

**Rights and Accountability in Development's
Unofficial Translation of Lutundula Report
December 2005**

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Note: Only select sections have been translated

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2. Mission Katanga

2.1 General Considerations

The Mission, which the Special National Assembly Commission in charge of examining partnership agreements/conventions and management acts of economic and financial nature signed during the 1996-97 and 1998 wars, sent to Katanga, visited not only the town of Lubumbashi, but also the districts of Haut-Katanga, Luluaba, and Tanganyka. The Mission made an inventory of a total of sixty (60) partnership agreements/conventions and management acts of economic and financial nature, including:

- 40 in behalf of GECAMINES;

- 10 on behalf of the Congolese State;
- 7 on behalf of SODIMICO
- 3 on behalf of the Société Nationale de Chemin de fer du Congo (SNCC)

The list of all the partnership agreements/conventions and management acts of economic and financial nature under review is in annex of this report.

In accordance with the objectives of the Commission, the delegation of Katanga also worked with State public services to obtain statistical data on mining exports as well as proofs of payment of obligations owed to the State. These were:

- Custom and Excise Duty Office (OFIDA)
- Congolese Control Office (OCC)
- Maritime Freight Management Office (OGEFREM)
- General Tax Department (DGI)
- General Land and Administrative Receipts Department (DGRAD)
- Provincial Divisions for Mining, environment and nature conservation, energy, urbanism and habitat, and Regional Divisions for Land Affairs and Migration (DGM)

In addition to the public services above, the Delegation worked not only with public enterprises, namely GECAMINES, SODIMICO, SNCC, and REGIDESO, but also with private enterprises concerned with the partnership agreements and management acts under review. These were:

1. General Entreprise Malta Forest
2. Anvil – Mining
3. COMISA
4. Congo Cobalt Corporation
5. Kababankola Mining Company
6. Boss Mining
7. Mukondo Mining
8. Congo Minerals
9. Bazano Group
10. SOMIKA
11. CHEMAF
12. FONDAF
13. MAD Group
14. SWANEPOEL
15. ALPHAMETAL

During the investigations, the Katanga Mission benefited from contributions by the civil society in Katanga at large and in particular laboratories (ABRI, ASIC, and CRAA), as well as NGOs and human rights associations.

The Katanga Mission also made some incursions on the mining sites concerned with the partnership agreements under review. With these visits, it aimed to see for itself the actual level of investment carried out by private partners with regards to both project development and the protection of the environment. The undertaking equally aimed at assessing GECAMINES's

production tools and the level of encroachment of its mining concessions. In addition, the Mission wanted to obtain technical advice and suggestions from GECAMINES personnel on measures and options to rehabilitate the public enterprise.

With the on-site visits, the examination of dossiers, the hearing of parties of the contracts under review or of any other person likely to provide them with the elements needed for the accomplishment of their task, the Mission Katanga took note of the following, with regards to partnerships concluded by the Congolese State and public [private?] enterprises and the management acts agreed by the public authorities and the administrators of these enterprises.

A. State and Public Services

A.1 State

1) Fiscal, custom, and para-fiscal exemptions were granted in an exaggerated way and for long periods of time ranging from 15 to 30 years. They failed to take into account the actual level of investment to be carried out, as well as the end of financial commitments for the loan obtained to this effect. As a result, the Congolese State has been deprived of important fiscal resources that are crucial to its development. These are the cases of KMC and Anvil Mining.

2) The Congolese State did not designate anyone to promote its interests, despite the obligation under the mining code to grant 5% to the State of the authorised capital of any new enterprise created in the aftermath of a new convention. Furthermore, in specific partnerships, the Congolese State is represented by foreign enterprises registered in tax heavens, which even private partners find difficult to identify. These are the cases of KMC and Anvil Mining. In this type of partnership, the Congolese State does not gain anything at the end.

3) Political leaders at the head of the State act behind the scene by trading favours or by giving inopportune orders to the contract negotiators or signatories. They follow very closely, and interfere with, the activities of the partnership.

4) The State gives its approval for the exploitation and commercialisation of mining resources to new companies without making any arrangement to control the installations.

5) In most cases, mining resources are exported raw, without any added value.

A.2 Provincial public services

1) The lack of responsibility and power of provincial public services, which cannot do anything against decisions, even taken illegally, by the authorities in Kinshasa. Decisions in Kinshasa are very often taken without notifying the regional authorities, this despite being compulsory. Objections that could have been raised by the latter are left unheard, because decisions in Kinshasa have already been made.

2) Collaboration and synergy between different provincial public services are cruelly lacking. These are the cases between OFIDA [custom] and OGEFREM [maritime freight], and between OCC [control] and the Provincial Division of Mining.

Statistics produced by the Provincial Division of Mining are in contradiction with those produced by the OCC, even if both services work alongside mining operators from loading to exporting. Likewise, statistics produced by OFIDA are different from those produced by SNCC [rail], despite data from OFIDA being collected during the transportation of goods.

OFIDA, which represents other public services, including OGEFREM, at the borders, does not pay its fees to, or liaise with, OGEFREM. OGEFREM is hence unable to supply statistics on mining exports from Katanga or Kasai.

The Mission has equally observed a lack of collaboration and coordination between State public services in a conflict between REGIDESO and the company SOMIKA.

The negative response by the Provincial Division of the Environment for a request by SOMIKA to obtain a plot of land on a mining concession situated upstream from the aquiferous zone of Kimolo (where the firm is based), did not take into account [the decision of the] Provincial Division of Land Affairs, which awarded property deeds for the plot of land to SOMIKA, through the *Conservateur des titres immobiliers*. The SOMIKA plant on the mining concession continues to pollute drinkable water in the town of Lubumbashi and to fuel conflict between the firm, on one hand, and REGIDESO and human rights NGOs in Katanga, on the other. A solution put forward by a Commission led by the head of the Provincial Division of Energy has consistently been rejected by SOMIKA, who was encouraged to do so by other public services in its favour.

3. At the frontier of Kasumbalesa, OFIDA services are very largely over-stretched and need to be computerised. This inadequacy does not permit the production of reliable statistics.

3. A bascule-bridge has been built in Kasumbalesa and is managed by a private company called ZATALT Spri, in partnership with the Ministry of Mining and OFIDA.

The installation of the bascule bridge has nonetheless caused numerous problems:

- First, the Office Congolais de Controle, the public service in charge of quality and quantity control, has been kept out of things, and hence made powerless. Second, the bascule-bridge has created a conflict of competence between OCC and ZATALT, the operator. Importers and exporters do not know whether to answer to OCC or ZATALT.
- The Ministry of Mining has made the weighting of freight compulsory on the bascule bridge, this despite being in violation of the liberal aspect of the mining code;
- All transporters have strongly criticised the cost of weighting export and import freight for US\$120/day per vehicle as excessive, in comparison with fees practiced in Tanzania, Zimbabwe, and Zambia, where weighting cost ranges between 3 and 6 US\$ by vehicle.

This cost is also excessive in view of the total value of investment of the bridge, which was in no excess of 200,000 US\$.

When we know that the frequency of crossing at Kasumbalesa is 50 vehicles per day, with a waiting time of 3 days per lorry, [at US\$120 per vehicle], the investment cost of the bascule bridge was paid off after only two months of operation.

5. The Office Congolais de Controle, OCC, lacks the infrastructure and instruments of control, like scales and laboratories specialised in mineral resources, and resorts to out-sourcing, by contracting public and private enterprises like GECAMINES, SNCC, SODIMICO, Anvil Mining, and even a foreign enterprise, Bwana Mukuba Mining of Ndola in Zambia.

The mining output from Anvil Mining and COMISA is communicated to OFIDA, OCC and the Provincial Division of Mining by those who export their products to Bwana Mukubwa Mining of Ndola in Zambia, South Africa and Namibia, and this after the products have left the Congolese territory. The reliability of data is hence subject to caution, being supplied and collated by a third person in the absence of personnel from OCC.

6. The Provincial Division of Mining does not master entirely the sector that it is supposed to control. Not only because it is not always included in the hierarchy, notably in the process involved in the attribution of mining deeds and the signing of mining convention, but also because it is managed by a head of office that does not stand up to the level of responsibility assigned to him.

Indeed, a number of mining operators with authorisation from Kinshasa do not enrol with the Provincial Division of Mining. Yet, according to the regulations in place, the Provincial Division of Mining needs to initiate a dossier, before mining deeds can be awarded. These are the cases of COPINATH Mining, AFRICOM Sprl at Likasi, and any other company operating under a mining convention.

7. A number of mining operators do not communicate their statistics on production and exploitation [exportation?] to the Provincial Division of Mining and neither pay their tax and fees, which they owe to the State. For all these breaches, the statistics provided by the Provincial Division of Mining are not reliable.

Nonetheless, the Mission Katanga has asked the Provincial Division of Mining to work with DGM/Katanga and the Provincial Government [*Gouvernorat*] and proceed with the inventory of all mining operators [in the region]; enforce the obligation under the mining code to communicate data on production and exportation; and enforce the obligation to pay tax to the State. In this respect, the Mission was outraged to learn, for example, that the company COMISA, albeit without success, asked the Mining Ministry in writing if it could pay the fees on behalf of the firm.

8. Concerning the Provincial Division of the General Department of Migration (DGM), the Mission Katanga has been in a position to note that the Province of Katanga, in general, and the mining sector, in particular, are invaded by foreigners from all sides. These foreigners have no qualification in the mining sector whatsoever and hold none of the required documents to live and work in DRC.

The Mission, which has associated the Provincial Division of DGM and the local administrative authorities to its visits on sites, can confirm that:

a) Foreigners that enter Katanga with a tourist visa settle and operate in the mining sector without informing the local territorial authorities. AT the Post of Kolwezy, for example, 80 expatriates live there, including 29 in trade, and 51 in the mining sector. Among these 80 expatriates, only 13 hold a working visa, including 4 in trade and 9 in mining. At least 40 do not hold any travel visas. The situation is even worse at the Post of Likasi, where there are a large number of foreigners, some of whom have even opened mining ovens where they reside. In Likasi, the encroachment of the mining sector is widespread.

b) The local and provincial administrative authorities as well as the provincial DGM officials are unable to take any action against the presence of these foreigners, since most of them hold tourist visas that our Embassies and Consulates overseas deliver for periods of 6 months and over.

c) [This] is against the regulation that travel visas cannot exceed 3 months; foreigners that settle in Katanga to work in the mining sector, use provisional attestations delivered by the Ministry of Labour instead of employment contracts, despite the fact that their travel visas do not give them the right to work in the country.

d) The huge presence of irregular expatriates constitute a real threat and a rising source of insecurity in the province of Katanga, because, according to the information received by the Mission, arms enter the province in a huge and uncontrolled way.

In addition, their presence is the main cause of encroachment of the GECAMINES mining concessions. Indeed, the concessions where these expatriates exert their activities or install their mining ovens are generally awarded by the Kinshasa authorities, without seeking technical advice from the provincial and municipal authorities. The latter often face a *fait accompli* situation, as already mentioned above. For example, in Likasi, a mining concession located within that of GECAMINES was granted to the company, COPINATH Mining, without the knowing of municipal and provincial authorities.

e) These foreigners that call themselves investors live in cramped conditions, with more than 10 people sleeping on the bare ground in makeshift houses rented to private landlords, and work on mining exploitations with materials and ovens pitched on old exhaust pipes [*mitrilles de chaudière*] abandoned by the SNCC. This is what the Mission observed, for example, in Likasi.

In conclusion, the inadequacy of resources and the absence of synergy and collaboration between the different public services operating in the mining sector have resulted in the following:

a) The data supplied by the different public services operating in the same sector are often incomplete or conflicting;

b) Because of the lack of retrocession of administrative receipts to each service of the government, public servants appointed on mining sites are taken care of by the private mining

operators that they are supposed to control. These are the cases of Anvil Mining and COMISA; both pay inspectors from DGM, Regional Division of Mining, OCC etc. As a result, public servants completely lack autonomy, independence, and efficiency.

B. Public Enterprises

The Mission Katanga held working sessions with the four public enterprises: GECAMINES, SODIMICO, SNCC and REGIDISO.

With REGIDISO, this was essentially about its conflict with the mining company, SOMIKA Sprl, with regards to the aquiferous zone of Kimilolo in Lubumbashi. The Mission was interested in SNCC because of its position as main transporter of large tonnage of exports, imports, and on the domestic network.

Hence, one needs to treat mining enterprises, those in charge of transport, and the case of REGIDISO separately.

B.1 Mining Enterprises

Concerning mining [public] enterprises (GECAMINES and SODIMICO), the examination of conventions, contracts, and management acts that are at the origin of the partnerships sealed with the private sector has in general disclosed the following shortcomings:

1. Almost all the partnerships sealed by the public enterprises did not have the objective or finality to raise the financial and material resources and new technology needed to guarantee their rehabilitation. Well on the contrary, the financial and technical problems that these enterprises were seeking to resolve have remained complete in most cases. Instead of benefiting from new resources for their rehabilitation, the public enterprises have approved joint-ventures whose objective is to create new companies with private partners, which, in other words, contributes to their own disappearance. As mentioned at the beginning of this report, policies set out and conducted by the government in this field have not been the most adequate or efficient.
2. In most partnership contracts, public enterprises are disadvantaged. They have a minority stake in the authorised capital of the companies that arise from the agreements, mostly because their contributions in kind, which they provide in the form of deposits, mining concessions and property, have neither been appraised nor taken into account. Indeed, the partners repeatedly claimed that deposits or concessions that have yet to be exploited are worth nothing;
3. The authorised capital is, in most cases, determined in a derisory way, because it remains below the financial needs [*objet social*] of the new company, which is obliged to resort to external loans. What is generally viewed as a contribution from the private partner is only a loan negotiated by the latter, where mining deeds belonging to the public enterprise are used as collateral, and which the partnership reimburses. In the end, the private partner only provides its credibility and acts as guarantee for the lending bank or financial institution.

