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# A State Affair: Privatizing Congo's Copper Sector



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Cover: The Lubumbashi tailings are the legacy of a century of mineral exploitation in the Democratic Republic of Congo copper belt. The hill still contained a panoply of mineral riches when it became one of Gécamines’ first assets to attract private investment in the late 1990s.

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# Foreword

The Democratic Republic of Congo is among the world's richest countries in terms of natural resources, but its people remain among the world's poorest. In particular, the DRC's mining sector has attracted billions of dollars in private investment, but these deals have generated limited public benefits. Poor governance has allowed the country's largest state-owned mining company, Gécamines, to engage in opaque mining deals that fail to serve the public interest.

Over the last 10 years, the Carter Center's extractive industries governance project has worked collaboratively with government, civil society, and private sector actors to advance greater transparency and improved governance in the DRC's mining sector. Our work has contributed to the disclosure of more than 100 mining contracts and the inclusion of additional data in the DRC's Extractive Industries Transparency Initiative reports, allowing public scrutiny of more than US\$1 billion in previously undisclosed revenue. In collaboration with Congolese civil society partners, we have used this information to evaluate the fiscal and human rights impacts of mining projects and called for reform of mining sector law, policy, and practice.

On several occasions, I have directly engaged the country's leaders by pressing for greater transparency and accountability in the extractive industries. Despite some progress, serious problems remain. The current political climate presents increased risks of obscure revenue flows. Prior to both the 2006 and 2011 elections, deal making by state-owned mining companies accelerated, generating significant proceeds that have been difficult to trace. In this context, it is troubling that Gécamines has refused to publish contracts for several mining deals that may have generated more than half a billion dollars since 2015.

This in-depth report by The Carter Center details how Gécamines has sold off assets while resisting

efforts to enhance transparency and increase revenue for the country's treasury. Based on a comprehensive review of thousands of corporate records, contracts, public statements, and articles and more than 200 interviews, the report examines Gécamines' role as a key gatekeeper to outside investors in the DRC's copper and cobalt mines and describes how Gécamines manages the income from these transactions with little public oversight. Specifically, of the US\$1.1 billion that Gécamines was contractually entitled to between 2011 and 2014, US\$750 million cannot be reliably tracked to Gécamines' accounts.

Gécamines' portfolio still includes vast stretches of land in the copper belt and minority stakes in about 20 joint ventures. To safeguard these mineral resources, prompt action by the DRC government, civil society, and the international community is needed to implement a robust accountability system for Gécamines and other state-owned companies. Immediate actions required include publication of recent mining contracts and audited financial statements of state-owned companies, disclosure of how state-owned companies' revenues have been spent, and strict enforcement of state-owned companies' compliance with asset sale oversight requirements.

The DRC has the potential to overcome the legacy of mismanagement and corruption that has plagued its extractive industries. I call on its political leaders to work with the private sector, civil society, the international community, and others to ensure responsible stewardship of the DRC's natural resources. The Carter Center remains a committed partner in this vital effort.



Jimmy Carter  
39th President of the United States and Co-founder  
of The Carter Center

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# Executive Summary

The Carter Center’s in-depth report, “A State Affair: Privatizing Congo’s Copper Concessions,” is the culmination of the Center’s analysis of mining sector trends in the Democratic Republic of Congo (DRC) since the end of the Zaire era 20 years ago, with a strong focus on the DRC’s key state-owned mining company, Gécamines. The report draws on the Center’s detailed analysis of the mining contract review process in the DRC following the 2006 elections and includes a broader economic and political analysis of mining privatization in the former Katanga province, a region particularly rich in copper and cobalt. The study is based on systematic research on the activities of both Gécamines and its most important partnerships, including a review of over 100 mining contracts, at least 1,000 corporate documents, and data from the Extractive Industries Transparency Initiative (EITI) covering 2007–2014. The Carter Center also conducted more than 200 interviews and submitted over 800 detailed questions in letters that offered right-of-reply to more than 30 companies, institutions, and individuals cited in the report. Relevant references to documentary and other evidence are made throughout the main body of the report.

This report assesses Gécamines’ central role in privatizing the sector. The report is complemented by four case studies analyzing the evolution of specific mining projects: Tenke Fungurume Mining (until recently held and operated by Freeport-McMoRan), Kamoto Copper Company (a Glencore project), Mutanda Mining (a Glencore project), and the former projects of First Quantum Minerals (now held by Eurasian Resources Group). These studies illustrate the overall trends of the sector in greater detail and shine a light on the decisions and practices that have deprived the DRC and its people from the benefits of Gécamines’ dealmaking.

