Democratic Republic of the Congo, mining contracts – State of affairs

The Congo wants to raise the profits of its mining sector.

IPIS, Antwerp March 25, 2008

On Thursday 20 March the Congolese government published the final report of the Interministerial Commission for the Revisitation of Mining Contracts (the “Revisitation Commission”). The publication had been announced two days earlier in a press release from the Ministry of Mines[1].

With the publication, a first phase is completed. The next stage should be that the government engages in renegotiations with private companies in order to obtain a new partition of mining revenues and thus a larger share for the poverty-ridden DRC.

The report, which is dated November 2007, consists of two parts. The first part (228 pages) analyses the mining contracts the state concluded directly with private enterprises and the partnerships of the state-owned enterprises EMK-Mn, Okimo, Miba, Sodimico and Sakima[2]. The second part, containing 246 pages, focusses on the partnerships concluded by the state-owned company Gécamines. Both parts can be found on the website of the Ministry of Mines[3].

1. Mission

The Revisitation Commission carried out the governmental decision of 20 April 2007 concerning 60 mining contracts between the Congolese state-owned companies and private enterprises[4]. The Commission had to audit the contracts and assess their impact on the DRC’s public companies and on national development. It was also mandated to formulate recommendations for an eventual revision of the contracts and to repair imbalances.

2. Findings

The Revisitation Commission decided to divide the screened contracts into three groups: category A for contracts that can remain unaltered, category B (those that should be renegotiated) and category C (contracts to be cancelled).

The recommendations are not always clearly deducable from the final report. Moreover, as several contracts with the same partner of Okimo are included, the total number of revised contracts is 61 instead of 60.

[1] Publication date announced for Revisitation Commission report on DRC’s mining contracts, Statement from Government of the Democratic Republic of Congo, Press Release by Bell Pottinger Corporate & Financial, London, Tuesday 18 March 2008.
[2] Entreprise Minières Kisenge-Manganèse (EMK-Mn), Offices d’Or Kilo Moto (Okimo), Société Minière de Bakwanga (Miba), Société de Développement Industriel et Minier du Congo (Sodimico), Société Aurifère Kivu et Maniema (Sakima).
[3] The journal Le Potentiel stated that the report was already removed from the website on 20 March. (March 22) http://www.miningcongo.cd
[4] Ministerial Resolution 2745/CAB.MIN/MINES/01/2007 is not included as an Annex, although this is promised in the introduction of the report.

The final balance is that there are zero Cat. A contracts, 39 of Cat. B and 22 of Cat. C.

Listed per public partner, the picture is as follows:

Public partner	Category B	Category C
State	1	3
EMK-Mn (ore)	1	1
Miba (mainly diamonds)	6	/
Okimo (mainly gold)	6	2
Sakima (gold)	1	5
Sodimico (ore)	1	5
Gécamines (ore)	23	6
Total	39	22

3. Tough renegotiations

If the Congolese government follows the recommendations of the Commission, it faces tough renegotiations with the private sector. Among the concerned private enterprises there are very strong industrial groups which possess the means to engage in expensive legal proceedings. A few examples from the report will clarify this.

3.1. Anvil Mining in Dikulushi

The Revisitation Commission concludes that the partnership between the state and the Australian enterprise Anvil Mining for the exploitation of Dikulushi has to be annuled. The Commission especially takes offence at the fact that Anvil acquired a full exemption from taxation and royalties for itself and its sub-contractors for a period of 20 years, through a contract informally granted in 1998. Nevertheless, Anvil has according to its own statistics produced the following amounts of copper and silver on the Dikulushi site[5]:

	2005	2006	2007
Copper (tons)	17.816	22.618	5.469
Silver (tons)	1.721.767	2.174.448	537.858

The question thus remains if Anvil will be willing to give up the concession.