4. The various management committees of the public enterprises lack determination and thoroughness during the negotiations. Private partners are in a position to decide which goods the contract will cover and choose the most advantageous terms of the convention. For all that, in a large number of joint ventures, the daily management [of the concession] is conferred to the private party;
5. In some cases, the management committees of the public enterprises that initiate and proceed with the negotiations – in which the Kinshasa authorities interfere a lot- lack transparency, collaboration and cohesion. In addition, some members of the management committee are kept out of things.
6. Because of the unfortunate interference of some governmental authorities [*as indicated above*], some partnership contracts are forced onto the management committee.
7. Many partnerships have been concluded with no respect of the minimum conditions set out by the then government in place. Indeed, it had been decided at the time that a partnership with a public enterprise could only be concluded after the private partner proved its identity through the presentation of legal statutes documents and its financial capacity, through the presentation of certified statements of account over the previous three financial years, as well as a feasibility study and one on the environment [*Footnote 44*].
8. With these conditions in place, the Government wanted first to keep away phantom companies and companies with little financial and technical viability, and second, to avoid concluding contracts that would not take into account the reality and real needs of the country. Yet oddly, contracts signed in violation of this very important governmental order were approved by the tutelary Ministry, if not by Presidential Decree. Hence, the highest political authority itself paved the way for the proliferation of mining companies, sometimes ghost and fictive, in Katanga.
9. Most foreign enterprises that signed mining conventions with the State or partnership contracts are located off-shore; they are insufficiently identified, and are incapable of providing the financial statements needed to assess their financial and technical capacity, as noted above. [These are] the cases of KMC with TREMALT.
10. Private partners at large only invest in their projects the fast returns that they have made by injecting a small amount of working capital into the infrastructure and small cobalt deposits that belong to public enterprises. This is what they claim to be their contribution.
11. Public enterprises typically and systematically lack control in the process of production, exportation and commercialisation of the mineral resources, which is exclusively [in the hands of] private partners that manage the projects.
12. While the clauses under the mining conventions and partnership contracts oblige partners to invest in industrial exploitation, some of the private partners, instead of bringing the required investment, illegally go in for artisanal exploitation and the export of authorised [unauthorised?] raw mineral resources. These are the cases of CHEMAF and SMKK.

13. Those mining operators in partnership with GECAMINES that practice artisanal and industrial exploitation stop the transformation process to the production of cobalt alloy, while the partnership contract require them to give their products to GECAMINES for custom-feed processing, so that some value can be added to the country's resources. [These are] the cases of SMKK, COMIDE, and the waste disposal company of Mutoshi, SRM.

14. Very few partnerships have distributed dividends since the beginning of their activities so far. As a result, public enterprises have to wait until the investment is reimbursed in the hope of cashing in some dividend.

15. Against expectations, partnerships have failed to resolve the social problems of the population in a satisfactory manner. In fact, the companies that are borne out of the partnerships are incapable of absorbing the personnel of the public enterprises that work on the sites and their installations.

B.2 Transport Firms

The only contracts signed by the SNCC during the period under review essentially relate to cross-border transportation with railway firms in Zambia, Zimbabwe, and South Africa. This goes beyond the Mission Katanga's workload and these contracts should be examined in the next report.

However, since SNCC operates for a large part in the transportation of mining products, the Mission has requested it to:

- Supply statistics on the volume of freight destined for export.
- Describe the procedures of control for the quantities received and exported, with regards to the documents established by the services of the State
- Produce reports on fraud cases recorded on its rail network to present.

All the documents that have been received from the SNCC will be examined and analysed at a later date.

B.3 REGIDESO

Within the context of the establishment of the company SOMIKA on the Kimilolo site, the Mission of the Special Commission was submitted [to its attention] a complaint by REGIDESO and human rights NGOs with regards to the pollution of the aquiferous zone of the site, which provides 75% of the population in Lumbumbashi with drinkable water.

The results of the investigations by the Commission will be presented in a report on the partnership between SOMIKA and the State

C. Private Entreprises

Entreprises that have obtained an authorisation from the State to operate in the mining sector – whether they are subject to the new mining code or governed by mining conventions- are classified in two categories.

Given the specificity of each case, comments will be made on a case-by-case basis [see 3.1].

However, with regards to the investment carried out by the private partner and the extension of its activities on the grounds, the private companies created in partnership with the Congolese State or public enterprises can be classified as follows:

1. Companies that have in effect invested and have a financial, economic, and social impact on their environment:

- Anvil Mining
- COMISA Sprl
- Compagnie Minière du Sud Katanga
- GTL and STL

2. Companies with investment potentials that are in the process of being established and have a programme of investment based on a feasibility study:

- Boss Mining
- Mukondo Mining
- Congo Cobalt Corporation
- Congo Minerals
- La Minière de Musoshi et de Kisenda

3. Companies that are in the process of setting up a partnership with the State or public enterprise with no consideration for the clauses and obligations of the contract:

- KMC
- SMKK
- COMIDE
- RWASHI Mining
- TSF

4. Companies that have concluded a partnership agreement with a view to having their claims on GECAMINES paid back:

- Fondaf
- Alphametal
- Swanepoel
- SRM: Société de traitement de rejets de Mutoshi

5. Companies that have signed a partnership agreement with a view to collecting manually mining products on the concessions and on behalf of GECAMINES:

- BAZANO Group Sprl
- CHEMAF Sprl
- SOMIKA Sprl

6. Inconclusive partnership with GECAMINES:

- Société d'Exploitation de l'Etoile (SEE)

D. The specific case of Gécamines

The Mission Katanga held several working sessions with GECAMINES, alternatively with the members of the management committee, with the technical experts and managers of the three regional groups, South, Centre, and West, and with trade union members. The Mission also paid visits on GECAMINES's three mining exploitation groups (Likasi, Kipushi and Kolwezi). The surveys and investigations that the Mission carried out reveal serious weaknesses at the core of GECAMINES. There are, however, options to rehabilitate the public enterprise, instead of closing it down in an act of desperation

D.1 Observed shortcomings

1. Generally speaking, GECAMINES embarked on building partnerships without the State clearly defining the objectives and principles of this strategy.

Indeed, faced with the difficulty to obtain new credits from the international financial institutions, overseas banks and foreign private donors since 1992, GECAMINES should have aimed at generating regular revenues that could be immediately injected in the revival of its traditional mining production activities.

However, without the existence of a defined and rational framework, no such a strategy was followed. Instead, several plants stopped operating and GECAMINES's mineral resources [*patrimoine*] were sliced up, mostly to satisfy the immediate needs for cash of the governmental authorities, rather than to finance the revival of the bankrupt enterprise.

2. During the negotiations of partnerships led by GECAMINES, a complete lack [of supporting material] was observed, with no schedule of conditions and requirements and no appropriate contracts or types of convention formulated by the tutelary body or the GECAMINES authorities with a view to guiding the negotiations.

3. It was observed that the management committee lacked direction and thoroughness. The conditions imposed by the then Head of State in his [*permanent*] instructions with regards to the

process of creation of a mining society in concessions belonging to state enterprises, as underlined in his letter of 4 November 2000, were never followed. It is also in this context that one needs to mention that in several partnerships, GECAMINES has accepted to make contributions in kind without them being valued or treat a reimbursable loan or an investment pledge yet to be fulfilled as the contribution made by the private partner.

4. Almost all partnerships with GECAMINES have been concluded without any feasibility study. This situation means that GECAMINES has always negotiated and sealed its contracts without taking into account the wealth of its mining deposits to be exploited and the projects' high level of profitability, with first pay-backs often coming after 2 to 3 years of operation. The lack of valuation of GECAMINES contributions in kind or their undervaluation means that GECAMINES is always in a weak negotiating position. For example, the metallurgic plants and industrial infrastructure of GECAMINES in KAMBOVE and in KAKANDA for the Centre group were leased to KMC for a symbolic dollar [per month]. However, thanks to the energetic intervention of the Mission [*of the Special National Assembly Commission*] in Katanga, KMC finally accepted to pay GECAMINES US\$100,000 per month, that is US\$1.2m for the year 2004. Payments over the previous five years still need to be negotiated.

5. The existence of several contracts signed with GECAMINES, and simultaneously covering the same goods [*and items*], yet with different private partners, was observed.

The most obvious case concerned the deposits of the Centre group, which were first subject to a partnership contract with RIDGEPOINTE, and then with TREMALT Ltd, a company owned by Mr Bredenkamp in the KMC project. This conflict [prompted] RIDGEPOINTE to file [a complaint] to the International Centre for Settlement of Investment Disputes (CIRDI). This is also the case of a state deposit subject to partnership with COMIN, leading to the creation of the Société d'exploitation de la mine de l'Etoile (SEE). To this day, however, this mine has been attributed without any feasibility study to the company CHEMAF.

6. Some partnerships concluded by GECAMINES have encouraged the emergence and creation of several firms in mining exploitation that have neither the inclination nor the capacity to do so. These are the cases of partnerships sealed with third party creditors as a way to reimburse GECAMINES debts or with companies in charge of collecting mining products.

These partners are often paid in mining products, which they exploit raw or sell locally to irregular foreigners who in turn illegally exploit Heterogenite.

[Hence], these partnerships encourage the quarrying of Heterogenite as well as the encroachment of GECAMINES mining concession, which deprives GECAMINES and the State of resources issued from mining products.

In conclusion, it appears that GECAMINES finds itself in a weak position in all the partnerships concluded and cannot benefit of anything substantial. There is a need to reframe GECAMINES actions to succeed in its rehabilitation.

3.1 [2.2] Case-by-case study

3.1.1 [2.2.1] Kamambankola Mining Company Sprl, KMC

A. Identification of the company

KAMAMBANKOLA MINING COMPANY, KMC, is a private company with limited responsibility under Congolese law, which GECAMINES and TREMALT LIMITED created under a deed drawn up by a notary on 31 January 2001, within the terms of the joint-venture agreement signed between them on 11 January of the same year and of a ministerial order No002/Cab Mines/01/2001, also dated 11 January, authorizing the creation of this enterprise.

KMC was created after a mining convention was concluded between the Congolese State and GECAMINES, on one hand, and TREMALT LIMITED, on the other. Its headquarters are located in the mining city of Kakanga (GECAMINES Group Centre). Its object is to prospect, explore, develop, exploit, process and trade mineral resources, metal goods and their by-products. Otherwise, KMC can also undertake any other operations that are directly or indirectly related to its goals or can help towards fulfilling them.

Its authorised capital, which was fixed at 25,000,000 FC, that is, approximately 80,000 US\$, was freed up with the payment of 15,000,000 FC by TREMALT LIMITED and 5,000,000 FC by GECAMINES; the latter's contribution in kind – made of the Luena and Kambove deposits and several tonnes of mineral resources stocked on the sites – was neither accounted for nor evaluated. It is worth noting that the Mission did not read any document establishing that TREMALT LIMITED made a payment of 5,000,000 FC for a 80% stake in the company, leaving GECAMINES with 20%.

It is also worth noting that according to documents handed in to the Commission in Kinshasa by TREMALT LIMITED managers, the company was created in January 2000 and registered in the British Virgin Islands, with its headquarters in Akara-Building, 24 de Castro Street Rad Town, TORTOLA. However, no legal document has permitted to establish with certainty the real identity of TREMALT LIMITED owner (s). A delegation traveling from London have nonetheless relentlessly claimed to the Commission that the company belongs to Mr BREDENKAMP, of Zimbabwean nationality and his family; Mr Bredenkamp is better known for being an arms broker than a mining manufacturer. The Commission has asked in writing the UK Embassy in Kinshasa to obtain from its Chancellery the authenticating of the TREMALT LIMITED identity documents. It is still waiting for a response.

B. Partnership and mining activities

KMC benefits from a mining convention signed on 7 March 2001 by DRC, GECAMINES, KMC and TREMALT, as well as from a partnership agreement, which TREMALT concluded with GECAMINES.

In addition to this convention and partnership agreement, the partnership GECAMINES-TREMALT in the KMC project, is based on the following legal documents:

- Presidential Decree No 034/2001, dated 18 June 2001, for the approval of the mining convention, dated 7 March 2001
- Endorsement No1, dated 9 April 2002, for the joint-venture agreement between GECAMINES and TREMALT, dated 11 January 2001
- Endorsement No1, dated April 2002, for the mining convention
- Presidential Decree, dated 13 January 2003, approving Endorsement No1 for the mining convention
- Endorsement No2, dated 15 January 2003, for the joint-venture agreement between TREMALT and GECAMINES
- Endorsement No2, dated 10 February 2003, for the mining convention
- Presidential Decree No051-B/2003, dated 30 March 2003, for the approval of Endorsement No2 of the mining convention.

The duration of the partnership was fixed to 25 years.

The Convention, dated 7 March 2001, and its Endorsements give KMC several advantages:

1) The unilateral transfer by GECAMINES of seven mining concessions (C14, C15, C17, C18, C19, C21, and C23), all parts of the capital [*patrimoine*] of the Centre Group, as well as quarry rights on Luena and Kakontwe. Nonetheless, following a request by GECAMINES – which lost everything in the Centre zone under the Ministerial Order No311, dated 19 March 2002 - the Mining Minister ceded back to GECAMINES several deposits (C14, C15, C18, and C33), the quarry rights on Luena and Kakontwe, as well as the concentrator in Kakanda, without it having to pay any fee.

2) The use by KMC of the installations and industrial and social infrastructure of GECAMINES built on the site of Kambove and Kakanda for a symbolic lease of US\$1 per month. Hence, KMC was not compelled to undertake any heavy initial investment or important preparation works before exploiting its first deposits. In fact, KMC solely, on one hand, took over mines that GECAMINES had already started to exploit (Kamoya mine), and on the other, used the landfills on the Kambove and Kakanda sites. In addition to the considerable advantage that the GECAMINES on-site installation and infrastructure offer, KMC also inherited from a skilled and already operational personnel.