The section titled “Mining Code Reform and the Parallel Mining Registry” demonstrates how

Gécamines continued to act as a gatekeeper to Congo’s copper and cobalt assets, despite the promulgation of a mining code meant to liberalize the sector.

The revenues Gécamines receives as a result of its gatekeeper role—royalties, bonuses, rents, and other contractual fees—are evaluated in “Contract Review and the Parallel Treasury” and are found to add up to approximately US\$262 million per year from 2009–2014.

The next section, “Transformation Into a ‘Commercial’ Company: Cementing the Parallel Governance Track,” shines a light on what Gécamines has and has not done with those revenues. It suggests that the explanation that most of Gécamines’ revenues are allocated to reviving the companies’ own production is overstated at best and that some US\$750 million cannot be reliably tracked to Gécamines’ own partnership accounts.

Despite their rhetoric to the contrary, the DRC government and Gécamines’ practices are often at odds with reform efforts designed to make the company more competitive, better run, and more accountable, the report shows. The Carter Center presents recommendations to confront this disparity and improve Gécamines’ transparency and accountability, such that it better contributes to the development of the DRC and the welfare of the Congolese people.

## **Gécamines: A Parallel State: Uncovering the Deals and Revenues of Congo’s State-Owned Copper Broker**

Over the past two decades, business ventures seeking to invest in the DRC’s copper and cobalt sector have had to deal with a key gatekeeper and the most important state-owned mining company, the Générale des Carrières et des Mines (Gécamines). Once a leading producer, Gécamines started

privatizing its assets in the mid 1990s, selling off its most valuable mineral concessions, in whole or in part, to investors with close ties to key Congolese political figures. In the process of privatization, Gécamines has collected significant revenues estimated at US\$262 million annually since 2009, nearly one-quarter of all mining company payments to state entities over the same period. Because those revenues are not directed to the public treasury, they are largely beyond the realm of public, parliamentary, and most other governmental oversight. While Gécamines has asserted that these revenues would contribute to its planned revival of mining production, in practice they appear to have been mainly used for other purposes.

History suggests that much of the benefit from the DRC's mining industry has not been used to invest in a country in dire need of jobs, infrastructure, and general development. The Carter Center's analysis also shows that Gécamines signed scores of contracts in the years preceding the elections in 2006 and 2011. As Gécamines still controls a significant number of mining permits and holds stakes in many joint venture companies—and as the country faces a period in which critical elections are supposed to take place—conditions are ripe for additional unreported sales and revenue diversion. According to news reports and sources close to the transactions, at least three recent deals have been signed that may have generated an additional half a billion dollars in undisclosed revenue in 2016–2017. There is a danger that the immediate future holds more of the same unless steps are taken to reduce this risk.

### **Mining Code Reform and the Parallel Mining Registry**

Gécamines has played a political role for much of the DRC's modern history. During Mobutu Sese Seko's 32-year rule (1965–1997), he is reported to have frequently tapped the state-owned company's coffers to sustain his vast patronage network. After decades of overproducing and underinvesting in

the company's factories and mines, Gécamines' production began to collapse in the early 1990s. As a result, revenues dropped, ultimately contributing to Mobutu's downfall. Although its production of copper and cobalt fell, Gécamines maintained its strategic role because it controlled the country's most sought-after mining permits. The first sites were sold to private investors in 1997 just after Laurent-Désiré Kabila and his rebel force arrived in Lubumbashi, the copper region's capital and home to Gécamines' headquarters. In subsequent years, those proceeds helped the rebel leader overthrow Mobutu and fend off military invasions from Rwanda and Uganda. Under Kabila, income from privatization replaced the production revenues that had existed under Mobutu.

After Laurent-Désiré Kabila was killed and his son, Joseph Kabila, became president in 2001, the World Bank actively promoted mining sector reforms aimed at ensuring that privatization would happen in a more orderly and less politicized fashion. The 2002 Mining Code was one such reform promoted by the bank, designed to liberalize the sector and create a level playing field where investors would be subject to a uniform tax regime and would follow a transparent, objective process to secure mining permits from the Mining Registry.

While the Mining Code was meant to apply to all mining companies, including those owned by the state, Gécamines has been able to maintain its privileged position throughout the last 15 years as a result of two factors. The first was a key clause in the code that provided that state-owned mining companies could retain their most valuable permits and sell them to other companies. These were the very permits investors most wanted: permits for concessions with relatively well-known reserves and, sometimes, usable infrastructure. In this way, Gécamines, rather than the Mining Registry, remained the gatekeeper to the most desirable mining assets, despite the Mining Code's liberalized, first-come first-served approach to accessing permits. Via a series of contracts with

private investors, Gécamines gradually transferred the most valuable permits to joint venture companies in which it kept a minority stake.

