est en tout état de cause très inférieur, pour GCM et pour l'Etat, au modèle Iskor."*²⁵⁸

Some of the IMC auditors' concerns had already been raised in October 2001 by the then Minister of Mines Simon Tuma-Waku Bawangamio. On 5 October 2001, Tuma-Waku received a visit of George Forrest, two former administrators of Gécamines (René Noleveaux and Urbain Brabants), and Arthur Ditto of Kinross, all of who just before had had an audience with the President to discuss the K-F project.²⁵⁹ In a report addressed to President Joseph Kabila, Tuma-Waku brought to notice the importance of Gécamines' patrimony involved in the planned joint venture:

*"Compte tenu de l'importance du patrimoine de la Gécamines qui est concerné par le partenariat, la cession en cause diminue considérablement le potentiel de la Gécamines et entame son avoir social."*²⁶⁰

²⁵¹ *Ibidem*, p. 68

²⁵² Restructuration de la Gécamines, *op. cit.*, p. 68

²⁵³ *Ibidem*.

²⁵⁴ *Ibidem*.

²⁵⁵ *Ibidem*.

²⁵⁶ *Ibidem*.

²⁵⁷ *Ibidem*.

²⁵⁸ Restructuration de la Gécamines, *op. cit.*, p. 68-69

²⁵⁹ N°CAB/MINES-HYDRO/01/1045/01, Rapport à son excellence monsieur le Président de la République.

Objet: création joint venture Gécamines-Kinross/Forrest, signed 09/10/2001 by Simon Tuma-Waku, p. 1, This document was available to the authors of this report for perusal only.

²⁶⁰ *Ibidem*, p. 3.

*"Suite à la cession des gisements de la Gécamines aux différents partenariats, les réserves totales restantes sont de 27.963.700 tonnes de cuivre, 757.180 tonnes de cobalt et 6.356.000 tonnes de zinc. Ainsi, les réserves concernées par le projet Kinross-Forrest représentent 39 % en cuivre et 59 % en cobalt des réserves actuelles de la Gécamines."*²⁶¹

Tuma-Waku in his report concluded that, compared to the 200 million USD the private partner planned to contribute, the equity stake of 30 % proposed to Gécamines in the joint venture was unacceptable.²⁶² A month later, on 16 November 2001, a trade union leader of Gécamines, Jean-Louis Tasinda, reportedly also warned Joseph Kabila about the plan to strip Gécamines of its most profitable units. Tasinda reportedly pleaded that the deal would leave Gécamines with 24.000 workers on its hands, as the joint venture would only employ 2.000.²⁶³

On 3 June 2003 K-F wrote a letter to Twite Kabamba and Nzenga Kongolo, respectively chairman of the board and CEO of Gécamines, with its joint venture proposal, moulded in a Memorandum of Agreement ("Protocole d'Accord") and attached to the letter.²⁶⁴ Curiously, the author(s) called the Memorandum "*our proposal resulting from the meeting held in the office of his Excellency the Minister of Mine and Oil on the 3rd of June 2003.*"²⁶⁵ The meeting with the Mines Minister at that time, Jean-Louis Nkulu, thus apparently resulted in one day in a seven page detailed document – the said Memorandum – on the joint venture K-F/Gécamines called Kamoto Copper Company (KCC). The Memorandum concerned the same assets as mentioned in the Tuma-Waku report, and the required (estimated) K-F input was still 200 million USD, but the proposed equity stake for Gécamines was now diluted to 25 % instead of 30 %.²⁶⁶

The above mentioned report of Tuma-Waku was later attached to a letter written on 23 June 2003 by Kitolo Bwanga, the director of Gécamines' "Division de Gestion des Contrats" to Nzenga Kongolo.²⁶⁷ Bwanga in his letter stated that he had examined K-F's Memorandum of Agreement and recommended that a first draft of such a Memorandum should contain a detailed description of Gécamines' contribution to the project.²⁶⁸ The letter continued:

"Nous attirons votre attention que le projet de rehabilitation du Groupe Ouest avait fait l'objet d'un appel d'offres international qui avait été interrompu à la demande du gouvernement. Nous signalons aussi que la 'filiale' Kamoto-mine + KTC est engagée par un accord entre Gécamines et Iscor. Dans les différentes négociations, Gécamines

²⁶¹ *Ibidem*, Annex II, p. 1

²⁶² *Ibidem*, Annex II, p. 2.

²⁶³ 'Jean-Louis Tasinda' in: *Africa Mining Intelligence* n°26, 19/11/2001.

²⁶⁴ Kinross Forrest Limited, letter with reference: L-05-2003-MDF, signed by Malta Forrest and Arthur Ditto on 03/06/2003. Attached: Protocole d'accord entre K-F Limited et Gécamines, 03/06/2003. Unsigned but mentioning the intended signatories: Arthur Ditto and Malta Forrest for K-F, and Nzenga Kongolo and Jean Assumani (deputy director general) for Gécamines. This document was available to the authors of this report for perusal only.

²⁶⁵ *Ibidem*.

²⁶⁶ Protocole d'accord, *op.cit.*, p. 4.

²⁶⁷ N° 8139/SG/GC/2003, Note à l'ADG, signed by Kitolo Bwanga Kipily on 23/06/2003. This document was available to the authors of this report for perusal only.

²⁶⁸ *Ibidem*.

*a toujours voulu garder Luilu pour éviter un conflit d'intérêt au cas où il y aurait d'autres partenaires. »*²⁶⁹

Bwanga's call for caution was, however, overtaken by events. Two days after he wrote his letter, on 25 June 2003, the then Mines Minister Jean-Louis Nkulu wrote a letter to Twite Kabamba, stating that he had received "*l'Accord Préliminaire (...) signé entre la Gécamines et Kinross-Forrest Limited, portant sur l'exploitation minière au Groupe Ouest.*"²⁷⁰ The "Protocole d'Accord" of 3 June 2003 had thus apparently changed into a fully fledged nine-page "Accord Préliminaire", that was approved by Nkulu a day after it was signed.²⁷¹ Kitolo Bwanga, the Gécamines' director who was in charge of managing such contracts, had thus clearly been bypassed. The reason for all this hurry could be that five days later, with the start of the transition on 30 June 2003, a member of the opposition would become Minister of Mines.

It was most probably this "Accord Préliminaire", containing no substantial alterations to the "Protocole d'Accord", that was so fiercely criticized by IMC. And despite the above mentioned call of Samba Kaputo in November 2003 to stop all joint venture negotiations, three months later further negotiations led to a Joint Venture Agreement between Gécamines and K-F.²⁷²

Before it acquired its stake in the Kamoto project, the Group of Gécamines' ex-chairman George Forrest (November 1999 – August 2001) already possessed the most important mining portfolio in the DRC: after exploiting the Kasomba mine, the Group acquired stakes in the Luiswishi (East Group) and the "Big Hill" project in Lubumbashi, and in May 2003, a month before the transition, it obtained rights over deposits at Musoshi and Kinsenda.²⁷³ Forrest's business practices and relations with the Kabila clan have been commented at length elsewhere.²⁷⁴ As noted above, Forrest is praised in the official September 2005 letter of PPRD/Katanga for his support to Kabila's party: "*Souignons que Monsieur George Arthur Forrest et son Groupe sortent du lot, pour nous avoir accompagné, pas à pas, dans la campagne d'implantation du Parti.*" It should be noted that, at the time when the letter was written, the DRC had no laws regulating issues related to party financing.