3) The mining convention granted KMC with a particularly advantageous and generous fiscal, para-fiscal and custom regime. Indeed, KMC benefits from a total exemption of tax, duty, fees, and any other levies, whether direct or indirect, fiscal or parafiscal, national, regional or local, owed to the State and/or existing and forthcoming decentralized [government] entities This exemption also extends to KMC social activities, to its equipment, the educational and health establishments, as well as the cultural and leisure activities of the personnel. The company KMC was also granted the right to give two financial statements, one in Congolese francs for its statements in DRC, one in foreign currency for its own statements.

4) The Article 11.1.5 of the convention on the creation of KMC and Article 11 on the company's statutes have conferred to the partner TREMALT ltd the exclusivity of the company's management. Indeed, the management committee, which is only made of TREMALT representatives, is controlled by a Managing Board of seven members, only two of which were designated by GECAMINES. This board supervises the management committee and can make decisions even in the absence of GECAMINES. No other monitoring structure for the management of the company has been accounted for.

5) KMC has been exempted from paying GECAMINES any premium for the transfer of mining deeds or royalties. Likewise, the partner TREMALT has been dispensed from the obligation to pay access fees for geological data.

6) An agreement for custom feed processing at the plants of Shituru was concluded in March 2001 between GECAMINES and KMC; initial reserves on the KMC concessions were:

Concessions	Initial reserves	
	TCu	TCo
C17 or PE463	85,000	-
C19 or PE469	896,169	217,635
C21 or PE467	329,079	17,223
Total	1,310,242	234,853

Custom-feed processing services [*Traitement à façon*] at the GECAMINES plants of SHITURU, where KMC was to process all its mineral resources, caused GECAMINES a loss of revenues of USD1,156,069; It also lost USD1,480,745, as 211,335 tonnes of mineral resources were consumed on the Kambove site, leased to the KMC partnership.

In return for all the above advantages, Articles 3, 23, 27, 35, and 39 of the Mining Convention, as well as Articles 33, 13, 16, and 19, of KMC Constitutive Act, committed KMC and TREMALT to:

1. Extract and produce mineral resources and concentrates that can be refined at GECAMINES's Shituru plants, and commercialise the processed products;
2. Produce 200 TCo per month in 2001, 250 TCo per month in 2002 and 300 TCo and more per month from 2003;
3. Restore and rehabilitate the exploitation sites, in conformity with the legislation on the protection of the environment;
4. Conform to book-keeping rules and have the accounts audited at the end of each accounting period.
5. Transfer mining and metallurgic technology, as well as management techniques, and ensure training for the Congolese personnel;

6. Create jobs and improve the living standards of the surrounding population;
7. Give preference to local suppliers over foreigners in the purchase of goods and services (articles 1 and 2 of the convention on the creation of KMC and article 30 of the mining convention).

All these operations were to be pursued to provide reciprocal benefits to the contracting parties (article 3.3 of the convention on the creation of KMC). Several conditions by TREMALT and KMC were to be met first, however:

1. Rehabilitating the Shituru plants aimed to process the concentrates produced by KMC;
2. Obtaining substantial external financing in the form of a loan, worth an estimated USD130,000,000 (article 3.4.3 of the convention on the creation of KMC). TREMALT committed to find this sum of money not only to finance KMC exploitation activities but also to rehabilitate the Shituru plants (articles 3 and 7 of the mining convention);
3. An efficient management of KMC, by respecting the contractual obligations and conforming to the rules of good management.

Despite the important benefits above being granted to KMC, the Mission of the Special National Assembly Commission made the following observations on the ground, concerning TREMALT partnership and KMC management:

1. KMC's achievements fell behind the benefits that it received and parties' expectations, as shown in the table below:

Year	Metal Production at the Shituru plants		Objectives		Achievement Rates of the objectives
	TCu	TCo	TCu	TCo	%
2001	871	171.3	-	1,200	14
2002	494	359.1	-	3,000	12
2003 (1)	-	-	-	3,600	-
Total 2001-02	1,365	530.4	-	7,800	7

(1) To date, KMC has failed to transmit to GECAMINES data on its concentrate production for 2003, either during meetings or through correspondence.

Hence, the success rates of the production objectives [were] 14% and 12% for 2001 and 2002 respectively. KMC's explanations for these very low achievement rates remained unconvincing.

2. KMC only started the superficial, and less costly, exploitation of the Mikondo mine and stopped processing mining concentrates at the Shituru plants in November 2002, that is after 18 months of operation.

3. KMC accounts, as of 31 December 2003, show a cumulated loss of USD11,356,875 over the first three years of operation (2001-03). It emerged from the KMC documents available at the Participation Department of GECAMINES that these poor financial results were explained by clearly excessive exploitation costs, which were hard to justify in view of the company's activities. In addition, in several correspondence then addressed to its partner TREMALT Ltd, GECAMINES protested against such a deficit, which it blamed entirely on TREMALT, the exclusive manager of the company, whose representatives [*created such a mess by*] spending lavishly on expenses, notably on holiday, the hiring of aircrafts, and overseas medical treatment [Footnote 45].

4. Because of this deficit, GECAMINES received no dividend whatsoever;

5. The rehabilitation of the Shituru plants remained partial (supply of spare parts with very limited impact and no possible comparison with what had been agreed under the partnership agreement). It was suspended because of the lack of advancement in the KMC project, notably following the suspension of its processing activity at the Shituru plants from November 2002.

When re-contacted in December 2003 to resume the rehabilitation of the Shituru plants, KMC confirmed that important financial difficulties prevented it from resuming its participation in the rehabilitation program of the plants (with reference to the meeting between GECAMINES and KMC Sprl on 02/12/2003).

6. According to the projected statements of account which KMC communicated to the Participation Department of GECAMINES in March 2003, TREMALT invested, over a projected 130 million in KMC investment, a total of approximately 18,250,000 USD, as follow:

- 31/12/2003: approx. USD10,000,000
- 2002: approx. USD 3,500,000
- Forecast 2003: approx. USD 4,750,000

KMC attributed TREMALT's low level of actual investment to its alleged implication in the plundering of natural resources in Congo in the United Nations report published at the end of 2002. As a result, KMC saw a number of its credit lines withdrawn, which in turn dented TREMALT's capacity to finance the project in an adequate manner and in due time" (Unsigned report by KMC Management to the management committee during the year finishing on 31/12/2003)

Although these numbers seem substantial, they do not translate TREMALT's long-term engagement in the development of KMC. Indeed:

- The TREMALT Management of KMC has itself announced the suspension of metallurgic operation at the concentrator of Kakanda and at the Shituru plants to favour instead less important works at the *Laverie de Katanga*;
- The exploitation of the Mukondo deposit was made on the surface, and to this day, prospecting activities for large-scale mining exploitation have not started yet.

- The declared amounts spent on fixed assets have yet to be confirmed. The present evaluation questions the credibility of KMC's statements of accounts;
- Finally, TREMALT management committee of KMC has yet to communicate a business plan over more than a year, which could demonstrate and materialize its commitment towards a sustainable development of the partnership.

7. In fact, KMC only works with GECAMINES' installations, and this, without any compensation in return, as indicated above.

8. No initiative was formally taken by TREMALT, who is KMC manager, to ensure the transfer of technology, notably new technology for the extraction and processing of metals, and modern techniques for management and the training of personnel;

9. No preference whatsoever was given to local suppliers;

10. Concerning the management of KMC by TREMALT:

a. Functioning of KMC statutory organs (Articles 9 to 12 and 15 of the Constitutive act)

- From 2001 to end December 2003, the President TREMALT Ltd of the Administration Board [*Conseil de gerance*] only held 11 meetings, while the Administration Board was statutorily obliged to meet at least 35 times, at the rate of one meeting a month.
- The TREMALT management direction of KMC often falsely claimed prerogatives of the Administrative Board and General Assembly in violation of articles 9, 11 and 15 of the [company's] statutes. For example, of its own initiative, the Direction dismissed the Director of the Katanga Operation, terminated the processing contract with the Shituru plants, chose the New Mining Code to the detriment of the mining convention of 7 March 2001, and finally, set up without approval from the Administrative Board, representations in Congo and overseas, notably the Harare Office, the Johannesburg Office, the Tshikapa Office and the Kinshasa Office.

This last initiative translated into a delocalization *de facto* of the company's headquarters leading to the archiving of accounting documents overseas and high traveling costs (budget category: Aircraft, USD215,236 in 2002)

b. Results and sanction of TREMALT's management of KMC

- Instead of providing a mutual benefit to all the contracting parties (art. 3.3 of the Convention on the creation of KMC), TREMALT's management of KMC led to important operating costs totaling USD11,356,875 by 31 December 2002;
- Subject to revenues due to be declared by 31 December 2003, the budget for the accounting year 2003 projected a return of USD13,529,027, which will be used, however, for:

- Reimbursing short-term credits, worth USD4,746,454, which TREMALT was to approve in 2003 to finance the purchase and installation of the *Laverie de Katanga*
- Paying arrears totaling USD10,018,023 owed to supplying companies affiliated with TREMALT

During their hearing with Mission Katanga, KMC managers accepted the observations that were made to them. KMC committed to pay GECAMINES, on one hand, USD 100,000 per month rather than a symbolic US dollar, by way of lease for its installations, and on the other, a sum yet to be agreed by way of compensation and reduction of the deficit contracted over three years without dividends.

Subsequently, in his letter addressed to the Commission, but with no contact number, dated 15 February 2005, TREMALT Director, Mr Colin R Blythe-Wood, asserted that his company was in the process of [re-] negotiating with GECAMINES the arrangements needed to change the agreements, mining convention and other joint-venture documents in the direction demanded by the Special National Assembly Commission. He enclosed a photocopy of a letter sent to this effect to GECAMINES on 26 January 2005. In this letter, TREMALT accepts to reorganise KMC finances and transfer to GECAMINES its shares in MUKONDO MINING, a company created in joint venture with KMC and BOSS MINING. Nevertheless, TREMALT attached 9 conditions to these two commitments, which were so difficult to achieve that KMC pledges to the Commission remain very hypothetical [Footnote 46].

For all that, as underlined in the minutes of MUKONDO MINING's General Ordinary Assembly, which TREMALT enclosed in annex of a letter to the Commission, dated 5 April 2005, the reorganization of MUKONDO MINING's authorized capital to let GECAMINES in, can not take place without the signature of the contracting parties and unless the 9 conditions are fulfilled. To date, neither GECAMINES nor Boss Mining have confirmed any of the assertions contained in the various TREMALT correspondences to the Commission there above and the Commission has found nothing to indicate that it could give credence to TREMALT's promises.

C. Conclusion

The evaluation of the partnership GECAMINES-TREMALT in KMC can be summed up as follows:

1. The management of KMC resulted in an important loss of USD11,356,875, despite benefiting from very advantageous conditions at the beginning and during its operation. This loss completely overtakes KMC's authorized capital, which was established at CDF 25,000,000, equivalent to approx. USD 80,000.
2. TREMALT only contributed 15% of the expected USD130,000,000;
3. KMC refused to continue to participate in the rehabilitation of the Shituru plants;

4. TREMALT did not really show any commitment towards the sustainable development of KMC. Hence, the only mining exploitations that KMC has carried out to this date have been relatively light and superficial and did not involve any large-scale mineralurgic investment;

5. The partnership has yet to submit any business plan that could lay out and show its development in the medium run.

6. The above characteristics of TREMALT's commitment to, and management of, KMC emerge more specifically and clearly from its 2003 budget, which is solely based on the exploitation of the superficial sites of the Mukondo deposit.

7. To this date, GECAMINES has yet to benefit from substantial financial fallouts from its participation in KMC (whether it consequently had to retrocede its revenues to the State or not). In addition, KMC owes GECAMINES USD7,200,000, on the basis of a lease for the use of GECAMINES's production tools, which the taker [KMC] itself put at USD100,000/month over the last 6 years (72 months), when the installations were used without any compensation.

It emerges from all these elements that the partnership TREMALT-GECAMINES was neither advantageous to the State nor to GECAMINES itself, while, within the terms of the mining Convention of 7 March, the objective of the KMC project was to "achieve right from the start direct financial fallouts for the State, which will benefit from a majority 66% share in the benefits" [Footnote 48]. With all that, this partnership is run by Mr J BREDEKAMP, who, according to a number of sources, is to be prosecuted for arms and drug trafficking by an international court of justice. In addition, in the absence of a response by the UK Embassy in DRC on the real identity of TREMALT and of any credible proofs of identity of its associates, this company remains nebulous and has all the appearance of a smokescreen company. DRC hence takes the risk to host mafia and money laundering activities, in breach of the law No4/016 of 19 July 2004 on fighting against money laundering and the financing of terrorism.

This is why, and given that nothing else can guarantee better prospects or a successful renegotiation of the partnership with TREMALT Ltd, the Commission has decided to reject this partnership, which is in all evidence one-sided.

To this effect, the Commission recommends, among others:

1. The cancellation of the Mining Convention of 7 March 2001 between the Congolese State, GECAMINES, and TREMALT.

2. If GECAMINES can not ask and obtain the dissolution of KMC with the arrangements of the Commercial Code and its statutes, the referral of the case to the High Court in Lumbumbashi with a view to legally disbanding the company KMC.

3.1.2 (2.2.2) Congo Cobalt Corporation

2.2.3 Mukondo Mining Sprl

2.2.4 Boss Mining Ltd

A. Identification of the Company

As of 20 December 2003, the company Boss Mining Ltd was constituted of two associates: SHAFORD Capital Ltd, a company under UK law and domiciled in VANTERPOOL PLAZA, WICKHAM CA YI, Road Town Tortola, British Virgin Islands, and the associate, Mr James TIDMARSH, a barrister of Swiss nationality and domiciled in 3 Route de St Cergue, 1295 MIES, SWITZERLAND.

