

Congo Mining Contract Review: Fast Track or False Trail?

DRC Government needs to clarify review process to restore trust

(18 February 2008) – The Congolese government’s ‘fast track solution’ to its mining contract review may turn out to be a false trail unless it addresses civil society concerns, warns a coalition of Congolese and international non-governmental organisations (NGOs) today [1].

In a speech on 5 February 2008 at the Mining Indaba in Cape Town, the Vice Minister of Mines of the Democratic Republic of Congo (DRC), Victor Kasongo, made a commitment to instituting a “brief and open administrative appeal process” for the mining contract review before “a specially constituted panel”. This would allow each company whose contract has been reviewed to put its case for ‘reclassification’ and to minimise confrontation and delay. According to the Vice Minister, the delay in the review process was the result not of ill-will, but of the sheer scale of the problem that had caught the government by surprise [2].

The NGO coalition welcomes the Congolese government’s commitment to proceed with the review of mining contracts and to do so in an ‘open’ manner, given the mining sector’s potential to improve sustainable and equitable development in the DRC – a country ravaged by a brutal war for more than ten years.

“However, civil society groups are concerned that so far, the government has only provided the haziest outline of the process that is being put in place,” said the coalition of NGOs. “This adds more confusion to a process that is already mired in controversy and suspicion.”

The NGOs described the ‘fast track’ appeals panel as an attempt to protect the DRC government from the threat of costly and lengthy litigation and international arbitration procedures. “Until the DRC Government stands by its promise to publish the Ministerial Commission’s final report and specifies how the appeals process will operate and the powers that it will have, there can be no confidence or trust in this ‘solution’”, said the coalition.

The NGO coalition is calling on the DRC government to urgently clarify the following questions:

- Has the government accepted the findings and recommendations of the Commission and is it prepared to implement them fully, including the cancellation of those contracts classified in category C (“to be revoked”)?
- What will be the composition of the appeals panel and how will its members be selected? What will its terms of reference and operating procedures be? Will the panel make the final determination on the future of these contracts?
- Will the panel include Congolese and international experts? If so, will they be nominated by the government or selected by an international bidding process?
- What measures are foreseen to guarantee the transparency and accountability of the panel’s work? Will civil society groups be able to submit comments on specific contracts and will the panel take these into consideration?

- What role is envisaged for the Congolese Parliament?
- Will the renegotiations be limited to the mining contracts already reviewed by the Commission? If so, does the government intend to take action in relation to other highly disadvantageous contracts, including commercial contracts which the Commission did not examine because of a lack of expertise?

Without addressing these concerns, an adequate renegotiation process cannot take place, say the NGOs. “The government’s preference for a fast track procedure gives rise to fears that they want to rush through the renegotiation, in order to reassure mining companies and improve the investment climate,” says the coalition. “In the absence of strong safeguards, transparency and accountability will be the first casualties of Congo’s ‘fast track’ process.”

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Notes for editors:

1. In October 2007, a ministerial commission mandated to examine mining contracts signed between private companies and the Congolese state or public enterprises completed its work. The Commission classified over 60 contracts into three categories: Category A contracts were deemed valid and did not require renegotiation; Category B contracts were deemed in need of renegotiation; and Category C contracts should be revoked. The Commission’s findings, which were leaked to the press in October 2007, concluded that none of the contracts under review were valid in their current form; all were classed in categories B or C. Despite strong pressure to disclose the contents of the report, the DRC government has not yet made it public.

2. Bell Pottinger press release: “Congo Plans Quick Conclusion to Mining Contract Review”, 5 February 2008.

This statement is surprising given that numerous studies, reports and audits by the United Nations, World Bank consultants, civil society organisations and a Congolese parliamentary commission have documented grave flaws and illegalities in many mining contracts and

provided evidence of the direct involvement of President Joseph Kabila, his government and closest advisors in negotiating some of these contracts.

See for example:

- Ernst & Young (France), Financial Audits, *Contrat de consultant n° 24/COPIREP/SE/11/2004*, available on www.freewebs.com/contratsminiers
- Duncan & Allen, *Rapport Final : Projet d'évaluation juridique des accords de partenariat de la Gécamines*, Contrat N31/COPIREP/SE/02/2005
- *Rapport du Groupe d'Experts du Forum de la Société Civile sur 12 Contrats Miniers*, August 2007
- 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 1998* (Lutundula Report), June 2005
- Rights and Accountability in Development, *Key Mining Contracts in Katanga: The economic argument for renegotiation*, April 2007
- Global Witness, *The Congolese Mining Sector in the Balance*, 1 October 2007
- NIZA, *Fatal Transactions*, International Peace Information Service, *The State vs. the People*, March 2006
- 11.11.11, Broederlijk Delen and Rights & Accountability in Development, Memorandum to the DRC Government, *Good governance and transparency in the mining sector in the Democratic Republic of the Congo*, February 2006
- IMC Group Consulting Ltd, *La Restructuration de la Gécamines (Phase 2)*, Kinshasa, February 2004
- United Nations, *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo*, S/2002/1146, October 2002.