²⁶⁹ *Ibidem.*

²⁷⁰ N° CAB/MINES-HYDRO/01/969/03, copy transmitted to the Cabinet Director of the Head of State (Evariste Boshab), the Director General of Gécamines (Nzenga Kongolo), and the President of K-F (Arthur Ditto). Signed by the Minister of Mines on 25 June 2003. This document was available to the authors of this report for perusal only.

²⁷¹ N°595/8140/SG/GC/2003, Accord préliminaire entre la Générale des carrières et des mines et Kinross-Forrest/Limited relatif à l'exploitation minière au Groupe Ouest de la Gécamines. Signed on 24 June 2003 by Nzenga Kongolo, Twite Kabamba, Malta David Forrest and Arthur Ditto on 24 June 2003. This document was available to the authors of this report for perusal only.

²⁷² N° 632/6711/SG/GC/2004, Convention de joint venture entre la Générale des Carrières et des Mines et Kinross-Forrest Ltd relative à l'exploitation de la filière Kamoto (mine)-Dima-Kamoto concentrateur-usines hydrometallurgiques de Luilu, signed by Nzenga Kongolo, Twite Kabamba, Malta David Forrest and Arthur Ditto on 9 February 2004. This document was available to the authors of this report for perusal only.

²⁷³ 'Hoop en wanhoop in de mijnen van Congo', in: Trends, 23/06/2005; <http://www.copperresources.com/news/documents/CRC%20Release%20301105.pdf>.; 'Forrest returns', in: *Africa Mining Intelligence*, 28/05/2003; *République Démocratique du Congo. Assemblée Nationale*, op. cit., p. 134.

²⁷⁴ See, for example: S/2002/1146, p 8, 10-12; RAID, op. cit., p. 56-66; <http://www.kongo-kinshasa.de/dokumente/divers/gecamines.pdf>, p. 6, 14.

Besides an analysis of the GEC contract, the above mentioned coalition of NGOs also commissioned the Canadian law firm Fasken Martineau DuMoulin (Pty) Ltd. to make an analysis of the February 2004 Joint Venture Agreement between Gécamines and K-F with respect to the Kamoto project. As in the case of GEC, Fasken Martineau DuMoulin (Pty) Ltd. centered its analysis on a comparison of the JV Agreement's provisions with those found in similar agreements.²⁷⁵

Fasken Martineau DuMoulin states that, under the JV Agreement, Gécamines agreed to grant the joint venture company KCC the exclusive rights to occupy, have full benefit, use, maintain, upgrade, develop, and process the tailings, and also the surface rights, the concessions, the properties of the KAMOTO project and all other mining rights and other rights or participations relating to properties held by Gécamines within the mining area.²⁷⁶ The JV Agreement also provides that, should the Concessions contain insufficient ore to meet the production targets defined in the feasibility study or to feed the processing plant for the period of the JV Agreement, then Gécamines must also make supplementary exploitable concessions available to KCC.²⁷⁷

Fasken Martineau DuMoulin (Pty) Ltd. concluded that:

1. In instances such as Kamoto, common practice is to have an audit and an evaluation of "in kind" contributions so that both partners can be satisfied that such contribution has been given a fair value. The share capital is thereafter attributed proportionately to the contributions of each partner. In the case of the Kamoto Project, the Parties' contributions have been determined before the completion of such a feasibility study.²⁷⁸
2. The JV Agreement relates to extensive assets, part of the national wealth of the Democratic Republic of the Congo, which are being transferred to be used by the private sector without an evaluation and assurance that the country will be appropriately remunerated for the privilege granted to a private concern.²⁷⁹
3. It is reasonable to assume that K-F will have been totally reimbursed in capital and in interests of all loans and advances and will have derived substantial benefits from the control exercised on the operations, prior to Gécamines receiving any remuneration on its contributions.²⁸⁰
4. It is reasonable to assume that the remuneration for the rented equipment and installation will be minimal, if any.²⁸¹
5. It is reasonable to assume that available cash for dividends will be minimized as it will be more advantageous for K-F Limited to be fully remunerated through contracts with related companies rather than share the remaining available cash with Gécamines.²⁸²

²⁷⁵ Fasken Martineau DuMoulin (Pty) Ltd., Analysis of the Joint Venture Agreement dated February 2004 between La Générale des Carrières et des Mines and Kinross Forrest Limited with respect to the Kamoto Mine, the Dima-Kamoto concentrator and the Luilu hydrometallurgical plant, 19 février 2006, 10 p.

²⁷⁶ *Ibidem.*

²⁷⁷ *Ibidem.*

²⁷⁸ *Ibidem*, p. 8

²⁷⁹ *Ibidem.*

²⁸⁰ *Ibidem*, p. 10

²⁸¹ *Ibidem.*

²⁸² *Ibidem.*

Elsewhere in its report the law firm adds: *"One can truly question the methodology or lack thereof used in the allocation of the share capital among the Parties in the Joint Venture to the JV Agreement."*²⁸³

Forrest Group²⁸⁴ in a public statement on the demarche of the NGO coalition says to regret *"ces nouvelles attaques et le procédé, peu glorieux, utilisé par les quatre ONG"*.²⁸⁵ The statement continues as follows:

"Pour ce qui est de l'analyse juridique des contrats 'Kamoto' qui a été commandée par les quatre organisations auprès du cabinet d'avocats Fasken, Martineau, DuMoulin (cabinet canadien d'avocats d'affaires), le Groupe Forrest n'en connaît pas la teneur, mais à travers ce qu'en rapportent les quatre organisations, on peut supposer que, pour le moins, il émette des réserves quant à ces contrats.

Faut-il s'en étonner quand on sait que ce cabinet est un cabinet d'affaires particulièrement impliqué avec la société canadienne FIRST QUANTUM MINERALS, qui est un concurrent du Groupe Forrest et dont le rapport Lutundula indique (pg 131) : "Le gisement de Lonshi a été cédé par la tutelle le 25 février 2000 à FIRST QUANTUM MINERALS sans contrepartie pour SODIMICO et le cadastre minier vient d'attribuer, à la même entreprise la zone A des réserves de SODIMICO... » ? On lira aussi avec le même intérêt l'analyse contenue en le rapport Lutundula page 156 et svt. tout en s'interrogeant déjà sur la coïncidence, l'éthique et la déontologie, le Groupe Forrest s'interroge aussi sur une possible collusion ...