Its authorized capital amounts to 1,000,000 FC and is allocated for 90% to SHAFORD Capital and for 10% to Mr James TIDMARSH.

During the extraordinary general assembly on 27 February 2004, following the transfer by Mr James TIDMARSH and by SHAFORD Capital of a 10% share each to GECAMINES, the latter took a stake in the authorized capital of Boss Mining, whose structure was readjusted as follows:

- SHAFORD Capital 80%
- GECAMINES Capital 20%

B. Legal instruments and object of the partnership

a. Timeline of the partnership

The company, RIDGEPOINTE OVERSEAS Development Ltd, a company that was created by virtue of the UK Virgin Islands' legislation, concluded a mining convention with GECAMINES on 04/09/1998 with a view to creating a joint company to exploit some selected mineral resources.

This mining convention approved by Presidential Decree No121 of 19 September 1998 put seven mining concessions at the company's disposal. And with Ministerial Orders No211 of 15/10/1998 and No217 of 27/10/1998, the Minister of Mining ordered the implementation of this mining convention through the transfer of the concessions there above.

Nevertheless, the Minister of Mining revoked these two orders with another ministerial order of 14 March 2000, hence preventing the partner RIDGEPOINT from continuing the activities that it financed since the launch of operation three years ago, and returning the mining concessions to GECAMINES.

Following the failure of every attempt of conciliation with the Congolese state, the company RIDGEPOINT, submitted a request to the International Centre for Settlement of Investment Disputes (CIRDI) for international mediation in its dispute with the Congolese State [DRC] and GECAMINES. CIRDI registered its demand in July 2000 and constituted a hearing to examine the dispute.

Nevertheless, in light of the stakes involved, [the risk of damaging] the image of the country overseas, and the very high cost of the judiciary proceedings, the two parties finally decided to resolve their differences out of court.

An amicable agreement was sealed on 24 February 2004 between RIDGEPOINTE OVERSEAS Development Ltd, GECAMINES, and the mining company, KABABANKOLA, and the disputed mining concessions were re-allocated between KMC (born from a partnership between GECAMINES and TREMALT), Boss Mining (born from a partnership between GECAMINES and SHAFORD Capital), and MUKONDO Mining (born from a partnership between KMC and Boss Mining).

It is worth noting that SHAFORD Capital represents the interest of RIDGEPOINTE OVERSEAS.

b. Legal instruments and object of the partnership

The company Boss Mining is based on the following legal instruments:

- The amicable settlement agreement of 25 February 2004 between RIDGEPOINTE OVERSEAS, GECAMINES, and KMC;
- Statutes of Boss Mining Ltd

The company's goals are prospecting, mining exploitation, and the processing of metal and mineral resources. The company can also take part in any operations that are, directly or indirectly, linked to its mission and are likely to promote an increase in its wealth [*patrimoine*].

C. Observation and conclusion

At the time when the delegation of the Special National Assembly Commission was in mission in Katanga, it was observed that Boss Mining Ltd was in the midst of being established.

The company operates an industrial exploitation and its investment carried out to date amounts to several USD millions. Work on the ground is serious.

This is why, and given the amicable settlement agreement [*at the CIRDI?*] on 25 February 2004, the Commission encourages the expansion and development of the partnership within the company, Boss Mining.

2.2.5 Momentary Association Luiswishi or Compagnie minière du Sud-Katanga Sprl, CMSK

A. Identification of the Company

The Momentary Association of LUISWISHI is a partnership concluded on 19 January 1996 between GECAMINES and Entreprise Générale MALTA FORREST (EGMF) Sprl. This project

consists of a three-year investment totaling 65 million USD and guaranteed by EGMF to develop the LUISWISHI deposit.

The Momentary Association of Luiswishi was subsequently transformed into a company named Compagnie Minière du Sud Katanga Sprl (CMSK).

CMSK's associates are GECAMINES and EGMF. Its authorized capital was fixed at 18,750,000 FC, 40% of which going to GETAMINES and 60% to EGMF.

The duration of the project under the company's ownership is 20 years, renewable twice for 15 years, that is, in total 50 years.

B. Basic legal instruments and object of the partnership

a. Basic legal instruments

- Draft Agreement GECAMINES [referred to as *GCM* in original text] and EGMF, dated 19 January 1996
- Letter No008/CAB.MINI/1/96 by the Minister of Mining, dated 8 February 1996, giving consent to the draft agreement on the Luiswishi deposit.
- Co-operation contract to develop the Luiswishi deposit, dated 5 April 1997;
- Letter No CAB/COMI/KKM/MK/023/97, dated 19 May 1997, giving consent to the agreements concluded with GECAMINES [*GCM*];
- Endorsement No1 of the cooperation contract to develop the Luiswishi deposit, dated 2 August 2000;
- Endorsement No2 of the cooperation contract to develop the Luiswishi deposit, dated 31 May 2003;
- Contract for the creation of a company between GECAMINES [*GCM*] and EGMF, May 2004
- Confidentiality Agreement between GECAMINES [*GCM*] and EGMF, May 2004
- Statutes of the Compagnie Minière du Sud-Katanga, CMSK, signed by a notary on 18 May 2004.

b. Object of the partnership

Under the Momentary Association of Luiswishi, the partnership between GECAMINES [*GCM*] and EGMF had for object to develop the Luiswishi deposit in three phases.

The first phase of development consisted of:

- Extraction of minerals from the landfills, followed by their transportation to the rehabilitated concentrator in Kipushi.
- Concentration of minerals within the limits of the concentrator's existing capacity
- Sale of the concentrates
- Prospecting of Sites [*écailles*] I and II

The second phase of development consisted of:

- Mining exploitation and the transportation of minerals to the concentrator;

- The concentration of minerals from the landfills or deposits at Kipushi or from the Luiswishi site;
- Custom-feed metallurgic processing at the Shituru plant or elsewhere by GECAMINES [GCM], followed by the sale of the metals produced or the sale of concentrates;
- Prospecting for Polygone

In the last phase, the development should consist of:

- Mining exploitation and the transportation of minerals to the Luiswishi concentrator;
- The concentration of minerals on the Luiswishi site;
- The metallurgic processing of mineral or concentrates in new installations;
- The sale of the metals produced

In line with Article 3 of the company's statutes, the partnership with Compagnie Minière du Sud-Katanga (CMSK), has the following objectives: the exploitation of mines and quarries, the concentration of minerals, the production of alloys and metals, and the commercialization and sale of the products resulting from mining and concentration activities and metallurgic production.

C. Luiswishi Deposit

This concerns the deposit situated near the locality of Luiswishi in the surroundings of Lumbumbashi town. This deposit comprises sites [*ecailles*] titled Luiswishi I, Luiswishi II, Luiswishi III, Luiswishi East, as well as the excavation [*ecaille*] of Kipushi.

The mineral resources to extract from the deposit of Luiswishi I have the following approximate specifications:

- 2.69% Cu
- 0.88% Co

On the existing landfills, there are approximately :

- 1.50% Cu
- 1.00% Co

Minerals that are part of the Luiswishi deposit will be extracted and processed until all economically exploitable reserves are depleted, that is, roughly 50 years.

D. Public works

On 30 January 1998, the Congolese government signed with a consortium CONSULT4 and the company, SWANEPOEL, a draft agreement to build the 494km-long dirt road LUAMBO-MANONO followed by the 396.35km-long axis KASUMBALESA-LUBUMBASHI-LIKASI-KOLWEZI.

The provisional cost for the road section LUAMBO-MANONO was put at USD32,110,000, to be paid in 24 months, to the tune of 65,000 USD/km; the provisional cost for the axis KASUMBALESA-LUBUMBASHI-LIKASI-KOLWEZI was put at USD 392,194,698, allocated as follows:

Phase I: 151,229,154 USD for the rehabilitation of the existing road and preparatory works for the enlargement of the road.

Phase II: 240,965,544 USD for the construction of a second lane, the laying-out of the road's crossings and structure, road marking and signing.

The Government asked GECAMINES [*GCM*] to guarantee the reimbursement of the funds needed to build the roads, by transferring the mine deposits KALUKUNDI-KISAMFU-TONDO-SHIKOLOBWE and MENDA to the consortium, with revenues from these deposits expected to go towards the reimbursement of the funds.

Following GECAMINES [*GCM*]'s refusal, the Consortium rejected the draft agreement on roadwork financing.

Another draft agreement is to be concluded with EGMF for the rehabilitation of the axis Kasumbalesa-Lumbumbashi, road maintenance work at Lubumbashi, and the construction of two markets in Kinshasa and Lumbumbashi.

EGMF received a total sum of 41,285,388.31 USD from the Momentary Association of Luiswishi to finance the public works, whose total cost remains, however, unknown. The Government transferred the money by using tax payments from GECAMINES. The money was spent as follows:

<u>Year</u>	<u>in USD</u>
1999	3,294,267.71
2000	14,344,008.54
2001	14,065,172.87
2002	7,733,377.32
2003	1,848,561.90

E. Evaluation of the Momentary Association of Luiswishi

a. on a technical level

The exploitation of Luiswishi performed well in view of the following results:

- 19,848 TCo were produced over 5 years of exploitation, equivalent to an average 3,970 TCo per year
- 2002 was the best performing year, with a production of 5,692 TCo, equiv. to a monthly production of 474 TCo, and the highest average cobalt yield of 76%.

b. on a financial level

b.1. Payments of services to partners and other suppliers of the company

GECAMINES was paid for services related to the company's Luiswishi operation on 31 December 2002, a total of USD 114,094,000, covering 14% of its total cost.

EGMF was paid a total sum of USD83,885,000, covering 74% of its total cost, SNCC was paid USD 14,173,000, covering 14%, and banks were paid USD 438,000 in financing fees.

b.2 Allocation between partners of the cash flow benefits from Luiswishi

It emerges from some elements of this dossier that GECAMINES [*GCM*] should have received 70% of all cash-flow benefits from Luiswishi, that is, USD 46,598,000 out of USD 66,955,000, the total amount that the Association generated in the five years of exploitation. The government, however, decided to levy outlandish para-fiscal charges on earnings that were in principle exempt of fees, before they could make it to GECAMINES' s global accounts.

As a result, GECAMINES [*GCM*] only received USD 6,464,000 after tax, that is 14% of its share.

(In '000 USD)

	Total by 11/2002	EGMF		GCM		State		Third parties	
USD	USD	USD	%	USD	%	USD	%	USD	%
Services	111,094	83,885	74%	13,200	12%	0	0	17,009	14%
Fees	26,241	0	0	5,320	20%	20,921	80%	0	0
Margin	40,714	20,357	50%	1,144	3%	19,213	47%	0	0
Total cash flow	181,049	104,242	50%	19,664	11%	40,134	22%	17,009	9%

Looking at this table, GECAMINES [*GCM*] received 11% of the cash flow generated throughout the five years of exploitation by the Association - only just above what SNCC received (USD14,173,000) and compared with 58% received by its partner EGMF and 22% received by the Congolese State.

Nonetheless, Article 12 of the co-operation agreement projected that the partners of the Momentary Association would achieve financial returns of 66.5% for GCM and 33.5% for EGMF.

In the five years of exploitation, GCM achieved a net and final benefit, after tax but before depreciation, of USD6,464,000, equiv. to a 10% return rate only.

(in '000 USD)

	Total	GCM		EGMF/Third Party		State
	USD	USD	%	USD	%	
Turnover	181,049	59,798	33	121,251	67	0

Services	114,094	13,200	12	100,894	88	0
Margin						
before tax	66,955	46,598	70	20,357	30	0
Tax	-	(40,134)	-	(ND)	-	40,134
Margin						
after tax	66,955	6,464	10	20,357	30	60%
Yield rate	37%	11%		17%		-

The poor financial results of Luiswishi exploitation can be explained first of all by the very heavy para-fiscal charges paid to the State: by 31 December 2002, the Government had levied at the source 86% of the revenues which the Monetary Association of Luiswishi owed to GECAMINES, that is, USD 40,134,000. As a result, GECAMINES was left with only 14% of what it was owed, approx USD 6,464,000.

F. Conclusion

A number of criticisms can be raised over the cooperation agreement on the development of the Luiswishi deposit – notably the fact that GECAMINES could not charge for many of its services (in effect reducing the share of its interventions in the operation cost of the association) or the fact that contrary to EGM, GECAMINES did not try to optimize the operation costs reflected in its share of exploitation. Yet, this partnership is the only partnership that generates fresh cash to GECAMINES. In the allocation of the profit margin, GECAMINES has a majority share.

In light of the above, the Commission recommends:

1. The continuation of the partnership between GECAMINES and EGMF in the management and exploitation of LUISWISHI;
2. The optimization by GECAMINES of the operating cost of exploitation.
3. The regularization of CMSK Sprl's statutes by taking into account the effective contributions and those that partners have promised to disburse.

2.2.6 SOCIETE MINIERE DU KATANGA, SOMIKA Sprl

2.2.7. Congo Mineral Sprl

2.28 Société minière de Kabolele et de Kipese, SMKK

A. Identification of the Company

The company was created under a deed drawn up by a notary, dated 2 June 2000, between GCM and the company, MELKIOR RESSOURCES Inc, a company under Canadian law that has its headquarters on Nesbit Street, PO Box 11385, Station H, Nepean, Ontario, Canada.

The authorized capital, which was fixed at 2,500,000 FC, was allocated for 60% to MELKIOR and 40% to GECAMINES.

The company was created for an undetermined period.

During the Extraordinary General Assembly on 27 April 2004, a third associate, COFIPARINTER, was allowed in, with MELKIOR transferring its 40% stake; the name of the company was changed to Société Minière du Centre (SMC).

The Compagnie Financière des Participations Internationales, COFIPARINTER, is a shareholding company with limited responsibility, which operates under Luxembourg law and has its headquarters based at No3, Boulevard du Prince Henri, L-1724, Luxembourg. It became SMKK's partner company, after the High Court of Lubumbashi ruled in its favour in a case against MELKIOR RESSOURCES Inc. The ruling was made final and executory, with no room for appeal or bail.

