



PROGRESS OF THE MINING CONTRACTS RENEGOTIATION PROCESS IN DRC

OPINIONS, PROBLEMS, AND PERSPECTIVES

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The Government of the Democratic Republic of Congo approved the report of the mining contracts review Committee in its Council of Ministers dated 19 December 2008, by adopting the following decisions:

1. Approval of the mining contracts and agreements, which present new elements that favour the revival and development of public enterprises. They include 11 Gécamines contracts, one Okimo contract as well as one agreement linking the State to Anvil Mining Congo.
2. Approval of contracts, which have not yet produced their feasibility studies but for which considerable progress has been made, in particular with regard to the commencement of works on site. These include: 11 Gécamines contracts, 5 MIBA contracts, 2 Sodimico contracts, 1 EMK-MN contract and 3 SAKIMA contracts.
3. The government has noted the termination of certain partnerships: 3 Gécamines, 4 Sodimico, 1 Miba, 3 Okimo and 1 Emk-Mn.
4. Approval of the option proposed by the Ministry of Mines to ensure the renegotiation of contracts and agreements which were

never finalised, taking into account the various advantages from which the Congolese State could benefit. These include the Gécamines-KMT and Mwana Africa-Okimo contracts and Agreements between the State and TFM, AGK, Banro and MDDK.

We also point out that the Government felt it was necessary to get the assistance of development partners in this last phase of the process, in particular the national and international civil society (Carter Centre, OSISA and others).

The aforementioned government decisions were executed, with the exception of the finalisation of the renegotiation of the two abovementioned partnerships.

From the outset it must be stated that the report, on which government decisions were based, is the result of negotiations, which the Congolese public enterprises conducted, under the supervision of government experts, with their different partners. These negotiations were not at all easy as there was strong resistance from certain investors or partners who considered their previous agreements to be acquired rights. But some of them ended up complying with

part of government's requirements. In any event, without having seen all the terms of the agreements concluded in contracts already negotiated, we do not think that there are any negotiated contracts, which fully complied with the government's requirements. We think that these requirements simply served as a basis for negotiations between the parties. What is more, according to our information, neither TFM nor KMT, want to transfer part of their acquired rights. Is government being weak in dealing with these partners or did it make promises at one stage to these investors? Is it just the weakness of members of government entrusted with this case? Are they all in agreement or does each one have his own agenda?

All these questions have led to comments, suspicion and a lack of trust in members of government involved in the negotiations.

Could it also be a case of bad faith of government partners involved in this process, perhaps favouring their position on the international scene or are there other reasons? It is within this framework that civil society organisations met on 19 March 2009 at CEPAS in Kinshasa to study



the attitude of these multinational companies and their backers which they accuse on the one hand of wanting to put pressure on the government to end the process and on the other hand of supporting these two companies with financing granted. This includes the World Bank for the financing of the KMT project, through SFI and the African Development Bank for the financing of TFM.

Why this accusation, it is because they feel that these two international financial institutions advocate good governance and transparency, and that they should therefore support government in the fight for transparency of contracts signed in the mining sector, especially as this process had been agreed to by them and by the entire national and international community.

The Committee's mining contracts review report denounced all the contracts presented for its examination and was assessed by everyone in the national and international community. This report was never disputed by any company or investor. Therefore the criticism was founded. It was a question of honesty and mutual trust.

Should the Congolese government not manage to come to an agreement with the foreign shareholders of TFM and KMT, there is a risk that the other partners, with which it has already concluded agreements, could come back. No preferential treatment should be given to any small or large contracts.

It is true that government must attract and coax investors but it is also true that investors must be treated in the same manner and on an equal basis.

Partnerships like AGK, BANRO, MWANA AFRICA, MDDK are also not the smallest but they finally managed to come to an agreement with the government. The financial crisis concerns all mining companies, which contribute, wherever they are working to an improvement in the social conditions of the Congolese people and participate in one way or another, in maximising State revenue by the payment of different taxes and duties.

Nevertheless, the moment will come when we will know whether the government has found solutions with these partners, to the two agreements, in the sense of correcting their terms.

What conclusion can be drawn from this analysis which continues to be a much discussed topic in DRC, especially with two partnerships which must both enter into the copper production phase in the current year? Should government bow to the pressure of these investors, who are about to start production or who in reality still have the largest copper reserves in the DRC?

Here it is a matter of sovereignty and good governance. Sovereignty in the conducting of state obligations where everyone, including all large or small investors, must comply with State norms and policies and good governance in terms of attracting investors.

The State needs investors, but investors who must not only draw the largest part of income but those who must accept to share this income with the DRC and thus contribute to this country's economy.

It is necessary to ask the World Bank, ADB and

other development partners, which constantly advocate good governance and which, in one way or another, have contributed to the pressure to revise all the partnerships signed with the investors, to assist the latter in coming to an agreement with the Congolese government.

We feel that these institutions could play an important role in influencing all the parties and we believe that they have interests, especially within the framework of transparency, in extractive industries.

Furthermore, to come back to the actual results of the renegotiation report, the government has not yet published the contents of renegotiations or the terms of agreements. However information that we have reveals that on average company shares in all the partnerships are about 25 to 30% for the Congolese party, royalties 2% and key money (pas de porte) depends on the value of the deposits made available to the partnerships.

Civil society should now also exercise pressure and remind government of its responsibilities with respect to the management of public property and invite investors to comply with state requirements.

Lastly we encourage government and the abovementioned investors to rapidly reach an agreement so that this process can be finalised and investment can be easily obtained for the development of mining projects in DRC.