*En ce qui concerne le contrat signé entre Gécamines et la société Kinross Forrest, le Groupe Forrest est et reste serein. Il ne doute pas que ce contrat soit non seulement parfaitement légal, mais encore équilibré entre les parties et que ses retombées sociales et économiques seront à la hauteur des attentes tant des travailleurs et de la population, que des autorités publiques, du partenaire Gécamines et des actionnaires de Katanga Mining Company."*²⁸⁶

In another statement on its website Forrest Group has put a link to the report of the Lutundula Commission and states that the report *"(...) reconnaît explicitement le rôle moteur que joue le Groupe Forrest pour l'économie, la population, les travailleurs, ses partenaires congolais ou étrangers, la Gécamines et l'Etat Congolais."*²⁸⁷

It should however be noted that the Lutundula Commission, though it was supposed to examine all economic contracts concluded before 30 June 2003, for an unknown reason has not included in its analysis the "Accord Préliminaire" signed on 24 June 2003, concerning K-F and Kamoto. The Commission only mentions the Kamoto mine and related assets in one of its recommendations:

²⁸³ *Ibidem*, p. 9

²⁸⁴ Formally, the correct company name is: Forrest George International.

²⁸⁵ http://www.pressreleases.be/script_FR/newsdetail.asp?language=FR&ID=31097 or <http://www.forrestgroup.com/fr/infos37.html>

²⁸⁶ *Ibidem* ; Katanga Mining Company is listed on the Toronto Stock Exchange and holds option rights to acquire 75 % of the Kamoto Copper Company.

²⁸⁷ <http://www.forrestgroup.com/fr/home.html>

“(…) il est recommandé d’arrêter toutes négociations en cours don’t l’objet est d’affecter aux projets de partenariat les unités de production et gisements suivants: 1. Kamoto; 2. le concentrateur de Kamoto; 3. la mine de Kipushi; 4. l’usine de Luilu; 5. l’usine de Shituru; 6. les gisements de Kamoto, KOV, Mashamba est et ouest et de Kananga.”²⁸⁸

After the Lutundula report was deposited at the Bureau of the National Assembly in June 2005, this recommendation, echoing that of the IMC auditors, was again neglected by the Kinshasa authorities. As noted above, the Council of Ministers decided in July 2005 to transfer the rights over the KOV and Kamoto concessions and assets to the Gécamines joint ventures with GEC and K-F. Both agreements were ratified by Presidential decree, respectively on 4 August 2005 and 13 October 2005.²⁸⁹ Moreover, two weeks later, on 28 October 2005, the DRC government, despite the Lutundula Commission’s recommendation to stop concluding contracts related to the national patrimony until after the elections, approved of a partnership between diamond mining parastatal MIBA and another Dan Gertler company, DGI Mining.²⁹⁰ The joint venture company acquired mining rights over a surface area of 15.000 square kilometres.²⁹¹

²⁸⁸ République Démocratique du Congo. Assemblée Nationale, *op. cit.*, p. 175-176.

²⁸⁹ Also on 4 August 2005 the President ratified a joint venture agreement concerning the vast mining concessions of Tenké Fungurumé. During the first week of August another decree appointed new directors to 30 parastatals (see Chapter: Governmentality).

²⁹⁰ ‘No new Africa play for Alrosa’, in: *Africa Mining Intelligence n° 120*, 16/11/2005; *Les diamants du Kasai: clé et moteur de développement*. Speech held by Gustave Luabeya Tshitala at the conference: *DRC’s natural treasures: Source of conflict or key to development*, Brussels, 24 November 2005. That same day the government approved of two other joint venture agreements with MIBA. The private partners involved are De Beers and Nizhne-Lenskoye (see Chapter: The Lutundula Commission).

²⁹¹ *Ibidem*.

9. Mining Reforms in practice: case of the Mining Registry (“cadastre minier”)

Abstract-This chapter is dedicated to the Mining Registry project, which was initiated and funded by the World Bank. The project aimed at introducing non-discretionary criteria procedures for the granting of mining rights. The idea behind it aligned with one of the key objectives of the new Mining Code, namely to change the government’s role from mining operator to mining regulator. The Mining Registry project was jeopardized from the start by the appointment in May 2003 of a Kabila stalwart, Ambroise Mbaka, at the head of the Registry. In clear contrast with the aim of depoliticising the business of awarding mining rights, the appointment of Mbaka was part of a political stratagem of the PPRD to consolidate its powerful position in the mining sector before the transition started. From the first day the Registry opened, exactly the opposite happened of what the World Bank had outlined for the project. Licenses were awarded on an ad hoc basis and the key principle of first-come-first-served was not respected, time delays were equally not respected, conflicting permits were handed out, kickbacks were paid, high-ranking authorities unduly interfered, etc. Less than a year after the Registry opened its doors to the public, Mbaka was dismissed and the Registry was closed down. It took a year to repair the damage and since November 2005 the Registry is headed by its fourth general director in less than three years time.

Chronology

- July 2002: President Joseph Kabila ratifies the new Mining Code, which was drafted at the instigation and with funding of the World Bank. The Code constitutes the legal framework for the mining sector. The new law’s directives are contained in the Mining Regulation, which is ratified in May 2003. Both documents outline the operational procedures of the Mining Registry.
- October 2002: The German consultancy firm GAF starts the project of the modernization of the Mining Registry, to which the World Bank has committed 1 million USD.
- May 2003: Kabila stalwart Ambroise Mbaka Kawayia is appointed general director of the Registry.
- June 2003: The new Mining Registry opens its doors to the public, and already from day one it is unable to handle files in a fair manner as was outlined.
- 30 June 2003: Start of the transition. Mines Minister and Kabila stalwart Jean-Louis Nkulu is replaced by Diomi Ndongala, who hails from the opposition.
- 3 May 2004: Diomi suspends Mbaka following complaints of several foreign companies about Mbaka’s poor management methods. Mbaka is replaced by the deputy director and the Registry is closed down to repair the damage.
- November 2004: A new general director is appointed to the Registry. Diomi Ndongola is suspended upon allegations by the Bakandjeja Commission of bad governance in the public enterprises under his authority. In January 2005 he is replaced by Ingele Ifoto, the fourth Mines Minister in three years time.

- March 2005: The Registry is re-opened.
- November 2005: Jean-Felix Mupande, a close associate of Joseph Kabila, becomes the fourth general director of the Registry in less than three years time.