3.2. De Beers Centenary

According to the Revisitation Commission, the state-owned company MIBA should renegotiate the joint venture SKD with the diamonds group De Beers Centenary, the most dominant player in its branch. The Commission judges it impermissible that the holdings (51% De Beers, 49% Miba) were split up arbitrarily, again through an informally granted contract, without a proper evaluation of the real contribution of both parties. Moreover, De Beers holds marketing rights for the entire production and earns a surplus for consultancy, whereas Miba isn not represented in the executive committee of SKD.

3.3. BHP Billiton World Exploration

Another informally granted contract concerns the joint venture between Miba and a subsidiary company of BHP Billiton, currently the world's largest mining group. Also in this case the Commission deems it necessary that renegotiations on the distribution of equities take place, taking into account the real contributions of both parties to the JV project.

[5] http://www.anvilmining.com/go/operations/dikulushi

3.4. AngloGold Kilo

The Commission thinks the mining convention Okimo concluded with AngloGold Kilo worsened during the past years due to the private partner. The area that AngloGold is allowed to exploit actually quadrupled, while the rent decreased. Moreover AngloGold still has not initiated production. Therefore the Revisitation Commission proposes a new joint venture with drastic changes: Okimos participation has to rise from 13,8% to 45%, the rent has to increase, an area of 6,000 km^2 needs to be returned to Okimo and AngloGold should start production immediately.

3.5. Tenke Fungurume Mining

Of the joint ventures the mining parastatal Gécamines concluded, Tenke Fungurume Mining is particularly striking. The Commission judges that Gécamines' holdings were wrongfully decreased to 17,5% in 2005 and that its share should be raised to the original 45 %. Besides that, the Commission wants to see the amended 2005 contract, which also decreased the financial compensation for the contribution of Gécamines from US $250 million to $100 million, annuled.

This could, however, prove to be very complicated, seeing that the original partner Lundin, sold – unduly according to the Commission - a share of its stake to the American mining company Phelps Dodge. Furthermore Freeport McMoran acquired Phelps in 2006, and now owns 58% of Tenke Fungurume Mining.

4. Evolution of the DRC mining sector

EThe way the government of the Democratic Republic of the Congo communicates about the analysis of the mining contracts is evolving. Non-governmental organisations are asking for more transparency since June 2007, when the Revisitation Commission initiated proceedings. The way in which the report is now published, is, contrarily to the government's attitude over the last months, in line with NGO demands.

In the beginning of October 2007 tens of duplicates of joint venture contracts between state-owned and private enterprises were unannouncedly posted on the website of the Congolese Ministry of Finances[6]. The decision to release these documents was useful. But the collection remains incomplete, and in numerous documents pages are missing. Meanwhile, the Commission did not release any official statements on its analysis of the contracts. In November the Congolese news paper Le Phare published a document, which it attributed to the Revisitation Commission and which contained a first categorisation and evaluation of the revised contracts[7].

The government chose to remain discrete on the activities of the Commission. It has to balance this affair very carefully, seeing the enormous interests at stake.

However, by the start of 2008 it appeared that the government and the Commission did contact the companies concerned. In February these mining enterprises received a letter stating the findings of the Commission applicable to their activities, and they were given the opportunity to reply. Also the enterprises remain very discrete. Sixteen of them acknowledged they received a letter from the Ministry of Mines.

In the mining sector some important events were noted since the Commission took off. On the 17 September 2007 the Congolese government concluded a protocol-agreement with three Chinese companies (Exim Bank, China Railway Engineering Corp. and Sinohydro) concerning "financing for the development of infrastructure in exchange for the exploitation of Congo's natural resources". To execute the agreement, a joint venture was founded with a 32% stake for the Congo and 68% for the Chinese partners.

[6] See: http://www.minfinrdc.cd
[7] Contrats miniers. Tableau d'évaluation et de classificiation des contrats, Le Phare, November 2, 2007. See: http://www.lepharerdc.com/www/index_view.php?storyID=4129&rubriqueID=4

The first appendix of the agreement indicates the amounts of ore that will be produced: 8.050.661 tons of copper, 202.290 tons of cobalt and 372,2 tons of silver. Mashamba, Dima, Dik Colline and Kolwezi are named as mining locations. A second appendix enumerates the infrastructure works, estimated at US$ 6,565 billion. China's share in this would be US$3 billion.

