

RAID
Rights & Accountability in Development

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VIA FACSIMILE and E-MAIL: 202-477-0380

Mr. Gobind Nankani
Vice President
Africa Region
World Bank Group
1818 H Street NW
Washington, DC 20433

Re: Democratic Republic of the Congo – Mining Sector

Dear Mr. Nankani:

Thank you for your letter of 6 March concerning problems with the restructuring of Gécamines and the World Bank's support for the mining sector of the Democratic Republic of the Congo (DRC). In March and April, we had meetings with officials at the Congolese Ministry of Mines in Kinshasa and at your suggestion, with Bank staff from the DRC Country Operations Department. We would like to respond to several points raised in your letter; namely, the IMC's terms of reference; the Transitional Government's attitude to the IMC's report and recommendations; the economic potential of the mining sector in Katanga; the problem of the joint venture agreements; and the voluntary departure programme. We hope that you will take our comments and recommendations as a constructive contribution towards the goal of establishing peace and sustainable development in the DRC.

We share the World Bank's view that the mining sector in Katanga, if properly managed, could make an important contribution to help alleviate poverty. It is reassuring that the issues we raised "have been at the heart" of the Bank's policy dialogue with the Transitional Government of the DRC. As you are aware, the IMC Phase 2 report repeatedly stressed to the World Bank and the Congolese authorities about the need for all the joint ventures and preliminary agreements to be formally renegotiated, because they locked up valuable mineral reserves for lengthy periods in ways that were highly detrimental to the interests of the Congolese State. IMC questioned the capacity and competence of some of the companies to develop the concessions and warned of far-reaching economic, social and political consequences if this problem was not dealt with.

You describe the IMC report as "a scoping study" to lay out options for the restructuring of Gécamines. While this is correct, the Executive Summary of IMC's September 2003 preliminary report, *La Restructuration de la Gécamines*, makes clear that the main objective of Phase 2 of the

IMC/BCECO contract was to assist the DRC Government and Gécamines to: “rapidly re-launch the production of copper and cobalt under the control of the company and to improve the productivity and efficiency of its operations by increasing the participation of private investors”.¹

In your letter, you state that the World Bank and the DRC Government took the view that “the mining potential would be regained faster if Gécamines were to be transformed into a private holding with limited production activity, drawing as much as possible on private partnerships to restore production in the most effective way”.

Under IMC’s plan, within two years it would have been possible for Gécamines to attain production levels of 100,000 tonnes of copper and 6, 000 tonnes (or more) of cobalt, with a turnover of \$250 million. Within five years, annual copper and cobalt production could have been in the order of 200,000 T/Cu and 30,000 T/Co respectively. With the surge in commodity prices, this could have generated sufficient revenue to settle Gecamines’ external debt of \$551 million and discharge its obligations to the workforce. IMC’s estimates were based on the 2003 copper and cobalt prices, which are two to three times lower than today’s prices. It would be interesting to know whether the Bank remains convinced that these private partnerships have been the most efficient means of trying to restore production levels.

IMC believed that it would, with radical managerial changes, be possible to develop a rapid and sustainable re-launch of Gecamines’ productive capacity (*Redémarrage Rapide et Durable*). But to achieve this, urgent measures had to be taken, including the renegotiation of all the existing joint venture agreements and the suspension of on-going negotiations for new joint venture agreements.²

Up until the point when the Kamoto and KOV contracts were signed, there was every indication that the World Bank and the Transitional Government had accepted most of IMC’s recommendations for the restructuring of Gécamines. Key elements of IMC’s proposals are reproduced in the DRC Government’s November 2005 Letter of Development Policy, with one important modification: while IMC had called for a comprehensive review of all of Gécamines’ existing joint venture agreements and the immediate suspension of negotiations on the remaining mining concessions and facilities, the Congolese Government’s Letter of Development Policy states that “past partnership contracts will be reviewed and new ones in advanced stages of negotiation will be concluded” (emphasis added). This modification is at odds both with official

¹ IMC Executive Summary, *La Restructuration de la Gecamines, Rapport Preliminaire* « Dans les années 1985, la Gécamines réalisait un chiffre d’affaires annuel de l’ordre de 1 milliard de dollars, avec un cash-flow voisin de 400 millions USD (production 450 000 t Cu/an). Aujourd’hui, Gécamines produit de l’ordre de 10.000 t Cu et son chiffre d’affaires est de l’ordre de quelques dizaines de millions. » September 2003.