In 2001 the World Bank approved an Institutional Development Fund (IDF) to finance the revision of the DRC's mining code and the modernization of the Mining Registry.²⁹² In its Transitional Support Strategy report of July 2001 the World Bank expressed the intent of the latter project as follows (emphasis added): “(...) *the Mining Cadastre, a core public mining institution created under the new law to improve the mining titles registry and management system, through the introduction of **non-discretionary criteria procedures** for the granting and foreclosing of mining rights, managed by a computer based reporting system. Once the legal framework is in place, support would be provided under the proposed IDA grant for a process of vetting mining rights so as to ensure that legitimate rights are brought under the new legal framework while illegally-granted claims are voided in a transparent manner. This will create a situation where investment can flow.*”²⁹³

In a letter of intent to the IMF Congolese senior executives describe the Mining Registry as “the key administrative institution responsible for managing the sector's new legal and regulatory framework.”²⁹⁴ This framework was outlined in the new Mining Code and Mining Regulation, decreed respectively in July 2002 and May 2003. The major innovations of the new mining legislation can be characterized as follows: “(i) *a change in the government's role from mining operator to mining regulator; (ii) the creation of a single mining regime without investment agreements negotiated on a case-by-case basis; (iii) the introduction of a special tax regime for the mining sector, which is fair and equitable and without exemptions; and (iv) the option, under a clear and straightforward system, of issuing mining titles on a first-come-first-served basis, transparently managed by an automated mining register to minimize discretionary action by the government.*”²⁹⁵

The new Mining Code and Mining Regulation give a detailed description of what the non-discretionary procedures mentioned above entail. Without going into all details, one can summarize as follows:

1. The applicant for mining rights hands over all documents pertaining to his demand to the Registry.
2. The Registry treats the demand according to the principle ‘first-come-first-served’.
3. The Registry verifies if the three main criteria are met:
 - a. Eligibility of the applicant: articles of association of the company, certified copies of identity cards, ...

²⁹² *Transitional Support Strategy for the Democratic Republic of Congo*, World Bank Report No. 22499-ZR, July 9, 2001, p.17.

²⁹³ *Ibidem*, p. 8.

²⁹⁴ *Memorandum on Economic and Financial Policies for 2004*, Democratic Republic of Congo, Kinshasa, June 24, 2004. See: <http://www.imf.org/external/np/loi/2004/cod/01/>

²⁹⁵ *Letter of Intent*, Democratic Republic of Congo, Kinshasa, January 14, 2002; See: <http://www.imf.org/External/NP/LOI/2002/cod/01/>

- b. The applicant needs to prove that he has the required financial capacity. The Mining Code prescribes the formula used to calculate the minimum sum.
 - c. For cadastral purposes the national territory of the DRC is divided into quadrangles (of approximately 85 hectare or 0,85 square kilometres). The Registry verifies whether the quadrangles applied for are available.²⁹⁶
4. The Registry sends its advice – favourable or non-favourable – to the Ministry of Mines. The advice is accompanied by a technical evaluation from the Directorate of Mines, another public entity involved in administering the mining sector.
 5. The Minister of Mines signs the decree of patent (“arrêté d’octroi”).
 6. If the mining title is granted, the Registry issues a certificate to the applicant signed by the general director of the Registry.

For every stage of the procedure a maximum delay is stipulated in the Mining Code. The decision of the Minister, for instance, must be imparted to the applicant within a period of thirty days upon receipt of the file sent by the Registry. Another stipulation of the Mining Code is that the holder of a permit must pay annual surface area fees to the Mining Registry. For an exploration permit the fee amounts to 2,5 USD per quadrangle during the first two years. The maximum number of quadrangles granted to a company for exploration is 23.500 (20.000 square kilometres), which yields an annual fee of nearly 60.000 USD.²⁹⁷ After two years the fee is multiplied by ten. Surface area fees for exploitation permits amount to 425 USD, regardless of the term of validity of the permit.²⁹⁸ The Registry reportedly issued 2.360 exploration and 150 exploitation permits in 2004.²⁹⁹ The maximum number of quadrangles per exploration permit is 470, and if we assume that all exploration permits issued in 2004 covered 470 quadrangles, these allotments represent a sum of nearly 2,8 million USD.

If all duties are duly collected, the Registry thus disposes of a considerable amount of fluid assets. These should enable it to maintain the financial and functional autonomy with which it is endowed.³⁰⁰ The idea behind this autonomy clearly aligns with the World Bank’s endeavours to minimize the role of Congolese politics in the distribution of mining rights. Another proclaimed intent, the enhancing of transparency in the business of granting permits, is stipulated in the Mining Regulation (emphasis added): « *Les fiches techniques, les cartes de retombes minières, les informations administratives concernant les droits miniers et de carrières octroyés ainsi que les demandes en instance sont disponibles **pour la consultation publique** au Cadastre Minier central ou provincial pendant aux moins cinq heures chaque jour ouvrable et **sur Internet.** »³⁰¹*

The project of the modernization of the Registry was granted to GAF, a German consultancy firm that had previously set up computerized mining titling systems in Namibia and Madagascar. The contract value was 1 million USD, and was funded by the World Bank. The

²⁹⁶ The criteria described apply to exploration permits. For an exploitation permit more criteria are taken into account (feasibility study, social development plan,...).

²⁹⁷ The maximum number of quadrangles covered by an exploration permit is 470. A company plus its affiliates may hold a maximum of 50 exploration permits (23.500 quadrangles = 20.000 km²).

²⁹⁸ Law N° 007/2002 of July 11, 2002 relating to the Mining Code, Art. 52, 53, 199.

²⁹⁹ ‘2.360 permis de recherche de minerais octroyés en 2004 en RDC’ in : *Panapress*, 15/07/2005..

³⁰⁰ Law N° 007/2002 of July 11, 2002 relating to the Mining Code, Art.12; See also :

<http://www.geocities.com/fsddc/potentiel280205.html>

³⁰¹ Décret N° 038/2003 du 26 mars 2003 portant règlement minier, Art. 28.

project duration was 18 months with an additional phase of 12 months for support and maintenance. Work on-site was started by GAF in October 2002.³⁰² Another consultancy firm, International Institutional Consulting (Spain), supervised the implementation of the new mining cadastre. World Bank official Paolo De Sa supervised the project.³⁰³

9.1 Political intrigue.

The new Mining Registry was to open its doors in June 2003 and was to be governed by a five-headed board of directors. In May 2003 the outgoing government appointed Ambroise Mbaka Kawayu to the post of general director and he was confirmed in this position soon after by the newly formed transitional government. Mbaka hails from Katanga and is a former chairman of Gécamines. In that capacity he was a signatory to the much contested contract (“*Convention Minière*”) between Gécamines and Ridgepointe Overseas Development Ltd. Through this contract Ridgepointe, a company of Zimbabwean businessman Billy Rautenbach, acquired a 80 % stake in the Central Mining Group (CMG), which was a joint venture with Gécamines (20 %), set up to exploit the *Groupe Centre* of Likasi.³⁰⁴ In November 1998, a few days after the deal was finalized, Rautenbach replaced Mbaka at the head of Gécamines, a position he would hold until March 2000. The management switch at Gécamines degraded Mbaka to the position of counsellor, but shortly after he acquired the post of Deputy Mines Minister in the government of the late Laurent Kabila.