B. Legal documents and objectives

B.1. Legal documents

- Agreement for the creation of a joint enterprise, dated 5 November 1999
- Statutes and Constitutive Act of SMKK, under a deed signed by a notary on 2 June 2000
- Order of 18 December 1999 giving consent to the establishment of SMKK

B.2. Object of the partnership

The new company holds the objectives of exploiting the KABOLELA and KIPESSE deposits, the metallurgic processing of minerals and bye-products, and the commercialization of enriched and/or not enriched metal products.

C. KABOLELA and KIPESSE deposits

The exact reserves of these two deposits will remain unknown, until the results of prospecting activities, which the partners MELKIOR and COFIPARTNER are financing.

The deposits are located in the Centre Group around Kambove

	Deed	Superficies	Reserves
Kabolela	Concession No 241 18/12/1999	669.5 ha	25,354 TCo 140,311 TCu
Kipese	Concessions No240 18/12/1999	554.5 ha	very interesting but yet to be determined reserves
Total	2 Concessions	1,224ha	in gold, cobalt and palladium

Preliminary prospecting activities through the use of trenches, small wells, and hole-drilling, display a substantial mineralization in the excavations [*ecailles*] in the north and south, estimated at 3,659,310 of dry tonnes at 3.81% copper (139,475 TCu) from the top to a depth down to 1,250m.

D. Analysis and Observation

Without financial resources and without feasibility studies that MELKIOR RESSOURCES Inc was supposed to provide for an industrial exploitation of its concession, SMKK began smaller or artisanal exploitations in 2003, without the active participation of GECAMINES.

These reduced exploitations led to the signing of several custom-feed processing contracts and/or sale, with or without any financial pre-arrangements being made with entrepreneurs, buyers and other third parties.

There were stopped following a decision by the Extraordinary General Assembly that partners held on 4 July 2003. This was, however, contested by the Management Board, who, of its own initiative, decided to revive the artisanal exploitation of the partnership's deposits on 29 October 2003. This artisanal exploitation was handed in to the company, SOMIKA, which was contracted for handpicking and custom-feed processing.

Operating results showed a cumulated loss to the tune of 2,174,897 USD by 31 December 2003, attributable to GCM in proportion of its share in SMKK Sprl's capital. It is important to signal that GCM has not yet receive any dividends.

The management of this partnership, which is solely run by the private partner, has proved to be inefficient and hostile to GECAMINES.

Both MEKIOR and COFIPARTNER have shown they did not have the financial incapacity to invest in the partnership.

E. Conclusion

In view of the above, the Commission recommends the cancellation of this contract, as demanded by GECAMINES itself, as commitments were breached by partners with little financial and managerial capacity.

2.2.9 Société de Développement Industriel et Minier du Congo (SODIMICO)

A. Identification of the Company

The company, Société de Développement Industriel et Minier du Congo (SODIMICO), is a public enterprise of industrial and commercial nature, created by decree No131/2002 of 16 October 2002. Its headquarters are in Lubumbashi. SODIMICO has the following corporate goals :

- prospecting and exploiting mining deposits
- extraction of mineral substances coming from these deposits
- industrial development, commercialization and sale of the products coming from these deposits, in either raw or processed form.
- Take a stake in cobalt and copper mining companies
- Exploitation and commercialisation of precious stones
- Establishment and development of the mining industry, with or without national and foreign partners
- Any other operations related to mining and industrial development, central or peripheral to the activities listed above, that are necessary fully to meet the company's objectives.

SODIMICO's management committee comprises 5 members. Yet its Administration Board has yet to be put in place

B. Timeline and weaknesses of SODIMICO

SODIMICO was created by presidential decree in January 1969, with the participation of two shareholders, who share the company's capital as follows:

- 20% Congolese State
- 80% Nippon Mining Corporation of Japan

Operations at the mine and the concentrator in Musoshi started in October 1972, with an annual production capacity of 35,000 tonnes of copper in a 30% concentrate, that is exported for processing to Japan. The mineral extract of this mine show a copper content of 2.5%.

The exploitation of the Kinsenda mine started on 02 October 1978. The mineral extract of this mine is of higher value, with a copper content of 5%. This mine is located 50km away from the concentrator, whose initial capacity has been maintained through the option to reduce calls to mines.

On 10 June 1983, in response to the government's refusal to extent the tax holiday period that had come to an end, Nippon Mining Corporation withdrew and transferred its stake to the Congolese State, against a commitment to pay USD50 millions.

In August 1983, PHILIP BARATT KAISER (PBK), a Canadian company, signed a management contract with the Government, after [winning] a restricted international call for bids. During the period of the contract (3 years), PBK did not undertake any investment works to develop the mine. The working capital from the exploitation of the mine deposits, which the Japanese had got ready before giving them up, was spent to pay salaries and fees.

On 29 April 1987, the Congolese government denounced the contract and transferred the company's management to GECAMINES. A cash reserve fund, worth approx. USD30 million, was reconstituted thanks to the exploitation of mineral reserves that were still within reach and available. In August and September 1998, the State-owner used the money to reimburse the debt

of Nippon Mining Corporation, which was reduced to USD 17 millions after negotiation, the remaining being used as dividends for the Public Treasury.

Deprived of its own means of development and managed by GECAMINES on the basis of a management contract that neither made compulsory nor allowed the company to become an integral part of GECAMINES units of production, SODIMICO began from then a long period of decline, and the mines of Kinsenda and Musoshi became flooded by 1988 and 1989 respectively.

This situation led to deteriorating social conditions for the workers, who started a strike that brought the mining exploitation to a complete standstill from 18 March 2002.

Hence, the end of SODIMICO activities was explained by a lack of investment that paralysed all development works at the two mines, but also by the government's decision to transfer these deposits to a third party, without any compensation in return. A financial compensation would have permitted this public enterprise to guarantee its survival through taking stakes in partnerships with holders of mining deeds. Hence,

- KIMPE deposit was leased to [*the benefit of*] COLMET, the partner of KGHM (of Poland) for a ridiculous fee of USD 5,000 per month, on the basis of a decision made by the present Management Committee, which remained very divided on the matter, but was put under pressure from the authorities [*tutelle*]
- The Lonshi deposit was transferred by the authorities [*tutelle*] on 25 February 2000 to FIRST QUANTUM MINERALS without any compensation for SODIMICO, and the Mining Cadastre attributed to the same enterprise SODIMICO's Zone A (reserves located in the Sakania zone)
- The authorities [*tutelle*] transferred the mining concession B, near Kambove, to MWANA AFRICA (formerly known as AMERCO), without any compensation for SODIMICO

C. Analysis and Observation

To date:

- Musoshi and Kinsenda mines are flooded and at a standstill;
- The concentrator has been obsolete and at a complete standstill since 18 March 2002;
- The personnel have remained completely inactive and are owed 60 months in salary payment arrears.
- The Congolese State has transferred all the deposits to private companies without any compensation for SODIMICO, with the exception of the agreed creation of MMK, for which the transfer of assets still needs to be regularized and a number of articles on the company's statutes need to be harmonized.

The Management Committee set up by the State is divided and in conflict. The Executive Director, the Deputy Executive Director and the representative of the trade union have sidelined the Technical Executive Director (ADT), the Financial Executive Director (FED), from the management of the company and are making decisions alone.

These three persons are accused of vandalism and [financial] embezzlement, by taking the following decisions to serve their own benefits:

- The artisanal exploitation of the deposits by the company's personnel and the exportation and commercialization of the extracted minerals to Zambia for their own use and profit;
- The sale to private buyers of the company's equipment and tools (cars, drills [*machine a sondage*])
- The embezzlement of revenues coming from the lease contract signed since 2001 for the installation of VODACOM and TELCEL aeriels on the SODIMICO concession;
- The dismantling of an electrical network, comprising a transformer electric pole and 2km of wires, that was given to Mr Denis, a person that could not be identified otherwise and is a member of the Executive Director's family, to connect and feed a privately owned sawmill;
- The lease of the KIMPE deposit to COLMET at a derisory cost that does not take into account the contractual commitments made by COLMET and SODIMICO since 18 July 1996.

A delegation of workers met with their trade union's representatives to submit to the visiting Mission of the Special Commission their difficulties essentially arising from the non-payment of their salaries and arbitrary decisions made by members of the management committee. All the workers that spoke on this occasion were summarily sacked from work by the management committee.

D. Conclusion

In view of the above, the Commission urgently recommends the following measures:

1. Suspending immediately and replacing quickly the management committee;
2. Having the management of the present committee audited by the revenue court and investigating accusations made by workers;
3. Indicting members of the management committee before the public prosecutor of the Appeal Court in Lumbumbashi with a view to starting legal proceedings over the serious misconducts they have been accused of;
4. Rehabilitating without delay the personnel that were unfairly sacked after denouncing members of the management committee to the Mission for their "uncivic" actions.
5. Considering the possibility of assigning part of the personnel to the beneficiary companies of the deposits taken away from SODIMICO in proportion of their needs.
6. Reviewing the salary situation of more than 2,300 workers that were abandoned to their sad fate by the Congolese state and eventually implementing in their favour a solution identical to that which benefited the GECAMINES personnel or that planned for the OCPT agents.

2.2.10. Minière de Musoshi et Kinsenda Ltd (MMK Ltd)

A. Identification of the Company

Minière de Musoshi et Kinsenda Ltd (MMK) was established on 29 March 2003 with a statutory capital of 250,000 FC, allocated among associates as follows:

- 20% to SODIMICO, public enterprise under Congolese law;
- 80% to enterprises belonging to the Forrest Group (EGMF, GFIA, NBLIA, AGRIFOOD, GFI and GGF)

The company has been created for 30 years from the date of its constitutive act.

B. Basic legal instruments and object of the partnership

B.1. Basic legal instruments

- Draft agreement between SODIMICO and ENTREPRISE GENERALE MALTA FOREST to undertake a feasibility study, signed 4 December 2002;
- Constitutive act of MMK SARL, signed 29 March 2003;
- Presidential decree No067/2003 of 3 April 2003 giving consent to the creation of the Limited Liability Company, MMK;
- Ministerial Order No Cab.Mines-Hydro/01/509/03 of 3 April 2003 on the transfer of mining deeds that SODIMICO owned for the Musoshi, Kinsenda and Lumbembe concessions, including the exclusive prospecting zones around them, to MMK.

B.2. Object

The company MMK Ltd has for objective, direct or indirect, for its own use or the use of a third participating party, in RDC or overseas, the exploitation of mines and quarries, mineral concentration, production of alloys or metals, commercialization and sale of mining products coming out of production or concentration activities.

The company can also take part in any operations that are, directly or indirectly, linked to this object or are likely to support an accumulation of its wealth or an increase in its revenues.

C. Analysis and Observation

C.1. At a legal level

1. On Article 6.1 of MMK statutes, the contributions of the companies belonging to the Forrest group are based on the financial requirements for MMK's development, which the feasibility study estimated at USD 41,042,000 for the period 2004-2010. To this date, according to EGMF statement, this Group [or EGMF?] has only invested USD 7,000,000. Group Forrest's contributions to MMK's capital will only be released progressively as investment materializes. It is hence incorrect to state in paragraph 4 of article 6 that contributions as determined in articles 5 and 6 have been observed and effected;

2. To this date, SODIMICO's partner in MMK has begun works to install an oven for the production of alloys and has obtained from the Minister of Mining the transfer of mining deeds. But SODIMICO's assets, while transferred to MMK, are still, in effect, part of SODIMICO's capital, because the procedure used for the transfer of this company's assets is in violation of the

legal arrangements No 78-002 of 6 January 1978 that apply to public enterprises and those of decree No131/2002 of 6 October 2002, concerning the creation and statutes of SODIMICO.

Indeed, Article 30 of this decree requires that the transfer of shares and properties be authorized by the Portfolio Ministry; in addition, article 7 of the same decree requires that any reduction in the enterprise's wealth be authorized by presidential decree.

3. Articles 21 and 40 on MMK statutes establish the decision quorums of the Administrative Board to an absolute majority (1/2 + 1) and those of the General Assembly to a simple majority of the votes, regardless of the number of shares each voter represents. Given SODIMICO's shares in MMK and its number of representatives – reduced to 2 out of 10 members in the General Assembly- and given the rules on the functioning of the executive organs representing companies with limited responsibility, this public enterprise has no chance to assert its rights when its views differ from those of its partners on important issues. Meetings can even be held legitimately in the absence of SODIMICO delegates.

C.2. At a financial and fiscal level

Subscriptions to the authorized capital were as follows:

1. SODIMICO:

Cash payment: 20% out of the 120,000 FC discharged

Contribution in kind:

- Mining deeds on Kinsenda, Musohi, and Lubembe concessions, including prospecting zones around these deposits;
- Industrial and metallurgic installations;
- The farm of Kinsenda and its lands;
- Machinery, pieces of apparatus, and tools;
- Past and future tax privileges (some to be defined under a common agreement);
- Office and residential buildings.

2. Companies from the Forrest Group

Cash payment:

- 80% out of the 120,000 FC discharged
- Commitment to raise finance for KMC's development

The feasibility study submitted by Forrest Group draws out an investment program worth USD 41,042,000 over the period 2004-2010 (seven years) and USD 64,472,000 over the period 2004-2020 (seventeen years).

The results of the feasibility study show, over a net total revenue of USD 264,284,000 cumulated over the 2004-2020 period, a net global revenue of USD 38,313,000 as profit for SODIMICO, equiv. to 15%, and a net global revenue of USD 122,396,000 as profit for the Congolese State

(tax on revenue and dividends, exit rights, and mining premiums), equiv. to 47%. This represents 62% for RDC against 38% for the private partner. These results are the fundamental reason behind transferring 20% of MMK's authorized capital to SODIMICO, whose installation and tools are in such a state of dilapidation and deterioration as a result of a lack of investment that they are almost of no use.