² IMC Phase 2 Report, « L’arrêt, comme indiqué précédemment, de toutes les négociations concernant les Projets des Partenariats en cours, déchargerait immédiatement le Management de Gécamines qui doit alors recentrer son action sur la relance de la production et l’amélioration de l’organisation, deux actions d’urgence absolue. »

Congolese policy – instructions to suspend all ongoing negotiations were issued in November 2003 from the President’s office – and was apparently contrary to World Bank advice.³

However, irrespective of whether the World Bank shared IMC’s views that Gécamines should have been relaunched as a fully fledged mining company, given the value of the assets we would urge the World Bank and the CIAT governments (i.e. those donor countries that support the transition in the DRC) – which together provide 69 per cent of the DRC’s budget – to exert maximum leverage on the Congolese authorities and to assist the new Government to find a way of revoking or renegotiating all the unbalanced joint venture agreements. Unless these contracts are amended or invalidated, we believe there will be incalculable, long-term damage that jeopardizes plans for the reconstruction of the country and increases the likelihood of further conflict and instability.

We welcome the fact that the Bank has commissioned a full legal audit by Duncan & Allan to assess the validity of each mining title. We are also pleased to learn that a separate financial audit of each of the joint ventures is being conducted by Ernst & Young, which we hope will examine problems related to self-dealing, transfer pricing and excessively generous exemptions from taxes and other duties in many of the contracts. You explain that these audit reports will be then be used as the basis for discussions with the Government “to ensure that remedial actions are taken on issues that might be identified”. But without international leadership and civil society oversight, we fail to see how the Validation Committee for Mining Titles will ever have sufficient credibility and independence to make a final and economically sound determination on the validity of contracts. We would recommend that the World Bank’s Department for Internal Integrity be requested to offer its assistance in investigating the way contracts were awarded during and after the war.

Concerns about the financial and legal aspects of the latest contracts for the Kamoto, KOV and Tenke Fungurume concessions could be allayed if the World Bank were to agree to appoint international consultants with appropriate financial and technical expertise to assist Gécamines to thoroughly examine the feasibility studies, which have already or will shortly be completed. On past performance, we do not believe that Gécamines, even with the new Sofreco management team, has the capacity to undertake the review unaided. Care needs to be taken that the prices quoted for copper and cobalt are realistic, but also reflect the current market values. The internal rate of return in the feasibility study for Kamoto, for example, is based on a very low price for copper revenue USD 1.10/lb and cobalt revenue USD 10/lbCo, whereas copper is being quoted today at USD 2.02/lb and cobalt at USD \$12/lb. (It is unclear whether the figures in the feasibility study have costs deducted.)⁴

The Private Sector Development and Competitiveness project made available \$43 million for Gécamines’ Voluntary Departure Programme to enable 10,646 employees to opt for early

³ The letter of 13 November 2003 from Mr. Samba Kaputo, the DRC’s Deputy Chief of the Cabinet, to Mr. Nzenga Kongolo, the Chief Executive of Gécamines, instructing him to suspend all ongoing negotiations between private partners and Gécamines.

