

RAID

Rights & Accountability in Development

UPDATE: SIGNIFICANT GAINS IN RAID'S CAMPAIGN FOR RENEGOTIATION OF MINING CONTRACTS IN THE DEMOCRATIC REPUBLIC OF CONGO

21 September 2006

In late February 2006, RAID and Belgium-based NGOs Broederlijk Delen and 11.11.11 called on World Bank President Paul Wolfowitz to investigate the Bank's failed program for restructuring the Democratic Republic of Congo's (DRC) state mining enterprise, Gecamines. The NGOs also sought a re-examination of mining contracts negotiated between Gecamines and overseas mining companies.

In response, the World Bank's Department for Institutional Integrity has launched an investigation of the Bank's restructuring program.

RAID is seeking a commitment from all companies that are confident in the fairness of their contracts with Gecamines to demonstrate this by agreeing to an independent, transparent re-evaluation of their agreements. As part of this commitment, companies would renegotiate any parts of their contracts that are not consistent with the World Bank's recommendations. Given the total lack of faith among Congolese and civil society groups in the existing contractual arrangements with Gecamines, their good faith efforts will demonstrate their interests in the DRC includes the country's long-term development and poverty reduction goals.

In an interview published on 20 July by the *Financial Times* (FT), Paul Fortin, the managing director of Gecamines, has confirmed that there is a "possibility some of the [mining] contracts could be renegotiated". Fortin also confirms that the World Bank's recently concluded audit "revealed 'some faults on the legal aspects' and that he 'think[s] that the laws were not respected in some cases'". In addition, if "Gecamines enters into new joint ventures, it would be through open tenders".

Fortin acknowledges that annulling the contracts could possibly undermine the DRC's development prospects: "What are my alternatives, to go to court and have a contract annulled? Well I'm opening up a can of worms, because then people would say you signed a contract in Congo and three years later they tell you the contract is no good, they don't like it and they tear it apart".

However, Fortin will "consider court action against companies that failed to produce". He adds: "There are guys who perform, there are guys who are slow, there are guys who don't perform. Those who don't perform, they are on the hit list...I will give them time to perform, if they don't we will cancel the contract, we will apply to court".

RAID

Rights & Accountability in Development

But Gecamines' first attempts to instigate a transparent bidding process is already facing the threat of a legal challenge by South Africa's Kumba Resources Ltd. (Anglo American has a 51% shareholding) and Canada's First Quantum.

According to a 15 September article published by *Reuters*, "Gecamines launched an appeal last month for new partners to develop the Kipushi zinc and copper mine. But Kumba and First Quantum said in a [9 September] statement they had rights to the mine and would take legal action to protect them".

According to Fortin, "With regard to Kipushi, Gecamines is advised that First Quantum and Kumba have no rights at all over Kipushi, which was confirmed by the legal advice GCM (Gecamines) obtained before launching the tender" and that "Kumba and First Quantum have the possibility of submitting a proposal like any other mining company".

First Quantum and Kumba's 9 September statement notes that "all necessary legal actions will be taken to actively protect, in all circumstances, those rights and those of their affiliates in the Kipushi mine..."

As noted in the FT article, "Congolese and advocacy groups have complained about the terms of the joint ventures – which in most cases give Gecamines a minority stake – are too favourable to the private companies at the expense of the crippled state. There are complaints about a lack of transparency surrounding the contracts. Corruption is endemic in Congo, which has endured two civil wars in the last decade, and there are few effective state institutions".

Download the February 2006 press release at:
http://raid-uk.org/news/DRC_contracts_27_Feb_06.htm

Sources:

Andrew England, "Congo mining chief puts private sector contracts under spotlight", *Financial Times*, 20 Jul 2006.

Daniel Flynn, "Gecamines says Kumba, Quantum no right to Congo mine", *Reuters*, 15 Sep 2006.

Statement by Kumba Resources: "Kumba and First Quantum to Protect Rights to Kipushi Mine", www.kumbaresources.com.