On a fiscal level, MMK benefits from the Mining Code regime, and from a number of fiscal and custom advantages granted by the Congolese State to SODIMICO in conformity with Article 6 Paragraph 2 of its statutes.

C.2. On a technical and economic level

On a technical and economic level, the options considered are as follows:

1. The simultaneous resumption of the Kinsenda and Musoshi mines was ruled out, because of the high operating costs involved in exploiting two mines that are far apart.
2. The installation of a primary grinder on the mine, as well as the transportation of the minerals on treads [*bandes transporteuses*].
3. Installation in Kinsenda of a new secondary and tertiary grinding unit with a capacity of 100,000 ts/month for an average monthly extraction of 75,000 ts.
4. Reconstitution in Kinsenda of a concentrator of modular type, re-adjusted to a projected supply of 75,000 ts per month, through the reclamation and rehabilitation of the spare parts of the existing concentrator. This option could save money on exorbitant costs in investment and in transport between Kinsenda and Musoshi.
- 5) The development of a new site [*a rejet*] and the construction of a road connection to the railway are planned.

6) Forecasted production:

- Supply minerals 75,000ts per month
- Content Cu in supply 5%
- Cu supplied in tonnes 3,750 tCu per month
- Concentrates in tonnes 7,417td per month
- Content Cu in concentrate 45%
- Produced Copper in tonnes 3,375 tCU per month
- Copper yield 89%

These parameters take into account cobalt and copper prices, at a fixed price of 15 USD/lb and 1 USD/lb respectively.

The project's calculated internal rate of return (after tax) was 27.2%.

C.3. On a social level

The Mission of the Special Commission of the National Assembly sent to Katanga made the following observations:

- 1) To this date, MMK hires 141 employees, 198 SODIMICO workers (whose salaries are paid by KMC), and 131 day labourers. Jobs are offered in priority to ex-SODIMICO workers.
- 2) The project will hire 500 employees by 2005, 900 by 2006, and 1,200 – equiv. to half of SODIMICO present staff – from 2007.
- 3) Beside providing healthcare to its own staff, MMK supplies pharmaceutical products and makes contributions towards the payment of Paul Muhona hospital staff's salaries in Musoshi.
- 4) At the Kinsenda farm, 50 ha are exploited at present. Rehabilitating the farm will allow to sow 200 ha in 2006. An expert agronomist, who already provides assistance for the re-conversion of a portion of ex SODIMICO workers, has been recruited for this project.
- 5) The electric post at Kasumbalesa has been rehabilitated by MMK, which also guarantees its maintenance and a regular supply of electricity to the population. The same applies for water treatment installations.
- 6) In partnership with the Belgium Technical Cooperation, MMK has begun to rehabilitate the sewage system.

D. Conclusion

In view of the important delays accumulated in the mines' development works, the dilapidated state of the infrastructure, and the flooding of the mines, heavy infrastructure rehabilitation and development work will have to necessarily precede any resumption in activities. This is why the commission encourages this partnership to inject fresh capital into this company imperiled by a lack of investment.

The Commission recommends, however, that MMK statutes be revised with a view to:

- 1) Clarify contributions that have already been discharged and those that will be disbursed when fresh capital is needed for investment;**
- 2) Decide on a level of quorum and qualified majority that give SODIMICO a blocking minority in the Administrative Board and during the General Assembly's meetings.**
- 3) add to the statutes a commitment by enterprises belonging to the Forrest Group to respect the projected calendar for financial disbursements and the conditions that apply to the allocation of capital.**

The Commission also recommends partners to proceed with the legal transfer of SODIMICO's capital [*patrimoine*] to MMK.

The Commission judges that the option put forward by the MMK project's feasibility study of abandoning the exploitation of the Musoshi mine and setting the cut-off grade at 2% presents the inconvenience of creaming off the best of the mining deposits. The future resumption of the exploitation of the Musoshi minerals (2.5% Cu) without the possibility of mixing them with the Kinsenda mineral might not be viable economically. Hence, **the Commission recommends partners to reconsider this option.**

2.2.11. The Groupement pour le traitement du terril de Lubumbashi (GTL Ltd) and Société congolaise pour le traitement du terril de Lubumbashi (STL Sprl)

A. Identification of the Company

The Groupement pour le traitement du terril de Lubumbashi (Grouping for the processing of Lubumbashi's pit), GTL, a company under British law, was established on 14 April 1998, with an initial statutory capital of USD115 millions, allocated between partners as follows:

- 20% GCM (Gecamines), public enterprise under Congolese law;
- 25% GGF (Groupe Georges Forrest), company under Luxembourg law
- 55% OMG BV, company under Dutch law

After taking advice from specialized firms (Price Waterhouse and Arthur Anderson), the three partners decided to establish GTL in the UK on the Island of Jersey. Two reasons were given to justify this decision:

- The need to present ownership guarantees on the company's assets to mobilize finances;
- The absence of double-taxation agreements between DRC and the three partners' countries of origin.

GTL's three shareholders have also set up STL, Société congolaise pour le traitement du terril de Lubumbashi, a private company with limited responsibility under Congolese law and with an authorized capital of 250,000 FC allocated as follows:

- 97% GTL Ltd
- 1% GCM
- 1% GGF
- 1% OMG BV

GCM remains the owner of the Lubumbashi's pit, from which cobalt-enriched clinkers are sold to GTL, according to the modalities set out in a long-term sale contract. GCM also remains the owner of the zinc that is recovered and conditioned during the processing of the clinkers, which it commercialises for its own profit.

The life of the project is estimated at 20 years.

B. Basic legal instruments and object of the partnership

B.1. Basic legal instruments:

- Joint venture agreement between GCM, GGF, and OMG BV signed on 24 June 1997;
- GTL Statutes, as registered in Jersey on 14 April 1998;
- Convention between GTL and the Congolese State, signed on 18 September 2001;
- Presidential Decree No10/2000 of 06/2/2002, giving consent to this convention;
- STL's Constitutive Act, signed on 08 September 1999.

GTL's Constitutive Act, which is registered in the UK on the Island of Jersey, has been submitted to the Commission. It clearly and frequently indicates the identities and addresses of the three shareholders, OMG BV, GGF and GCM. It removes any confusion on the authenticity of GTL, which is not a phantom company.

B.1. Object

GTL Ltd has for object to build and install a processing plant, to transform Lubumbashi clinkers in DRC, and to commercialise and sell the Co-Cu alloy and other elements. The company has also the right to take on any activity that is incidentally related to, or a direct consequence of, all the above operations.

In order to meet its corporate objectives, GTL signed on 24 June 1997:

- A long-term contract for the sale of clinkers to GCM;
- A long-term contract for the sale of Cobalt alloy to OMG;
- A custom-feed clinkers processing contract with STL Sprl.

STL Sprl has for object the exploitation of installations in Lubumbashi to transform the clinkers of Lubumbashi coalpit into cobalt alloys for GTL under the terms of a custom-feed processing contract. STL can also take part in any operations that are directly or indirectly related to its corporate objectives and that are likely to increase its wealth [*patrimoine*] and revenues.

C. Analysis and Observation

C.1. On a legal basis

Articles 4.3, 4.4, and 4.5 of the joint venture agreement and Articles 63, 69, 92, 99, 104 and 105 of the GTL's statutes establish that:

- The number of administrators and representatives of the company's shareholders is 6 members for the General Assembly and 6 members for the Administrative Board, 3 to represent OGM BV, 2 to represent GGF and 1 to represent GCM
- The quorum for all decisions of the Administrative Board is 4 members, present or represented.
- The quorum for the decisions of the General Assembly is 66% of the votes.

With these quorums, there is a risk of holding meetings and taking important decisions even in the absence of a GCM delegate. Whether they relate or not to questions as important as the revision of contracts signed between partners, the liquidation of the joint venture company, the approbation of the annual budget, or an increase in the company's capital, meetings where the number of administrators or votes is sufficient are in effect valid.

STL statutes in Articles 31 and 33 establish quorums to even lower levels, that is "the presence of at least two associates", and "4/5 of the votes of the associates that are represented".

The long-term contracts for the sale of cobalt alloy and that of clinkers stipulate that the joint venture company is to constitute and maintain a buffer stock of 2,500 Tco of alloy in KOKKOLA in Finland. OMG only needs to pay for the amount of stock it withdraws at a time. This stock represents a cost and loss of earnings for GCM, which cannot make money out of it unless OMG consumes it.

Given the low level of production of the Lubumbashi processing plant, this stock has to this date not been constituted.

C.2. On a technical and exploitation level

The annual production capacity of the plant as projected in the agreements is:

- 4,500 Tco
- 2,500 Tcu
- 1,500 TZn

The installations started their activity in November 2000.

Production ('000 tonnes)

	2000	2001	2002	2003	up to end-August 2004	
Co	0	1,825.4		1,932.1	3,061.6	2,035.3
Cu	0	1,152.5		1,290.1	1,887.4	1,193.3
Zn	537	7,422.0		7,508.0	9,846.0	7,236.0

Average content rate

- 17.5% Co instead of the projected 30%
- 11% Cu instead of the projected 20%

This feeble performance compared with the projected figures in the feasibility study is explained by technical problems, which started at the beginning of the plant's operation and which are related to dusting under-capacity, the position of the oven refractories, and delays in the installation of a converter.

Several months of stoppage were required to do some improvement work on the installations. The rise in production in 2003 may be the result of these improvements.

C.3. On a financial and fiscal level

Authorised capital: USD 115 millions

Subscribed capital: USD 118 millions and USD 5 millions in issuing rights

In conformity with the signed contracts and agreements, OMG financed 20% of GCM's shares in the company's capital. GCM was to reimburse OMG using proceeds from the sale of clinkers.

At the end of the month of September 2004, GCM entirely paid off its shares in the capital of GTL, which paved the way for an average monthly revenue of USD 2.3 millions from the sale of clinkers.

Financial Results (USD)

	2001	2002	2003
Sale of alloys	8,593,254	20,534,724	34,103,934
Net results	(8,796,694)	(20,027,682)	(5,278,012)

Given the value of the sales achieved at the end of August 2004 and the persistence of favorable metals prices, sale proceeds for 2004 are estimated at more than USD 80 millions, with net results exceeding a positive USD 9 millions.

The GTL project benefits from the Investment Code's tax privileges.

C.4 On an economic and social level

The investment has permitted to hire 360 workers, including 15 expatriates.

SNCC alone is in charge of the transportation for export of more than 25,000 tonnes of cobalt alloys per year, a source of substantial revenues. SNCC is also in charge of transporting the tonnage of zinc produced and transferred to GCM.

STL signed a contract with SNEL to supply the plant with electricity with a subscribed capacity of 40,400 Km. Electricity consumption represents the largest category (23%) of STL's global operating costs. The annual electricity bill for 2003 totalled 4,147,699 USD.

C.5 Dispute between GECAMINES and OMG

The objectives of the project, as agreed in the agreements and contracts aimed to retrieve cobalt and copper without taking into account the **germanium** present in one part of the pit.

After negotiations, an agreement was signed in May 2004 between OMG and GCM. The agreement engages OMG to pay royalties to GCM (7.5%) on the sale of crude germanium oxide that it retrieved from the alloy and sold. It was agreed that this payment should apply retroactively on germanium sales from January 2001. It is worth noting, however, that the

Commission has been unable to gather enough elements of information to offer an objective advice on the exact value of these royalties.

The services of GCM's Participation Direction have criticized GCM for not monitoring closely enough the agreed clauses of conventions and contracts. In the partnership between GTL and STL, this notably relates to:

- Irregular holding of statutory meetings and the absence of GCM delegates in some of the meetings
- Lack of official data [*formalisation*] on the physical conditions attached to the delivery, weighting, sampling and analysis of the clinkers sold to GTL.

On this subject, GECAMINES partners have asserted that clinkers are delivered in a totally transparent way, in conformity with the modalities agreed with GCM experts. A GCM delegate, who has been permanently mandated to the project, should in principle ensure the control of inputs and outputs.

Finally, GCM has complained of important delays in GTL transmitting its financial statements for 2001, 2002 and 2003.

D. Conclusion

The project GTL-STL holds the merit of having been implemented, and as inherent to any big projects, of having had positive impacts on the local environment, including the building of new infrastructure, jobs creation, and technology transfer. The level of investment is the highest of all the partnerships initiated by GCM. The company also uses the latest technology available. The presence of Otokumpu [Footnote 50: a Finland company of international renown specialized in metallurgic research] in OMG undeniably adds some scientific value to the project.

Nonetheless, despite the economic and social benefits of the project, the Commission recommends:

D.1. to GECAMINES and its partners

- 1) to consider all measures that are susceptible to lower the costs of production, in order to guarantee lasting financial fallouts for investors, and eventually, the Congolese state. This is because the project - whose profitability strongly depends on cobalt prices as well as production costs - has not yet reached its projected production targets, as a result of technical difficulties and the absence of installations for a converter, which has also restricted the alloys' contents in Cu and Co.
- 2) to formalize the conditions of extraction, weighting, sampling and analysis of the clinkers that are sold to GTL, even though current practices are deemed transparent and in conformity with the conditions agreed with GCM experts.

D.2 to GECAMINES

- 1) to renegotiate, with a view to canceling them, the unfavorable conditions attached to the constitution of a buffer stock of 2,500 Tco;
- 2) to renegotiate a level of quorum and qualified majority that could guarantee GECAMINES a blocking minority of votes, when important decisions are made concerning the partnership between GTL and STL;
- 3) to increase its involvement in the monitoring and control of the project's activities.