Mbaka Kawayu is perceived to be very close to President Joseph Kabila.³⁰⁵ Far from being a politically neutral move, and thus contravening the idea of depoliticising the business of granting mining licenses, the appointment of a Kabila stalwart as director of the Registry was part of a PPRD stratagem to consolidate its powerful position in the mining sector before the start of the transition. The Global and Inclusive Agreement, signed in December 2002, stipulated that a member of the unarmed political opposition would acquire the post of Mines Minister under the transition. But due to the Mining Code stipulations on the Registry, much of the competence over the granting of mining rights was transferred from the Mines Minister to the head of the Registry, and the scope of the transitional Mines Minister’s mandate was further depleted by a series of Presidential decrees issued in the last months before the transition. The decrees deprived him of his competence over the oil sector, transferred the authority over a “Permanent Restructuring Committee” for Gécamines to the President himself and obliged the Mines Minister to share his power over the Centre d’Expertise d’Evaluation et de Certification (CEEC) with the RCD-G led Portfolio Ministry.³⁰⁶ Moreover,

³⁰² http://www.gaf.de/images/content/news/PR_sigtim_RDC.pdf; GAF’s project supervisor refused to grant an interview to the authors of this paper, stating that GAF’s contract with the World Bank contained a clause of confidentiality.

³⁰³ Neither Paolo De Sa nor Craig Andrews, the World Bank’s principal mining specialist, have so far responded to the questions of this paper’s authors about the Mining Registry.

³⁰⁴ ‘Billy Rautenbach, le patron blanc de la Gécamines’ in: *Le Soft International* n° 755, 25/01/1999; Belgische Senaat, Gewone Zitting 2001-2002, Parlementaire onderzoekscommissie «Grote Meren», Hoorzittingen Vrijdag 8 februari 2002. See footnote 187.

³⁰⁵ ‘Ambroise Mbaka Kawayu’ in: *Africa Mining Intelligence* n° 61, 14/05/2003.

³⁰⁶ ‘Not much meat for new Mines Minister’ in: *Africa Mining Intelligence* n° 66, 23/07/2003; The CEEC is a key institute in the diamond trade since it is the public service that evaluates and certifies precious and semi-precious stones, and issues Kimberley certificates for diamonds. Until August 2005 it was led by Victor Kasongo, another confidant of President Kabila. Kasongo is now head of mining parastatal Okimo and was replaced at the CEEC by Jean-Pierre Tshimanga Buana (MLC). In the period considered, the Portfolio Minister was Joseph Mudumbi. Mudumbi was suspended in November 2004 upon charges of corruption by the Bakandeja Commission; http://www.geocities.com/fsddc/phare_hydrocarbures.html

the transitional Mines Minister would be seconded by the outgoing Mines Minister and Kabila stalwart Jean-Louis Nkulu, who became Vice-Minister of Mines.³⁰⁷

The new Mines Minister in question was Diomi Ndongala, the head of the Christian Democratic Party. His short-lived career as Mines Minister is emblematic for the constant political struggle in Kinshasa over resource control during the transition. On numerous occasions Ndongala did indeed come into conflict not only with the entourage of Kabila but also with Vice-President Bemba. An example is the already mentioned Emaxon dossier. In April 2003, diamond mining parastatal MIBA signed a contract with the Canadian firm Emaxon Finance International, granting the sales rights for 88 % of its output to the latter company for a period of four years.³⁰⁸ Emaxon, as noted above, belongs to the IDI Diamonds group of the Israeli diamond tycoon Dan Gertler, who with his company GEC also acquired rights over the KOV concessions and assets in Katanga (see Chapter: Gécamines' reform in practice: cases KOV and Kamoto). Ndongala always publicly opposed the Emaxon deal and advocated the process of selling MIBA's diamonds by tender. In August 2003, he openly clashed with his Deputy Minister after Nkulu had signed a sales order for a 10 million USD diamond package exported to Antwerp.³⁰⁹ In April 2004 then, both Joseph Kabila and Jean-Pierre Bemba revoked a deal that Ndongala had struck with the Indian run company Chemaf.³¹⁰ Ndongala had reportedly awarded rights to Chemaf over the Gécamines concession of Ruashi-Etoile for the bargaining price of 5 million USD.³¹¹ The authors of the December 2005 report *Digging Deeper* have explained this demarche on behalf of Bemba as the after-effect of a feud between Ndongala and Bemba: Ndongala during his legislature reportedly took several measures to fight export fraud in the diamond sector, thus jeopardizing Bemba's alleged illicit diamond export operations via Brazzaville.³¹²

On 3 May 2004, a month after the Chemaf dispute, Ndongala removed Mbaka Kawaya from his post at the Registry.³¹³ Ndongala himself then got suspended in November 2004, as a result of the above mentioned "Bakandeja Commission" audit, that charged him of bad governance in the public enterprises under his authority.³¹⁴ The allegations against him were, however, never scrutinized in a juridical procedure.³¹⁵ Ndongala was succeeded by Ingele Ifoto who also hails from the opposition. Ifoto, the fourth Mines Minister in three years time, is in office up to the present day and keeps a rather low profile, which is probably the best guarantee for his political survival.

9.2 Bad governance.

The suspension of Mbaka followed complaints of several foreign companies about poor management methods. The ministerial decree ordaining his suspension describes the motives in general terms: « *des indices suffisamment graves de manquement de transparence et de*

³⁰⁷ Nkulu is a former senior manager of Gécamines. In November 2002 he replaced Simon Tuma-Waku as Mines Minister, a function that he kept for 8 months.

³⁰⁸ <http://www.digitalcongo.net/fullstory.php?id=32335>

³⁰⁹ 'So who controls diamond trade?' in: *Africa Mining Intelligence* n° 68, 10/09/2003.

³¹⁰ *Rapport préliminaire sur l'exploitation illégale des ressources naturelles en RD Congo, op. cit.*, p. 10.

³¹¹ *Ibidem*.

³¹² *Digging deeper, op. cit.*, p. 94.

³¹³ 'Mines Minister bangs on the table' in: *Africa Mining Intelligence* n° 85, 19/05/2004.

³¹⁴ 'Médias et bonne gouvernance. Le hold-up de la dernière chance' in: *Plume & Liberté* n°5, May 2005, Journalistes en Danger ; *Digging deeper, op. cit.*, p. 95.

³¹⁵ *Ibidem*.

rigueur dans la mise en place du Cadastre minier, dans l'instruction cadastrale des dossiers de demande des droits miniers et ou de carrière et dans la gestion des ressources financières ». ³¹⁶ More specifically Mbaka was said not to abide by the principle first-come-first-served. ³¹⁷ Upon receiving the complaints Diomi reportedly contacted Paulo De Sa, the World Bank representative in charge of the mining sector. De Sa replied with an e-mail to the head of the Mining Ministry's office demanding the Minister should cease signing documents relating to the registration of permits. ³¹⁸ Just to illustrate how sensitive the issue of foreign interference in Congolese matters is: in a public reaction Mbaka denounced De Sa's demarche as a "scandal worthy of Watergate" and stated that the Registry was not to be confounded with a co-operation project. ³¹⁹

The authors of this paper in October and November 2005 conducted an enquiry among industry sources, international legal advisors and sources within the Registry, all of who typically requested anonymity. The following paragraphs are based on these interviews.

Apparently major governance problems already arose on the very first day the new Registry opened its doors to the public. It must be noted that all sources confirm that none of these problems were due to a lack of technical capacity, as staff had received proper training, and as board members had ample experience in the mining sector and possessed all the necessary managerial skills.