On the 8 February Katanga Mining announced it had reached an agreement with Gécamines concerning the deposits of Dikuluwe and Mashamba (together: DiMa). Katanga Mining returns Dima to Gécamines, and will, by way of compensation, receive two other concessions before 2015 or a sum of US$ 825 million as from 2012. Gécamines will transfer the DiMa-concessions to the joint venture with the Chinese partners.

In February 2008, Katanga Mining has become one of the largest mining companies in DRC's copper province, Katanga. The company then merged with Nikanor, which was an important player in the Kolwezi mine basin.

The report of the Revisitation Commission does not take into account this merger. It formulates recommendations for the two companies separately.

Kamoto Copper Company (KCC, a joint venture between Gécamines and Kinross-Forrest) has to demonstrate among other things that it is technically and financially capable to operate the Kamoto mines, whose ore reserves are estimated at US$ 45 billion. In its turn DRC Copper and Cobalt Project (DCP, a joint venture from Gécamines with Global Enterprises Corp.) is required to bring into account its contribution of reserves from Gécamines, estimated at US$15 billion. The Revisitation Commission proposes a renegotiation for both KCC and DCP.

5. Straight forward to negotiations?

The DRC has announced it will establish a Task Force with eight members (7 ministers and the chief of staff of president Kabila) with a view to the next stage.

If renegotiations are actually carried out, the country normally finds itself in a strong bargaining position. The demand for minerals on the world market is exceptionally high. The copper price has nearly doubled over the past three years:

	Nov. 2005	Jan. 2006	July 2007	Dec. 2007	Feb. 2008
$/metal Tons	4268	4733	7972	6586	7886

(Source: BGR, Rohstoffpreise)

Mining companies flourish as exemplified by the net results of the world's two largest mining companies:

Net profit US$ mln		2007	2006
	BHP Billiton	13,496	10,534
	Rio Tinto	7746	7867

They are looking for new exploitation possibilities, also in the Congo. The DRC is proclaimed to posses a quarter of the world's deposits of copper and one third of global cobalt deposits[8]. Moreover, the grade of copper- and cobalt ore in the Congo is higher than in for example Chili, the world's largest copper producer.

Additionally the appearance of emerging economies (Brazil, Russia, India and China) in Africa has even further strengthened the bargaining position of governments vis-à-vis multinational corporations.

[8] "Currently, the identified resources of the Katanga Copper Belt are estimated at 70 Mt of copper, 5 Mt of cobalt and 6 Mt of zinc (...). The Katanga Copper Belt contains the largest known cobalt resources in the world", in: DRC, Growth with Governance in the Mining Sector, World Bank, 19 November 2007.

Whether Congo is able to convert these potentials into cash, remains to be seen. The country is still recovering from a long period of political instability and war, and the capacity of its institutions to play it rough when confronted with its private multinational partners, remains unequally low.

The World Bank advised the government in October 2007 to ask for assistance from specialised international law firms in their revisitation process. Also in other countries where there's a mining contract review – such as Guinea, the Bank insisted on such backing.

Bilateral assistance for the Congo in this area remains weak. Until now Belgium has been the only country to support the review process financially. It put € 150,000 at the disposal of the Carter Center, an American NGO which provides legal advise to the Revisitation Commission.

Several mining companies are taking positions and some are showing their good intentions with the renegotiations in view. Oriental Iron, for example, announced on 20 March (publication date of the report of the Commission) it will invest US$ 7 billion in an iron extraction project in the Congo. Although Oriental is not mentioned in the report, its manager, the Israeli businessman Dan Gertler, is involved through GEC in Katanga Mining.

Camec (involved in the joint venture Boss Mining) declared on 10 March it is prepared to invest £43,5 million in its Congolese activities.