2.2.11. Tenke Fungunrume Mining Company, TFM, SARL

2.2.12 Anvil Mining Congo

2.2.13 Compagnie Miniere De Sakania (COMISA Sprl)

A. Identification of the company

In his letter No1904/Cab.Minis/FKM/DKM/MN/2000 of 5 February 2000, the Minister of Mining allocated to Bwana Mukubwa Mining Limited - a company under Zambian law, which is a subsidiary of FIRST QUANTUM MINERALS Ltd, a company under Canadian law - the prospecting zone ZER LVIII/KT in Lonshi and Sabwe, whose deposits were taken away from SODIMICO.

A mining convention between DRC and Bwana Mukubwa Mining Ltd was negotiated, but never signed, between the parties.

On 15 May 2000, the company Bwana Mukubwa Mining Congo, BMMC Sprl, was established with an authorised capital of 1,000,000 FC and divided into 1,000 shares, allocated as follows:

- 900 shares Bwana Mukubwa Mining Ltd
- 100 shares Raphael NGOY

On 3 December 2001, in order to avoid any confusion between BMMC sprl, which is under Congolese law and its shareholder, BMM Ltd, which is under Zambian law, BMMC's General Assembly agreed to change the name of the company to COMPAGNIE MINIERE DE SAKANIA (COMISA ltd).

During the meetings of the General Assembly held on 12 November 2000, 04 March 2002 and 24 March 2003, changes were made to shareholders and the repartition of the company's capital, as follows:

- 999 shares FIRST QUANTUM MINERALS Ltd
- 1 share Raphael NGOY Mushila

B. Basic legislative instruments and object of COMISA

B.1 Object

COMISA Sprl has for main object - in DRC and overseas, by itself or through the use of third parties, individuals or companies, conjointly, through shares, or under any other forms - all the activities that are directly or indirectly linked to the following:

1. the prospecting, research, exploitation and processing of various mineral substances, as well as any other related activities;
2. the production of aluminum, lead, zinc and pewter;
3. the production of copper and cobalt, as well as other non-ferrous metals;
4. Production of metals and precious stones, such as gold, silver and diamond;
5. Reclamation of metals contained in waste and scrap;
6. Commercial activities related to the wholesale purchase or sale of merchandises of all kinds;
7. Various industrial activities related to the development in the research, prospecting, exploitation, processing or cutting of metals and precious substances.

The company can undertake, in DRC as well as overseas, any activity and financial, industrial, commercial, and property investment operations that are directly or indirectly related to the company and its corporate objectives.

The company has been established for an indeterminate period. It is subject to the application of the Mining Code of 11 July 2002.

B.2. Basic legal instruments

1. Statutes drawn up by the notary on 15 May 2000 and subsequently changed on 02 November 2001, 08 January 2002, 10 April 2002 and 27 May 2003.
2. New trade register NRC 48,866 Kinshasa;
3. National identification No01-118-N39841T

C. Description of the project

The project consists of developing the exploitation of the copper monometallic deposit located in Lonshi, near Sakania, in the province of Katanga, near the border between DRC and Zambia.

The projected global investment was estimated in the range between USD 25 and 30 millions. The feasibility study demanded by the Commission has not been handed in.

The Lonshi deposit is composed of 18% of oxidized minerals, located in the upper part of the mine that is currently exploited as an open pit. Its life expectation, at current production rate, is estimated at 4 years.

82% of the reserves are underground. They are constituted of mixed and sulfurised minerals to be treated underground. The feasibility study of this second phase of mining exploitation has not yet been elaborated.

The Lonshi mine is located 45km away from Ndola, where the metallurgic processing plant belonging to Bwana Mukubwa Mining Ltd, the subsidiary of the common group FIRST QUANTUM MINERALS Ltd, is located; crude minerals is delivered for processing by road from Lonshi.

The open pit exploitation of the Lonshi mining deposits started in August 2001 and is operated by 26 articulated, 40-tonnes capacity, VOLVO trucks and 6 HITACHI diggers. Statistics on production from August 2001 to end June 2004 give the following results on extraction and exportation:

Production data

	x1,000 tonnes Minerals	soluble content % Cu	x1,000 tonnes soluble copper
2001	337	4.87	16.4
2002	1,246	4.23	52.7
2003	713	4.78	34.1
End June 2004	179	5.31	9.5
Total	2,475	4.55	112.7

Export data

	Dry tonnes Minerals	soluble content % Cu
2001	9,741	4.66
2002	261,164	4.80
2003	1,218,903	4.82
End June 2004	192,326	5.57
Total	1,682,134	4.90

D. Commercialisation

The crude mineral that is extracted from the Lonshi mine is exported to Ndola, where it is processed by direct lixiviation in a plant belonging to the company Bwana Mukubwa Mining Ltd. The mineral is sold at a fixed price, as agreed in a signed contract between COMISA Ltd and Bwana Mukubwa Mining Ltd, two companies of the same group First Quantum Minerals Ltd. The Commission has verified the fairness of the sale price formula compared with those concluded in other markets under similar conditions.

E. Financial results

Results for financial year ending 31 December 2002	(614,218 USD)
Results for financial year ending 31 December 2003	+ 352,264 USD

F. Analysis and Observation

F.1. On a legal basis

COMISA has not transferred to the Congolese State 5% of the company's authorized capital shares, in conformity with Article 71 of the Mining Code, under the pretext that it obtained the deposit under the common law regime, before the mining code was enforced.

F.2. On a technical level

The mineral is exported and sold crude and without adding value in DRC. COMISA explains this situation on the short life cycle of the first phase of the exploitation, which involves open pit mining and cannot justify or pay off any investment in the construction of a processing plant, while there is already one with enough capacity near Zambia.

Without presenting a feasibility study, COMISA has promised to build a concentrator and probably a thermal processing plant from 2006 to transform the mixed and sulphurised minerals that will be produced in phase 2 of the exploitation.

The Mining Cadastre attributed to COMISA on 7 March 2003 new deposits of the former Zone A of SODIMICO reserves, situated around Sakania.

COMISA plans other studies for the development of the project LUFUA, which has very interesting copper and cobalt deposits

A set of generators presently supply the electricity needed for the exploitation of the mines. COMISA is in negotiation with ZESCO in Zambia and ZNEL in DRC to extend the electric cable network from Ndola to Lonshi.

F.3. On a commercial and exportation level

The transportation of crude mineral is operated by trucks, while the services of the Mining Division delivers the attestation required for each daily consignment.

The OCC personnel check the trucks out. Weighting then takes place without any control by OCC in the Ndola installations and on scales belonging to Bwana Mukubwa Mining Ltd, which then transmits its report to the OCC personnel. Similarly, Bwana Mukubwa Mining Ltd carries out the sampling and analysis of minerals in its Ndola installations to determinate their copper content and humidity rate without any control by OCC.

F.4. On a social level

COMISA hires a total of 475 employees, including 15 expatriates and 100 day labourers.

An area destined for the construction of social infrastructure has been awarded. A construction project of 80 houses is planned before the end of 2005. A health center has already been built.

The 45km long road Lonshi-Ndonla has been developed; maintenance work is carried out on a regular basis.

COMISA sponsors several academic activities at the polytechnique faculty of the University of Lumbumbashi.

Several building works have been sub-contracted to small and medium Congolese enterprises, which employs locally recruited personnel.

The wages are calculated in Congolese francs, but paid in Zambian Kwacha. Kwachas are purchased on the free market and without the intermediary of the Central Bank of Congo.

F.5. On a fiscal level

COMISA is subject to the mining code in force from 11 July 2002. The relations between COMISA and the local administration have been hampered by delays in establishing the administrative services and organs in charge of implementing the mining code and the lack of confirmation and transmission of orders related to the latter's applicability; there have been delays in collecting taxes and fees owed to the State, as a result.

COMISA paid to the State and public services a total amount of 1,099,194.92 USD and 245,266,214 FC, equiv. to 671,962 USD, from February 2002 to August 2004.

G. Conclusion

In view of all the above, the Commission recommends:

G.1. to COMISA

1. The urgent installation of an electronic scale in Lonshi so that the OCC personnel can control and monitor the weighting of all products destined for exports;
2. Build and equip a laboratory for the analysis of minerals in Lonshi, to allow OCC to control the operations.
3. The presentation of a feasibility study for the first and subsequent phases of mining exploitation in conformity with the Mining Code and other contractual commitments to ensure eventually that value is added to the minerals in DRC through local processing and transformation;
4. transfer to the Congolese state 5% of the company's authorized capital shares, as requested under the mining code;
5. Replace progressively the Zambian personnel with a national workforce to be recruited among SODIMICO or GECAMINES skilled personnel.

COMISA will be deprived of all mining deeds, should it fail to comply within three months after the adoption of this report by the National Assembly.

G.2. to the Congolese Government

1. to check and have checked the commercialization contract signed between two enterprises of the same group to ensure its fairness and ensure the safeguard of DRC's interests;
2. to request from COMISA that it respects change regulations when purchasing Zambian Kwachas to pay the personnel's monthly salaries;
3. to collect the State's 5% of COMISA's authorized capital.

2.2.14 The Issue of Artisanal Mining Exploitation in Katanga

A. Legal framework

Article 26 of the Mining Code sets out: *“without prejudice to Article 27 provisions, only adults of Congolese nationality can obtain and hold artisanal exploitation permits and traders permits.*

In addition, Article 109 in Title IV of the Mining Code defines the zones for artisanal exploitation with the following terms: *“when the technical and economic factors that characterize some gold, diamond, and other mineral substance deposits do not allow for an industrial or semi-industrial exploitation, but allow for an artisanal exploitation, these deposits are established – within determined geographical boundaries - as zones for artisanal exploitation. Artisanal exploitation zones are established by Ministerial Order, following advice by the Direction of Mining and the concerned Provincial Governor”*

Paragraph 3 of the same article sets out the following provision: *“Mining perimeters subject to mining rights in course of validity can not be transformed into artisanal exploitation zones. Such perimeters are expressively excluded from the artisanal mining zones established in conformity with the provisions set out in this Chapter”*.

Well before the promulgation of the present mining code, the Governor of the Province of Katanga took the decision No10/1692/CAB/KAT/2000 of 7 August 2000 mandating GECAMINES to establish on behalf of DRC a structure in charge of:

- buying the raw minerals produced on artisanal exploitations
- the custom-feed processing of these minerals
- commercializing the resulting output
- paying the various participants

with a view at the time to generating jobs and revenues for the populations and artisanal miners and prohibiting the exportation of raw minerals.

GECAMINES was given the responsibility to develop this structure in an autonomous company within three months after the decision was made.

This is why GECAMINES created a new department named NOUCO, which was to cooperate with the artisanal mining association, Association des Exploitants Miniers et Artisanaux du Katanga (EMAK). The latter is an association [ASBL] established on 7 August 2000 to provide a

framework to defend the interests of artisanal miners and represent them in all their relations with NOUCO.

EMAK takes on globally the costs of stocking, transporting, billing and selling its members' products to NOUCO and signed with GECAMINES a draft agreement on the delivery of cobalt minerals to GECAMINES.

Hence, legal instruments upon which the artisanal mining exploitation of Katanga is based and organized are:

- the Mining Code
- Mining Regulation
- Decision N010/19692/CAB/GP/KAT/2000 of the Governor of the Province of Katanga, signed 7 August 2000
- NOUCO Statutes (not submitted to the Special Commission)
- Draft agreement No410/6775/SG/GC, related to the delivery of cobalt minerals to GECAMINES, signed 7 August 2000 between GECAMINES and EMAK;
- EMAK Statutes (not submitted to the Special Commission).

B. Present situation on the ground

The artisanal exploitation of the mines of Katanga has become extensive. This activity employs 60,000 artisanal miners and 130 identified merchants.

Despite the logistic instruments put at GECAMINES's disposal, NOUCO's structure has ceased all activity and not paid off its debts to the detriment of the artisanal miners. NOUCO owes a debt exceeding 1 million of USD to EMAK as a result of non-payment for the minerals that were already received and priced. No investigation has been carried out to analyse the causes of NOUCO's failure and establish where responsibilities lie. The managerial staff in charge of running NOUCO and blamed for the misappropriation of funds have remained unpunished.

COMIDE, Compagnie des Mines et de Développement, that GECAMINES created in replacement of NOURO with the statutes of an autonomous company, has not accomplished its mission either. Its managers carry out artisanal mining exploitation as they please and for their own benefits.

Today, GECAMINES installations and mining concessions are invaded by diggers of all horizons composed of uneducated children that are at the pay of merchants and trading posts owned essentially by foreigners of different nationalities (Libanese, Chinese, Indian, Pakistanes, Korean...) which operate and work with tourist visas delivered by DRC embassies in their countries of origin, as indicated above.

GECAMINES itself, which lacks sufficient material resources, resorts to handing over artisanal exploitations to expatriate companies (BAZZANO, SOMIKA and CHEMAF) to feed its industrial installations; these companies take advantage of so-called "collaboration" contracts that are abnormally juicy and that pay them in kind by letting them keep half of their production, whose quantity is neither correctly nor sufficiently controlled by GECAMINES.

GECAMINES's mining concessions are also invaded by uncontrolled elements of the army, which take to artisanal mining and that are at the source of insecurity for both GCM and diggers that are often forced to work for free for their benefits. For all that, it is the Tenke-Fungurume site, which is exploited artisanally by the military, that is at the center of a formal demand to DRC and GECAMINES by LUNDIN, who is GCM partner in TFM.

As noted above, private enterprises that are partners with GECAMINES or holders of mining deeds given by the Ministry of Mining, take to artisanal mining on mining concessions destined for industrial exploitation, for which they lack sufficient material resources. These are the cases of CHEMAF, Congo Minerals, SMKK and other identified and non-identified companies.

The holders of purchasing permits for mineral substances produced on artisanal exploitations establish trading posts and warehouses that are leased or bought around GECAMINES mining concessions, and where they purchase products supplied by artisanal diggers, which are again in this case, children.

The zones reserved for artisanal miners are in general far from the main trading and consumption centers and the access roads. They contain poor quality minerals.