Due to the preceding preparatory work, it had almost been a year since new mining titles had been granted. The opening day was hectic because of the large number of demands that were deposited. In the flurry, the correct application of the first-come-first-served principle was threatened because the Registry's staff experienced great difficulties piling up all files in the correct order of receipt, and the principle was further violated by files disappearing from the stacks. Sources within the Registry alleged that members of the board had picked out several files and made contact with the applying companies, private initiatives that clearly contravened the whole idea of impartial procedures. As a consequence, some companies were from the start favoured above others, which was a pattern that persisted until the decision in March 2004 to suspend work at the Registry for a year.

Other problems reported by industry sources were:

- the granting of several permits for the same surface areas – a practice connected with payment of kickbacks
- overlaps in exploration perimeters due to geodesic problems
- non-respect of the prescribed time delays and the use of bribery to speed up the process
- nonsensical applications backed by forged bank statements leading to a freeze of surface areas for speculative reasons
- administrative hair-splitting that needlessly complicated procedures
- a refrain from action when companies did not meet deadlines for paying their annual surface fees
- the inaccessibility of the Registry's information on the internet

³¹⁶ L'arrêté ministériel n° 340 CAB.MIN/MINES/01/04 du 3 mai 2004 portant suspension du Dg du Cami.

³¹⁷ 'Mines Minister Bangs on the Table' in: *Africa Mining Intelligence* n° 85, 19/05/2004.

³¹⁸ http://www.news24.com/News24/Africa/News/0,,2-11-1447_1522378,00.html

³¹⁹ *Ibidem*.

On the institutional side, staff could not get used to the idea that the Registry was an autonomously functioning entity. Because it was located in the same building as the Mines Ministry, the Registry kept being perceived as its administrative continuation. In the original outline of procedures, the Mines Minister's only task was to issue decrees based strictly on the advise of the Registry and the Directorate of Mines. However, at some stage, the cabinet of the Mines Ministry reportedly installed a commission to re-analyse the analysis of the Registry and the Directorate. Another consequence of infringing on the intended institutional division was the politicisation of the Registry's working. The Registry became part of the institutional chain leading upwards from the Mines and Finance Ministry to Vice-President Bemba's Economic and Financial Commission (ECOFIN), and from there on to the "espace présidentiel", where advisors to Joseph Kabila such as Kikaya Bin Karubi and Augustin Katumba Mwanke reportedly kept an eye on operations at the Registry.³²⁰

One instance was reported to the authors of this paper of a permit granted by the Registry, that was afterwards withdrawn in favour of another company, by order of an unidentified government entity outranking the Mines Ministry. The tenor of the story recalls a phenomenon that anthropologists describe as the Big Man Syndrome.³²¹ Applied to bureaucratic structures it results in a situation in which civil servants exert absolute authority over their inferiors. If an order is not or improperly executed, the inferior functionary is simply discarded and replaced by another one. The said syndrome can of course have a salutary effect on the working of institutions, yielding discipline and effectiveness, but the drawback is that a spoilt element in the structure of command affects all elements down the chain.

The case of the Registry again shows that there is an enormous amount of political obstruction to get impartial and transparent procedures adopted in the mining sector. Although the modernization of the Registry seemed to be a project that could easily be implemented, it turned into chaos within less than a year of operation. The damage done apparently was of such scale that it took a year to be repaired. After the dismissal of Mbaka the Registry was indeed only re-opened in March 2005. Currently, it is headed by its fourth general director in three years time. The person in question, Jean-Felix Mupande, again is a close associate of Kabila.³²²

³²⁰ 'Eugène Diomi Ndongala' in: *Africa Mining Intelligence* n° 65, 09/07/2003.

³²¹ For some interesting remarks on "Big Manism" and corruption, see: Paul Nchoji Nkwi, *Democratic Governance in Africa: a decade of misconceptions*, University of Yaoundé, Cameroon, *s.d.*

³²² 'Jean-Felix Mupande', in: *Africa Mining Intelligence* n° 121, 30/11/2005.

Conclusion.

Three decades of Mobutism and seven years of war have plunged the DRC in a deep economic, social, political and humanitarian crisis. Under pressure of the international community, the former belligerents, together with representatives of the unarmed political opposition and civil society organisations, joined a transitional government that has ruled the country since July 2003. The principal objectives of the transition were to re-unify and reconstruct the country, to establish peace, to create an integrated national army and to organise democratic elections. If one makes up the balance sheet of nearly three years of transition, one cannot but conclude that for the most part it has failed. The east of the DRC is still not under government control and is immersed in conflict, the integration of the army is far from achieved and parallel command structures reflect the persistent loyalty of troops to the rebel movements they belonged to during the war. Elections, finally, were postponed with a year and have over the last months been rescheduled numerous times to an always later date.

Much of the transition's failure can be ascribed to bad governance and corruption on behalf of the DRC's current political class. The DRC's history has burdened it with a certain kind of "governmentality" that is the main obstruction in the way of reconstructing the country and adequately addressing the humanitarian crisis it is facing. At all levels of the state apparatus, public office is seen as a means to acquire personal wealth and privileges. For low rank officials, who are underpaid or not paid at all, petty corruption is a strategy for survival. This excuse however is not valid for corrupt practices on behalf of the country's leaders, who bear a grave responsibility for the situation the next government will inherit. Large-scale embezzlement of funds earmarked for military purposes has made the national army inefficient and barely operational. Its inadequately paid soldiers often revert to their guns as a means to scrape a living and pose a security threat to the population that they are meant to protect. The ongoing conflict in the east has a strong economic and resource component to it, and is largely brought about by high-ranking politicians within the transitional government. Finally, one of the major causes for the postponement of the elections is the ruling politicians' reluctance to step down from their comfortable position in the transitional institutions, and to lose their access to the wealth yielded by the nation.

Throughout the transition the leaders of the DRC have paid ample lip service to international donors on the issue of bad governance and corruption. In practice, however, the key principles of good governance – participation, accountability, transparency – have constantly been disregarded. As a result, the Congolese public opinion perceives anti-corruption measures more as a tool to rule out political adversaries, than as a genuine effort to serve the interests of the population. An example of this is the Parliamentary enquiry into governance practices at public enterprises by the Bakandeja Commission. The investigation led to the dismissal of many high rank officials and six ministers, but was not further scrutinized in court, which could have held the accused officials accountable. Our discussion of the political imbroglio concerning another Parliamentary enquiry, that of the so-called Lutundula Commission, clearly shows that the main political parties have thwarted initiatives aimed at enhancing transparency in the politico-economic management of the country, when such initiatives tended to interfere with their own affairs.

