

CADRE DE CONCERTATION DE LA SOCIETE CIVILE DE L'ITURI SUR LES RESSOURCES NATURELLE

ANALYSIS OF THE KIBALI PROJECT'S FISCAL AND PARAFISCAL REVENUES.

“Short Term Win, Long Term Loss”

EXECUTIVE SUMMARY:

(translated from French)

In partnership with The Carter Center, the *Cadre de Concertation de la Société Civile de l'Ituri sur les Ressources Naturelle* (CdC/RN) conducted a sixteen month analysis of the Kibali Project's fiscal and parafiscal revenues. The project is located in the northeast of the Democratic Republic of the Congo in Haut Uélé province's Watsa territory, more specifically in Concession 38 of SOKIMO, which is one of the country's richest gold regions. There has been industrial and artisanal mining in that concession since colonial times, and it continues to attract private investors to this day.

Even though mining in this region flourished in previous years, mining activities in the former Province Orientale and the territory of Watsa have gradually diminished due to socio-economic instability at regional and national levels.

As a result of a long period of intense production by various mining companies, the population in the region has experienced prosperity through economic and social development. The development of the mining sector should stimulate other sectors of the national and local economy, by creating community development projects and maintaining concurrent industrial and artisanal production, but this is not currently the case.

Kibali Goldmines Ltd. is the largest gold-producing company in the DRC and the largest contributor to the national budget. It has generally complied with the payment of its fiscal and parafiscal obligations subject to the Mining Code of 2002, the Mining Regulations of 2003 and the Tax Code of 2007, as well as agreements including the Partnership Agreement of March 10, 2009, the Partnership Agreement of October 15, 2009, and the Contract for the Disposal of Equity Shares of October 30, 2009. In most cases, Kibali Goldmines has paid its taxes in full.

However, some improvements are still necessary for the Congolese Government, SOKIMO and Kibali Goldmines Ltd. to achieve true sustainable development. Issues include:

- The hoarding of natural resources due in part to the proactive granting of an operating license to Kibali Goldmines Ltd by the Mining Registry, locally known as CAMI;

- The lack of clear documentation defining the indexed rate for the calculation of surface area fees;
- Limited or a lack of retrocession of the *redevance minière* (mining royalty paid to the State as per the Mining Code) to the province and decentralized territorial entities;
- Small shareholding of SOKIMO in Kibali Goldmines Ltd;
- The involvement of the government in the business of the SOKIMO;
- Late payment of significant taxes on profits and gains to the Government;
- Late sharing of dividends to shareholders of Kibali Goldmines Ltd;
- The high indebtedness of the SOKIMO with Randgold Resources Ltd. and Anglo Gold Ashanti Ltd; and
- The partial disclosure of contracts and annexes of Kibali Goldmines Ltd.

These risks and issues will be future obstacles for the Government, SOKIMO, shareholders of Kibali Goldmines Ltd., and the new province of Haut-Uélé as well as for the decentralized territorial entities. They should be corrected or mitigated so that the Kibali project can reach its maximum potential and for the Congolese people to benefit from it.

The study focused on a detailed analysis of three tax flows, namely: surface area fees, the *redevance minière*, tax on profits and gains, as well as three parafiscal flows (key money, the monthly annuity, and the asset sale). The choice of analysis of these flows is justified by the fact that their sources are diversified and contain complete data (primary, secondary, and tertiary sources or verification).

This analysis of the fiscal and parafiscal flows led the research team to come up with recommendations to various stakeholders in relation to each problem and/or risk.

RECOMMENDATIONS

To the Central Government:

- Effectively retrocede the entire 40% of *redevance minière* (mining royalty paid to the State as per the mining code) for the province of Haut-Uélé and ETDs in accordance with Article 242 of the Mining Code of 2002;
- Strengthen the capacity of technical services in the mining sector and mining state-owned enterprises (SOEs) so that they are able to cross-check the results of reserve evaluations and feasibility studies carried out by private companies;
- The Congolese Parliament should insert a legal provision into the Mining Code that makes the release of extractive companies' financial statements mandatory. This provision should also define the standards of accounting in force in DRC (OHADA standards) and file this information in the Commercial Court Registry for the public to access it free of charge;

- The Ministry of Mines has to publish all unpublished contracts and annexes, related to JV of Kibali Goldmines Ltd. (including the Contract of Technical and Financial Assistance Reviewed, the Financial and Technical Assistance Agreement (2003), and the Revised Association Agreement, last Version);
- Facilitate an effective privatization of SOKIMO to be autonomous in relation to the Government;
- Clarify the allocation of \$2,250,000 USD or 50% of key money received from SOKIMO in 2009; and
- Draw a clear distinction between the Government as a public power and the Government as shareholder in a SOE, because certain decisions are made by the central government at the expense of SOEs.

To SOKIMO:

- Release all annual reports, including financial statements, about its partnership with Kibali Goldmines Ltd;
- Evaluate the reserves itself for its perimeters that aren't yet granted, and set the rates of the fees taking into account the real value of its reserves;
- Disaggregate the allocation of payments for all parafiscal flows received (key money, monthly annuity, etc.) to inform the public about the use of these funds;
- Discuss and clarify all aspects related to contractual obligations when signing future contracts, to avoid expect revenues (e.g. a royalty) not addressed when discussing the contract and that is not there;
- Find another source of funding instead of selling shares to meet fiscal needs, as this approach will not only reduce the future interest of SOKIMO but also decrease its decision-making power in the joint venture in which it is a shareholder; and
- Declare the allocation of the \$90.1 million remaining of the \$113.6 million (price of the disposal of shares). Only \$23.5 million was declared and allocated to debt repayment, payment of wage arrears of officers of SOKIMO, and social expenses.

To the Mining Registry (CAMI):

- Do not prematurely award mining rights to mining companies;

- Update and regularly publish the list of permits and deprive or reassign idle mining rights to other investors;
- Ensure strict payment of surface area fees;
- Publish all handbooks regulating the payment of surface area fees and other flows falling under CAMI's jurisdiction, including those relative to the indexed rate for the calculation of surface area fees.

To Kibali Goldmines Ltd:

- Review its revised feasibility study and minimize gold production costs in order to pay the tax on profit and gains as well as dividends to shareholders in the medium term;
- Publish its own annual and financial reports to the Congolese public, as Randgold Resources Ltd. and AngloGold Ashanti Ltd. Have done as well as several other projects in Africa, and produce this information in a non-disaggregated way;
- In addition to the relocation and resettlement of villages affected by the project, develop social projects, including: paving the Ariwara-Aru-Watsa Road, constructing school and health facilities, etc.