Richard Adkerson, CEO of the American mining group Freeport McMoran, in December 2007 said he was assured that the government would not take "arbitrary measures". However, when the Commission report was published, spokesman Bill Collier stated the joint venture Tenke Fungurume Mining was negotiated with the government "in a fair and transparent way".

Some miners receive support from financial circles. An analyst with Haywood Securities in Toronto qualifies the recommendation to raise Gécamines' share in TFM from 17.5 to 45% as no less than an "expropriation". A manager with the New York hedge fund Van Eck Associates endorses this statement suggesting that Gécamines wants to transfer its 45% share in the joint venture with the Chinese enterprises.

6. General framework

The mining contract review is one of the core activities within the wider policy of the DRC government. The current Government, under the authority of Prime Minister Antoine Gizenga, was established in the beginning of 2007. During its first year in office it handled three major issues, each of them complicated, internationally sensitive in one way or another and without results that are immediately tangible for the population.
These issues are, besides the revisitation of the mining contracts (April 2007), the framework agreement with China (August and September 2007) and the military operation against general Laurent Nkunda in Eastern Congo.

There are linkages between these dossiers. With regard to Nkunda, the government showed it wanted to restore its authority over the entire Congolese territory after years of war and rebellion.

Also in the mining sector the government seems to want to put affairs straight. The minister of Mines Martin Kabuelulu has, for example, prohibited all mining activity in Walikale, Eastern Congo, to achieve control over the illegal exploitation and smuggling of tin ore. One month later, Kabuelulu announced a military network of illegal smuggling was dismantled.

However, at the 'States General' of the mining sector in March in Kinshasa it appeared that anarchy still rules the extractive industry. Kabuelulu stated that 4542 concessions for mines and stone-pits have been granted to 642 firms and that these concessions together constitute 33% or the national territory[9]. At the same time the minister declared that from the 60 revised mining contracts, there are 5 in production

[9] From June 2003 till December 2005, 2010 mining rights were granted, according to a list from the Ministry of Mines. This list can be found at the following website: http://www.miningcongo.cd

and for 6 others a feasibility study is ongoing. In the search for solutions the conference proposed some modifications for the Mining Code of 2002.

Another, more important reason for these modifications is the need to make the mining sector more productive and lucrative. Also the World Bank perceives this as an objective. Since several years the Bank is actively engaged in the restructuring of the Congolese economy. The Bank was the co-author of the Mining Code of 2002, co-organiser of the scaling down of Gécamines and a very active observer, during the transition period (2003-2006), of renegotiations and the creation of numerous joint ventures, all of them cloaked in a veil of secrecy[10].

The World Bank claims that DRC can recover through economic growth and good governance. For the mining sector this means among other things ending fraud and corruption, which currently costs the country an estimated US$150 million per annum. According to the Bank the sector has the potential to generate US$ 186 million in fiscal revenues a year, a considerable amount when comparing it with the country's annual budget of about US$ 1.2 billion. Mining taxation in 2005 officially only yielded a mere US$ 26.7 million.

In a Strategy Note of 16 March 2008 the World Bank estimates that within ten years the mining sector could account for 20 to 25% of the DRC'sGross Domestic Product.

The contract review in the DRC should also be seen in the light of similar endeavours throughout the African continent. Countries like Zambia, Tanzania, Liberia, Guinea and Nigeria have indeed engaged in renegotiation processes in order to increase revenue from their extractive industries.

Further information:
International Peace Information Service
+32-3-225.00.22
raf.custers@ipisresearch.be

IPIS vzw
Italiëlei 98a
2000 Antwerp
Belgium
tel.: ++32(0)3/225.00.22
fax: ++32(0)3/231.01.51
info@ipisresearch.be
www.ipisresearch.be

[10] A notorious September 2005 memo of Craig Andrews, the mining specialist at the World Bank, shows that the Bank – at least informally – was aware of the numerous anomalies surrounding these dealings under the transition.