The Lutundula Commission's report provided us with a good basis for an analysis of governance practices in the mining sector, where, because of the DRC's vast mineral reserves, economic stakes are exceptionally high. In this analysis we focused on mining sector management in Katanga, the province that harbours by far the greatest potential for resource based economic growth. The mining area of Katanga has in recent history not been a war zone and during the war and the transition the central government has retained a solid grip on the province. Over the last decade Katanga's - and the country's - main mining parastatal Gécamines has been most intensively targeted by reform efforts, for which it has received ample assistance of the World Bank since 2001. The interaction between the Congolese government and the World Bank has resulted in an anarchistic and opaque privatisation process that has stripped Gécamines of all its assets. The parastatal company is now bound by countless contracts with, often dubious, private partners that contribute little or nothing to Gécamines or to the national treasury.

As a consequence of the failure to relaunch the most vital part of Katanga's economy, widespread poverty and unemployment have struck the province. These grim socio-economic conditions might very well exacerbate underlying political and ethnic tensions that threaten to lead up to violent conflict in the future. Another consequence of the mismanagement of Gécamines is the phenomenon of artisanal mining. Every day an estimated number of fifty to seventy thousand "creuseurs" invade numerous mining sites in Katanga to dig for heterogenite, an ore that is exceptionally rich in cobalt. These people work in appalling conditions for little more than 1 USD a day. Most of the ore, which they sell through intermediaries to big trading houses, leaves the country unrefined, and this again deprives the DRC of much needed revenue. Several attempts on behalf of the Congolese authorities to structure the informal sector have failed due to corruption: an organ (NOUCO) set up by the provincial governor to defend the interests of artisanal miners, left them with a debt of 1 million USD; and the directors of NOUCO's successor COMIDE organize artisanal mining activities for their own profit.

The NOUCO and COMIDE example points to the main reasons for the dilapidated state of the Katanga mining sector, namely bad governance, corruption and institutional failure. The countless joint venture agreements that Gécamines has entered into, contain numerous anomalies that are all detrimental to the State and to Gécamines. These agreements are usually negotiated by Gécamines' directors, but President Kabila and members of his entourage frequently interfere. The terms of these contracts, deemed by experts to be in most cases stupendously unfavourable for Gécamines, give serious reasons to believe that the officials involved in the negotiations have received kickbacks as a way of "compensation". Our interviews with several international legal advisors who have partaken in joint venture negotiations, confirm that demands for kickbacks on behalf of high ranking Congolese officials are a recurrent element in such negotiations. Corruption might also explain why the Congolese authorities allow that joint venture contracts are in most cases not properly executed. At the provincial and local level then, institutional controlling mechanisms are absent or inefficient. Public services which are supposed to regulate the mining sector and mineral trade are under-equipped and underpaid, if not unpaid. They take conflicting measures and they are unable to procure reliable export statistics. Their representatives are in some cases paid by Gécamines' private partners themselves, an aberrance of course which gives way to massive tax and export fraud.

The general picture of the mining sector in Katanga drawn by Congolese and international NGO's, journalists and observers, is that it is stuck in a vicious circle caused by corruption, mismanagement and predatory patrimonialism recalling Mobutu times: mining operations hardly generate revenue needed to fund a properly functioning institutional apparatus and, *vice versa*, institutional failure leads to a lack of revenue. The political responsibility for this situation lies primarily with Kabila's Katanga clan and its power brokers, who have upheld their near-hegemonic position in the province for almost a decade. Hard evidence of corruption is difficult to find, but there is documented proof that Kabila's PPRD uses Gécamines as a vehicle for party financing. The company's directors make regular financial contributions and also businessmen or companies engaged in joint venture mining operations provide support to the party.

Regarding this situation also the World Bank has a lot to answer for. For five years now the Bank has been supervising and funding the restructuring of Gécamines, but our analysis of the way Gécamines' giant mining assets of KOV and Kamoto were transferred to private companies, clearly shows that the Bank cannot be unaware of how the mining reforms that it outlines are implemented in practice. The World Bank funded an independent audit carried out in 2003 by consultancy firm IMC. IMC strongly advised against the existing agreements involving Kamoto, worked out a detailed business plan for the exploitation of KOV within the framework of a rapid restart strategy for Gécamines, and recommended to dismiss all of Gécamines' directors. Some of the directors were indeed dismissed but this happened only two years after the audit, namely in December 2005. In the mean time the Congolese authorities, neglecting both the IMC recommendations and those of the Lutundula Commission (also funded by the World Bank), had officialized the KOV and Kamoto deals, thereby burying the IMC rapid restart strategy and stripping Gécamines of its last assets of any importance. After the IMC audit, the World Bank for its part funded a legal audit of Gécamines, which was carried out by law firm Duncan & Allen and is said to be finished by now, but which will, in accordance with common practice, not be disclosed to the public. At the time of writing a foreign consultant (a French firm called Sofreco) is co-managing Gécamines, again with funding from the World Bank. Due to political obstruction Sofreco's involvement was deferred for more than a year, and it has found Gécamines as an empty shell. The consultancy firm is currently engaged in the fourth round of partnership auditing in three years time. Its project leader has publicly stated that his team will not bring up the joint ventures contracts for discussion and will limit itself to see to it that the partnerships respect their engagements.

Our analysis of mining sector management in the DRC ends with a case study that reflects the quintessence of our paper's conclusions: throughout the transition, efforts to implement good governance practices related to mining sector management have largely failed due to a lack of political will on behalf of the DRC's ruling elite. In addition to this, the World Bank has not been able or willing to cope with the enormous amount of political obstruction such efforts have met with. The case study in question is that of the Mining Registry, which was a project aimed at introducing non-discretionary criteria procedures for the granting of mining rights. The idea behind this project aligned with one of the key objectives of the new Mining Code, namely to change the government's role from mining operator to mining regulator. The Mining Registry project was jeopardized from its start in May 2003 by the appointment of a Kabila stalwart, Ambroise Mbaka, at the head of the Registry. In clear contrast with the aim of depoliticising the business of awarding mining rights, the appointment of Mbaka was part

of a political stratagem of the PPRD to consolidate its powerful position in the mining sector before the transition started. From the first day the Registry opened, exactly the opposite happened of what the World Bank had outlined for the project. Licenses were awarded on an *ad hoc* basis and the key principle of first-come-first-served was not respected, time delays were equally not respected, conflicting permits were handed out, kickbacks were paid, high-rank authorities unduly interfered, etc. Less than a year after the Registry opened its doors to the public, Mbaka was dismissed and the Registry was closed down. It took a year to repair the damage and since November 2005 the Registry is headed by its third general director in less than three years time.

In short, repeated efforts to improve the situation of the DRC's population after the war by trying to pave the way for sustained development and shared economic growth, have been undermined completely by bad governance practices under the transitional government. Elections are at hand, but cannot be expected to make any miracles happen. Either – and this is a very likely scenario – the ruling elite (or most of it) will be voted back into power and will thus be endowed with more legitimacy than it has enjoyed before, or either a new political class will arise, which will have a difficult time trying to eradicate deeply-rooted patterns of corruption and patrimonialism. Moreover, any newly elected government will be burdened by the inheritance of the war and the transition, and will be facing enormous challenges. Conflict in North Katanga, the Kivus and Ituri is likely to persist and may even spread to other areas. Major security sector reform efforts will need to be undertaken to create a functional and disciplined army. Also, the Congolese population, of which the greater part is immersed in a grim humanitarian crisis, might lose its patience if elections do not quickly lead up to a tangible improvement of socio-economic conditions. As we have seen, the mining sector could have played an important role in improving those conditions during the transition, but mainly due to mismanagement it has, however, failed to do so. Any new government will need to bring about a radical change of resource management practices, but even under the best conditions, it will still take several years before the mining sector is able to generate substantial revenue and employment. In the mean time, the international community should make good governance of the DRC mining sector one of its prime concerns, so that eventually – finally – the population of the DRC will be able to reap the riches of its soil.

