



Synergie COSCCET & DEDQ

Province du Haut-Katanga

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THE FRONTIER PROJECT: A LOST OPPORTUNITY FOR THE DRC

(English version translated from original French text.)

The *Comité de Suivi pour la Contribution des Communautés et Eglises à la Transformation Humaine* (COSCCET) and *Détectives-Experts pour les Droits au Quotidien* (DEDQ), two nongovernmental organizations (NGOs) for the defense and promotion of human rights in the natural resources sector in the Democratic Republic of the Congo (DRC), and striving for better governance of revenues, conducted a study analyzing the fiscal and parafiscal obligations of the Frontier mining project, a subsidiary of the Eurasian Resources Group (ERG).

The analysis took place over 12 months from January to December 2016. It aimed to estimate and compare the fiscal and parafiscal revenues paid by Frontier between 2009 to 2015 to the Public Treasury on the one hand, and to encourage discussions between the Congolese people, the authorities and the company on the issues related to the these revenues from the project on the other. In addition to analyzing the impact of the termination of the Frontier S.P.R.L contract by the Congolese justice system in 2010, the report monitors the following six revenue flows: surface area fees, the mining royalty to the state, the profit tax, the provincial tax on concentrates, the provincial roads and drainage tax, and dividends.

The following weaknesses were noted:

- The lack of an update to the CAMI Decree of 16/10/2008 setting the rate of indexation for surface area fees;
- The US\$4,731,100 mining royalty shortfall caused by to the suspension of production between 2010 to 2012;
- The decrease in profit tax from US\$71,538,111 in 2010 to US\$6,206,723 in 2014;
- The anticipated collection of provincial road and drainage taxes for approximately US\$3,840,795.
- The DRC's loss of US\$20,000,000 due to the various transactions between different investors that succeeded each other on the project between 2010 and 2012;
- The non-respect of Article 242 of the Mining Code regarding the distribution of the mining royalty between the central government and the provinces, and between the provinces, cities and territorial entities;
- The partial publication of contracts related to this project, including particularly the contract between ENRC and the DRC for the creation of Frontier SA in 2012;

- The absence of a clause in all documents (contracts, endorsements, etc.) that could provide guidance on the dividends that the State should collect;

In light of the above, the not-for-profit COSCCET-DEDQ recommends:

To the Central Government:

- Distribute the remaining mining royalty share owed to the province of Haut-Katanga since 2009 in accordance with Article 242 of the Mining Code;
- Publish the contract creating Frontier SA, the amendments to the Memorandum of Understanding and to the Protocol of Agreement, the amendments to the joint-venture agreement between SODIMICO and Fortune Ahead Ltd, the amendments to the Transaction and Investment Agreement, the letter from the Managing Director of the DGI authorizing the Frontier tax breaks from May 2012 to October 2013 after its takeover by ENRC, and the contracts that linked First Quantum to the DRC (Ministry of Mines);
- Publish the sales contract between the DRC and ENRC relating to license 13080;
- Assess the real value of assets before proceeding with asset sales;
- Explain the mechanism by which the State acquired its 5% stake in the project;
- Regulate the debt-financing threshold for mining companies at the local level.

To the Provincial Government:

- Demand the central government the return the remainder of the mining royalty from the Frontier project owed to province, which in turn will distribute it to the territorial entity in which Frontier SA operates;
- Ask Frontier SA for the remaining US\$16,696,282 of the concentrates tax for the period between 2012 to 2014;
- Avoid contracting for advance payments from companies for the roads and drainage taxes and the concentrates tax.

To the city of Sakania:

- Demand from the national government, particularly from the Ministry of Finance, an estimated amount of US\$3,257,290 for the mining royalty paid by Frontier SA and owed to Sakania;

To NGOs:

- Accompany Frontier project stakeholders to ensure that the rights of each party are respected, in particular the distribution of the mining royalty by the national government and the payment by Frontier SA of all revenues owed between 2009 to 2014;
- Support communities near the project in demanding their share of 15% of the Frontier mining royalty.

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For more information, see: <http://www.congomines.org/reports/1212-analyse-fiscale-du-projet-frontier-a-opportunity-lost-for-the-rdc>