⁴ Hatch, The Kamoto Copper Company Feasibility Study – Executive Summary Report, April 2006.

retirement. The project was designed and implemented without the benefit of any preliminary assessment or household surveys. Nevertheless, the IMC report warned that there was a high incidence of poverty in Katanga, which was compounded by the fact that Gécamines had not paid its workforce for almost two years. IMC reported that families were living on less than a dollar a day and could only afford to eat once a day, which was not enough to keep them in good health.⁵ The promise that those who took early retirement would benefit from a major support programme tailored to meet their individual needs, including helping them to be retrained and find new jobs has manifestly not been fulfilled.⁶ We believe that your confidence in the conclusion that “93 per cent of the employees have found new jobs” is misplaced. The evaluation’s claim is based on an estimate that 9,924 out of the 10,641 retrenched workers are involved in some kind of income generating activity. However, this is meaningless for it tells us nothing about the quality or sustainability of these activities, nor their precise relationship to the World Bank-funded programme. The evaluation notes that over 72 per cent of the beneficiaries were dissatisfied and the overall perception was that there had been little beneficial social impact or improvement in living standards as a result with the programme.⁷

We are confident that there is no disagreement between us about the need to ensure that the transfer of the DRC’s valuable mineral reserves to the private sector should be done in a transparent manner that conforms to the Congolese Mining Code, mining regulations and international best practice standards, including a credible, competitive bidding process. In a post-conflict country like the DRC, it is all the more imperative that such transfers should seek to obtain the best possible terms from these transactions to help rebuild the country’s infrastructure and alleviate the poverty of its people. In conclusion, in order to redress the calamitous situation, we would like to reiterate the recommendations made in our previous memorandum that called for:

- Total transparency with respect to mining conventions and their amendments, feasibility studies, economic models, financial plans and the remuneration obtained;
- The nomination of an independent group of experts to examine the legal and financial aspects of all the mining contracts signed by the Transitional Government against the terms of the agreements governing the transition, Congolese law and international law; and
- A criminal investigation by the appropriate law enforcement bodies in the DRC and other concerned countries in instances where there are indications of coercion, fraud or corruption in the negotiation or the execution of mining contracts signed by the Transitional Government.

⁵ *Restructuration de la Gécamines – Rapport V5. Audit Social et Environnemental République Démocratique du Congo* « Bien qu’il y ait un manque d’information sur le niveau de pauvreté à la Gécamines, et que l’Institut National de Statistiques n’ait pas mené des études sur cet aspect, il existe bien un niveau élevé de pauvreté. Pour ne parler que de la Gécamines où les agents n’ont pas été payés pendant presque deux années, les familles vivent avec moins d’un dollar par jour, se contentant d’un repas par jour, et ceci est loin d’assurer une bonne santé. »

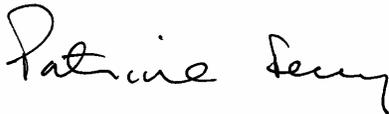
⁶ *Jacques Catry Programme de Restructuration de Gécamines: Volet Social* « Les volontaires vont bénéficier d’un important programme d’aide à la réinsertion adapté à chaque situation individuelle.

⁷ *CRETES/COPIREP, Evaluation Des Activites De Reinsertion Des Partants Volontaires De La Generale Des Carrieres Et Des Mines « GECAMINES » Rapport Final, Février 2006.*

Additionally, we recommend that the Bank:

- Appoint suitably qualified international consultants to assist Gécamines conduct a thorough technical and financial analysis of the feasibility studies for Kamoto, KOV and Tenke Fungurume and any other recently acquired mining concession.
- Assign its Department for Internal Integrity to assist in investigating the way contracts were awarded during and after the war.
- In the interests of transparency, the IMC/SNC audits should be published without further delay. The new legal and financial audits of Gécamines' joint venture agreements that are being finalised should also be made publicly available as soon as possible.
- Deploy the skills of former Gécamines workers in a range of programmes more suited to their experience that might include small scale industrial activities and the repair and remedy of some of environmental legacy problems identified in the SNC/ Lavalin audit report.

Yours sincerely,



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