Appendix I: list of ministerial posts and parties

Table 1: The Ministers

Commission	Government	RCD	MLC	Political Opposition	Civil Society	RCD-ML	RCD-N	Mai-Mai
Political Commission	-Interior Decentralization and Security -Press and Information	-Defence Demob and Former Combatants -Family and Women's Condition	-Foreign Affairs and International Cooperation	-Justice -Solidarity and Humanitarian Affairs	-Human Rights	-Regional Cooperation		
Economic and Financial Commission	-Finances -Industry and PME [?]	-Economy -Portfolio	-Planning -Budget -Agriculture	-Mines	-Public Functions		- External Commerce	
Reconstruction and Development Commission	-Energy	-PTT (Post + Telecoms)	-Public Works and Infrastructure	-Scientific Research -Transport		-Urbanization	-Tourism	- Rural Development - Environment
Social and Cultural Commission	-Health -Arts and Culture	-Labour and Social Security -Superior and Tertiary Education	-Primary and Secondary Education -Youth and Sport	-Social Affairs -Land Affairs				

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Table 2: The Deputy Ministers

Commission	Government	RCD	MLC	Political Opposition	Civil Society	RCD-ML	RCD-N	Māi-Māi
Political Commission	-Foreign Affairs -Integration in the Defence Force	- International Cooperation -Security and Public Order	-Interior - Defence		-Demob and Former Combatants	-Justice	-Press and Information	
Economic and Financial Commission	-Mines	-Budget -Public Works and Infrastructures	-Finances - Portfolio	-Planning -Public Function	-Commerce -Agriculture			
Reconstruction and Development Commission				-Energy				-Transport
Social and Cultural Commission	-Primary, Secondary and Professional Education			-Health		- Superior and Tertiary Education	-Social Affairs	-Labour and Social Security

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Appendix II: letter PPRD/Katanga

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REPUBLIQUE DEMOCRATIQUE DU CONGO
PARTI DU PEUPLE POUR LA RECONSTRUCTION
ET LA DEMOCRATIE
PPRD
PROVINCE DU KATANGA

« Unité, Renouveau et Développement »

Bureau du Conseil provincial Lubumbashi, le 20/09/2005

N°Réf. : 036.../BPCP/CP-KAT/2005

Transmis copie pour information :
Au Secrétaire Exécutif Provincial
Au Camarade Vital KAMERHE
Secrétaire Général du PPRD
à Kinshasa

Objet : La dynamique du PPRD/Katanga

Camarade Secrétaire Général,

Le Conseil Provincial du Parti apprécie, à sa juste valeur, la démarche initiée par la hiérarchie pour soutenir financièrement le fonctionnement du Parti à la base ; cela va aider à renforcer les structures et à susciter davantage l'élan de mobilisation.

Le Conseil provincial du Parti s'emploiera, comme toujours, à faire respecter la procédure statutaire pour l'utilisation de ce fonds, et à faire jouer à chaque organe son rôle.

Le Conseil Provincial souligne, toutefois, qu'au Katanga, le programme d'implantation a été animé de manière permanente et en symbiose par les membres des deux organes, et entend soutenir cette dynamique, sans discrimination aucune, pour préserver la cohésion et la cordialité chèrement acquises après trois ans de travail d'équipe.

Pour le Bureau du Conseil Provincial

Penser à séparer les équipes pour le bénéfice des avantages, même symboliques, favoriserait l'esprit de division et même la démobilisation au sein des entités. Le temps est au regroupement pour un élan décisif vers les élections.

L'autre particularité de la dynamique à soutenir au PPRD/Katanga, c'est la capacité à mobiliser les ressources pour animer la vie du Parti à la base, notamment par des cotisations, des donations et diverses contributions.

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Concernant les cotisations ; les mandataires de deux grandes entreprises locales, la Gécamines et la SNCC, ont contribué efficacement à faire rayonner le message du PPRD dans tout le Katanga. Nous recommandons vivement toutes ces personnes à l'attention de la hiérarchie du Parti : Ir MUKASA KALEMBWE, Ir KABAMBA TWITE, Ir NZENGA KONGOLO, Mr ASSUMANI SEKIMONYO, Ir KASWESHI MUSOKA, Mr KABONDO UMBA pour la Gécamines et Mr Mathieu KABIKA, Ir NKULU KILUMBA, Ir René KASHOTA, Ir Samy TAYUWE SHONGO et Mr KYOLA BAKANAKI pour la SNCC.

Dans la rubrique des contributions spéciales, c'est peut-être aussi l'occasion de réitérer notre reconnaissance à leurs excellences Messieurs et aux personnalités ci-dessous : Vital KAMERHE, Augustin KATUMBA MWANKE, Jean MBUYU LUYONGOLA, Evariste BOSHAB, Ghislain CHIKEZ DIEMU, Théodore MUGALU, Nestor DIAMBWANA, MAWAPANGA MWANANANGA, Aimé MUKENA, Urbain KISULA NGOY, KIKAYA BIN KARUBI, KASONGO de CNE et Moïse KATUMBI CHAPWE. Elles ont honoré le Parti en Province par différentes prestations.

Quelques responsables d'entreprises oeuvrant au Katanga se sont intéressés à notre Parti : Mr SIMON de la Société East China, Mr GONZALO de la société MARC RICH RSA, Mr CHETAN et Mr HITECH de SOMIKA. Soulignons que Monsieur George Arthur FORREST et son Groupe sortent du lot, pour nous avoir accompagné, pas à pas, dans la campagne d'implantation du Parti.

Nous continuons à entretenir des rapports de confiance avec toutes ces personnalités et nous aurons, par moment, besoin de l'apport de la hiérarchie pour soutenir les intérêts réciproques et préserver ces ouvertures.

Dans ce même cadre des stratégies, nous recommandons à la hiérarchie de mettre sur pied une politique de rapprochement avec les grandes entités économiques nouvellement créées sur l'axe minier du Katanga. Au niveau de la Province, des efforts particuliers sont déployés pour raffermir la dynamique du Parti dans toute cette région.

Nous voudrions terminer en exprimant le vœu de voir se poursuivre cette disposition positive concernant le financement des activités du parti à la base, cela constitue un réel motif d'encouragement pour les animateurs des structures.

Sentiments hautement patriotiques.

Pour le Bureau du Conseil Provincial

Dieudonné MWENZE
Rapporteur Général



Richard MUYEJ MANGEZE MANS
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