Despite the high prices for metals (cobalt and copper) on the international markets, the pay that artisanal miners and Congolese merchants receive is derisory. Artisanal mining benefits mostly trading posts and has not permitted to create, as anticipated, a middle class in the Province, or even improve the purchasing power of the population.

No provincial services nor GECAMINES are in a position to supply with reliable statistics on production from artisanal mining exploitation.

E. Conclusion

With all that, the artisanal exploitation of Katanga mines is a self-service and anarchist market to the limit of the informal, from which the country does not actually get any substantial benefits. It allows at the most poor people to survive temporarily. In these conditions, it would be illusory to rely on artisanal mining exploitation to generate financial resources, which DRC in general and Katanga in particular need to support reconstruction.

The failure of artisanal exploitation in the Province of Katanga is imputable to:

1. The Ministry of Mining and its services, which have:
 1. Granted mining deeds in excess without ensuring that the modalities and enforcement conditions of the mining code, as set out in the mining regulation of 26 March 2003, are respected;
 2. Granted mining deeds without seeking the advice of the provincial services on the respect of the conditions of eligibility.

3. Granted authorizations for the export of raw minerals without distinction or respect for the conditions set out in the mining regulation, in particular that on concerning processing possibilities on the national territory to a lesser cost;
2. to the tolerant and lax attitude of Gecamines Management, which chose the easy option by yielding the organization of artisanal mining to foreign private companies to feed its plants, and which fell short of its responsibilities assigned by the provincial political authorities on the organization and monitoring of NOUCO and EMAK activities, as a result of concealed interests and lack of will.

Hence, the Commission recommends:

1. to the DRC Government:

- to initiate a control of all artisanal mining exploitation activities so that they conform with the mining code and regulation;
- to forbid and severely punish child labour
- to give COMIDE *** 's notice to fulfil its contractual obligations by undertaking effective activities of mining production within 6 months, or else be disbanded.
- To give Gecamines the means to rehabilitate quickly and progressively the refineries of Shituru and Luilu, whose capacity could easily absorb the totality of minerals resulting from artisanal mining.
- To withdraw all the authorizations to export crude minerals that were given to trading posts that purchase minerals produced on artisanal mining exploitations, namely, SHEMAF, SOMIKA, and BAZZANO;
- To give the authorization to purchase minerals stemming from artisanal mining only to trading posts that have built installations that are viable and conform with hygienic and environmental regulations and that can add value to the minerals locally through processing.
- To commission an audit by the Revenue Court on the reasons for NOUCO's bankruptcy and all the prejudice caused to artisanal miners.

3. to Gecamines:

- to terminate the exploitation contracts, Hand Picking, that were signed in violation with the mining code with the foreign private companies, SHEMAF and BAZZANO, which received disproportionate revenues when compared with the task they have accomplished and the costs that they have incurred.
- To put into order artisanal mining exploitation by:
 - a. channelling the minerals to its processing plants;
 - b. promoting with the help of EMAK the emergence of a middle income class and an increase in the purchasing power of former Gecamines staff that retired voluntarily and are looking for new jobs;
 - c. strictly controlling and prohibiting child labour

- To proceed with the appraisal of partnership contracts signed with private companies that benefit from mining concessions and check that the contractual engagements and the mining code are respected, with regards to:
 - a. undertaking a feasibility study within an agreed period of time;
 - b. starting industrial exploitation within an agreed period of time or ordering equipments and engines needed for this type of exploitation
 - c. the proliferation of the deposit by artisanal mining [??]
 - d. conforming with all the other contractual engagements

2.2.15 Options for the Rehabilitation of Gecamines and the Mining Industry in Katanga

A. Issues concerning the mining industry in Katanga

Since it was established following the nationalization of the Union Minière du Haut Katanga in 1967, Gecamines has followed a route that was characterized until 1991 by the will to maintain the country's traditional position as the world's fifth largest copper and first largest cobalt producer, despite often distabilising political events (closure of Lobito railway, the 80 day and 6 day wars in Kolwezi).

The transformation of the mineral products in the metallurgic processing plants was taken up to the phase of metal, leaving only an extra 1-2% to be refined overseas. More than 98% of the value added took place in the country. A new electro-refining plant was even built in Luilu to increase the country's value-added, but its launch was subsequently hampered by the political events of 1992.

Today, all the mining operators established in Katanga, whether they are partners of Gecamines or holders of mining deeds, do not produce nor export products that have been refined into metals. Several of them export crude minerals, while others produce mining concentrates, Cu-Co alloys or cobalt salts, whose metal content always remain below 30%, or in some exceptional cases, 45%.

Refining plants established overseas that take delivery of products from Katanga include those in Zambia, whose capacity is no in excess of the country's mining production as a result of depleting reserves. Indeed, the Zambian copper-belt deposits are depleting, while processing plants have been recently rehabilitated and hence, display capacities that can absorb more and more products from Congo. Trade usually takes place on a one-to-one and informal basis, without any transmission of statistics to the tax administration in Congo.

The first contracts signed between Gecamines and its partners that produce Cu-Co concentrates, committed the latter to hand over their products for custom-feed processing to the refining plant of Shituru. Several tones of concentrates were handed over to Gecamines, but this contractual clause is no longer respected because of the following:

- Sharp decrease in the plant's processing capacity as a result of insufficient financial resources to carry out the necessary rehabilitation and maintenance work;
- Low productivity, low recovery yield, and the absence of thoroughness in the conduct of the operations.

In the past, the commercialization of all the products was assigned successively to the Société Générale des Minerais (SGM), a subsidiary of Société Générale de Belgique, and SOZACOM renamed Gecamines commerciale. These companies were in a strong market position, given the large quantities of metal goods they sold directly and without the help of intermediaries. A small percentage was given to merchants in response of the market's needs for regulation.

Presently, the private companies that work in partnership with Gecamines are responsible for the commercialization of their mining output. Each of them sells its products to traders and often negotiates market clauses that are not favorable to Gecamines. The tractability of metal goods extracted in DRC's mines from production to marketing stages remains hypothetical; this deprives the country of statistics that could confirm its position on the international market for non-ferrous metal.

Finally, none of the present partners of Gécamines have shown sufficient mining experience for the scale of the projects that they were awarded. They all rely on Gecamines' expertise, its personnel, and international mining companies to kick-start their exploitation.

Gecamines' activities have declined following the collapse of the Kamoto mine, the departure of almost 40% of staff driven back to the Kasai region and the donors' embargo from 1992. Production was drastically reduced to a low 9,000 tonnes of cooper and 3,000 tonnes of cobalt in 2003, against an annual production of 470,000 tonnes of copper and 15,000 tonnes of cobalt in the past.

Today, Gecamines no longer contributes to the government's budget. With a debt exceeding USD 2 billions, Gecamines is now the object of several lawsuits.

Despite this gloomy picture, Gecamines still possesses three major assets that could help with re-launching its activities. These are:

1. The ownership of mining reserves in the rich and abundant deposits of:
 - 1) Kamoto, KOV, Mashamba, and Kananga in Group West
 - 2) Tenke and Fungurume in Group Centre
 - 3) The zinc, copper and sulphur mine of Kipushi
2. Competent human resources that compose the technical expertise of the national mining industry
3. Large units of production that are at a standstill and requires financing to resume operation (Mine of Kamoto, Concentrator of Kamoto, Luilu plants, Mine of Kipushi)

With all that, the mining industry in Katanga is now in a deep crisis. How to rehabilitate it? This question requires profound discussions that go beyond the remit of the National Assembly. For its part, the Special Commission contributes to the debate by making the proposals below.

C. Ways to re-launch the mining industry in Katanga and Gecamines

To relaunch the mining industry in Katanga and Gecamines, the Special Commission of the National Assembly makes the following recommendations:

C.1. General Recommendations

a. To the government

1. define a mining strategy that is clear and rational in order to make the country benefit from its mining resources and organize this sector better;
2. define a legal framework for partnerships between the state or public enterprises and private companies, which will determine guiding principles, objectives to be achieved and performance criteria so that partnerships can be assessed, instead of letting each public enterprise navigate at a rough guess and with no sense of direction
3. submit all mining conventions and partnership agreements between the State or public enterprise and private companies, of 10 years or more to a compulsory evaluation every 5 years, with the possibility of termination if the partner has failed to fulfill its obligations
4. establish a timeframe for the regular and compulsory review of tax exemptions and other fiscal or custom benefits that are granted as part of a mining convention or partnership agreement.
5. enforce without fault the Mining Code, which is favorable to the country, instead of continuing to manage the mining sector on the basis of mining conventions that often enclose one-sided financial clauses and fiscal clauses that pose a disadvantage to the country. Resorting to the conventional fiscal regime must be an exception, with limited usage.
6. to authorize artisanal mining exploitation only in strict conformity with the mining code
7. compel all public and private mining companies to respect their commitments to use the country's custom-feed services for their mining products, so that the domestic mining production is also better valued on the international market
8. prohibit totally and without delay the exportation of the country's crude minerals, given the existing custom-feed structures in the country.
17. instruct the mining public enterprises issue calls for bids when dealing with important mining deposits (KAMOTO, TENKE, FUNGURUME, KANANGA, KOV...) before contracts are concluded with third parties;
18. cancel without delay the Management Committee of SODIMCO and take the culprits to court after publication of the Revenue Court's audit report.

19. change and provide some training to notaries appointed in the Province of Katanga so that the law is correctly enforced.

b. To mining public enterprise and public services

1. always request that the contributions they make in kind or in the industry to the companies established in partnership with third parties are properly valued.
2. apply immediately the Commission's recommendations on individual partnerships.

C.2. Relaunch of Gécamines

The relaunch of Gecamines can be envisaged in two steps, that is:

a. in the short-term

1. Thanks to financing, whose amount has yet to be determined:
 - 1.1 To proceed with the progressive and partial rehabilitation of:
 - a. the concentrators in Kambove and Kolwezi
 - b. sections of the Shituru and Luilu plants that are destined for the lixiviation of concentrates coming from the Kambove and Kolwezi concentrators, as well as those supplied by partners for custom-feed processing;
 - 1.2. To purchase a production unit for sulphuric acid, to be produced from imported sulphur, whose quantities need to be assessed against the number of tonnes needed to feed the lixiviation process.
2. Organise, through EMAK, artisanal mining exploitation, from which products will be purchased by Gecamines to partially feed the Kambove and Kolwezi concentrators;
3. Cancel all the contracts signed to pay back debts to third parties and produce a debt arrears repayment plan instead.
4. Renegotiate the following contracts:
 - i. The sub-contracting of the exploitation of the mines of Tuilzembe, Kamatanda, and other mines on behalf of Gecamines, with a view to supplying the Kambove and Kolwezi concentrators
 - ii. The custom-feed processing of the concentrates produced by companies in partnership with Gecamines, with a view to supplying the Luilu and Shituru plants

5. Centralize within a new structure at Gecamines the commercialization of all finished products and provide guarantees to partners thanks to:
 - i. the sound management of inputs and outputs in the custom-feed processing units
 - ii. an opening of bank accounts “trust funds” in agreement with the partners with a view to share and allocate automatically and systematically the revenues stemming from the sale of the custom-feed processed products and owed to each stakeholder. This will stop Gecamines spending revenues owed to partners, like it has done in the past.
 - iii. A selection of buyers and negotiation of prices and below par ratings, in agreement with all partners.

3. in the medium and long term

DRC will need to resort to important external financing to support a recovery of Gecamines and the mining industry in Katanga that is strong enough to revert back to historical production levels.

The mobilization of these finances and the guarantee of access to a modern and appropriate technology require an involvement of private partners, with a view to rehabilitating, adapting and exploiting the large production units currently at a standstill as well as the large deposits that are available.

To this effect, given that the existing partnerships have been a bad experience, because their contracts enclosed disputable clauses; did not reflect any government policy with regards to mining exploitation; and were signed on a one-to-one basis,

The Special Commission recommends the following:

1. to regulate public-private partnerships by adopting a law establishing a framework to be respected to safeguard the interest of the country and promote some degree of equity.
2. to resort to international calls for bids to select private partners
3. to elaborate a schedule of conditions and terms of reference that are appropriate to each project and accessible to consortiums led by mining companies that are experienced, internationally renown, solvent and capable of mobilizing finances.
4. to plan a contractual obligation to provide financing within an agreed period of time, so that deposits do not come to a standstill.
5. to adjust the level of production to the size of the deposit
6. to create the right conditions for competition and competitiveness and avoid situations of private monopoly, when attributing projects.

In order to implement the above recommendations, prevent the confiscation of Gecamines’ equipment and deposits, on which its recovery crucially depends, and maintain a choice of partnerships in line with a global vision that Gecamines’ new structure will represent, the

Commission recommends that all the following ongoing negotiations concerning production units and mining deposits be frozen:

- 1. Kamoto mine**
- 2. Kamoto concentrator**
- 3. Kipushi mine**
- 4. Luilu mine**
- 5. Shituru mine**
- 6. Deposits of Kamoto, Kov, Mashamba east and west, and Kananga.**

Negotiations with regards to the deposits of Tenke-Fungurume can be pursued in line with the Commission's recommendations, since the deposits are already subject to a contract with Lundin.

In addition, with a view to channelling and controlling efficiently the flow of products sent to Zambia for refining, the Commission recommends that an agreement be signed on this matter between this country and DRC.

Nevertheless, the future of GECAMINES necessitates that the government decides on a clear option for the future of this public enterprise's statutes. Will GECAMINES still exploit mines directly or will it become a mining holding company that intervenes in the sector through creating partnerships with private companies and taking stakes in these companies' capital? Or will it simply be privatized? To this effect, the mission conferred to COPIREP is very important. It is essential that this mission comes to a conclusion rapidly and that the government gives it a special attention. COPIREP's report will give all the technical elements needed to explore, and decide on, the main options for the restructuring of state-owned enterprises and in particular, that of GECAMINES.