The second factor was the government's deliberate action to ensure that Gécamines retained and even expanded its portfolio of mining permits beyond the limits set forth in the Mining Code. With a privatization process in place, Gécamines' portfolio should have gradually been reduced until its role as a permit dealer was eliminated. Instead, Gécamines has been permitted to systematically convert its research permits into exploitation permits—in apparent violation of the technical, financial, environmental, and social requirements set forth in the Mining Code. According to the Mining Registry, Gécamines holds approximately 100 exploitation permits while the legal limit is 50. In addition, Mining Registry data showed that the government ignored Gécamines' defaults on surface rent payments which, according to the code, should have led to the withdrawal of those permits. Since the law is not being consistently applied to the state-owned company, it is likely to keep its exploitation permits until they may expire—or until it sells them to investors.

Based on the Carter Center's analysis in this report, almost all current operators in the Katanga region have entered the mining sector through negotiations with Gécamines rather than through the Mining Code's state registry of mining permits. Given that Gécamines still has exclusive control of a large portion of unexploited sites in the DRC copper belt, other interested parties will almost certainly have to work with Gécamines in the future.

### **Contract Review and the Parallel Treasury**

Gécamines' privileged position as the state-owned trader of mining permits allows it to decide who will operate in the copper belt and to receive direct payments from its partners that are not destined for the state treasury. These payments come to the company via one-off sales or ongoing revenues from its minority stakes in joint venture companies.

When Gécamines first started selling off its assets

in the 1990s and early 2000s, it was operating in a severely challenging business environment. A civil war was waging across the country, copper prices were low, and the economy was in shambles. In the run-up to the 2006 presidential election, pressure on Gécamines intensified as competing candidates sought campaign funds. Inexperienced with asset sales and under political pressure, Gécamines and other state-owned companies entered into a series of lopsided deals that generated small upfront payments that mainly benefited foreign military allies, speculators, and other risk takers.

The fragile context in which these earlier deals were signed meant that privatization revenues were initially relatively small. Concerns about the lack of revenue going to the DRC state eventually triggered international pressure to review the underlying partnership contracts and negotiate a "fair share for Congo." While the government agreed to a sector-wide contract review during multistakeholder peace talks in 2003, the contract "revisitation" process was not set in motion until 2007, after President Kabila was elected and his presidential coalition was in full control of the government and state-owned companies.

The 2007–2010 contract revisitation process led to the renegotiation of most contracts, ultimately allowing the DRC to increase income for Gécamines and other state-owned companies significantly. In most joint venture partnerships, Gécamines became entitled to extra signing bonuses and production-based royalties. It also regained some of its former assets—some by way of government revocation of licenses and some through negotiations. These assets were subsequently reassigned to new, politically connected partners under joint ventures in exchange for bonuses, future royalties, and other revenue streams for Gécamines.

The company continued to benefit from similar transactions well after the revisitation process ended. Beginning in 2010, Gécamines proceeded to sell its minority stakes in some of the most commercially valuable joint ventures, in deals that were heavily

criticized for being politicized, opaque, and focused on short-term gains. The deals generated sizeable income at a crucial time, making up one-quarter of all mining sector revenues in 2011, the year that Joseph Kabila won his second presidential term in elections that The Carter Center and other observers reported as deeply flawed.

Meanwhile, Gécamines successfully protected some of its other lucrative revenue from debt collectors, fending off lawsuits on several continents with the help of international legal assistance. In addition, Gécamines regularly blocked deals in which its joint venture partners would try to sell their shares to a third party, only allowing transactions to proceed in exchange for large cash payments, the latest of which was over US\$100 million.

### **Transformation Into a “Commercial” Company: Cementing the Parallel Governance Track**

According to EITI reporting, of the US\$1.5 billion in income that Gécamines earned from its partnerships between 2009 and 2014, less than 5 percent was sent to the DRC treasury in the form of tax payments and dividends. What happened to the rest?

In theory, Gécamines' spending should be easy to trace, since the company was transformed into a commercial enterprise in 2011 as a result of a World Bank-backed reform effort aimed to increase Gécamines' transparency, efficiency, accountability, and profitability. In addition, the DRC endorsed several transparency initiatives, including EITI, through which it has committed to publicly disclose information on state-owned company revenues.

Yet, Gécamines continues to be a financial black box. According to its managers, Gécamines' revenue is being reinvested to boost its operational capacity and to increase its copper and cobalt production. However, the company's output has not reflected such investment. While its output climbed briefly in 2012 and 2013, the increase was artificially inflated via costly, secretive arrangements with business partners who agreed to produce copper for Gécamines in exchange for a significant bonus. In 2014, production

dropped back to pre-reform levels. Meanwhile, Gécamines used its commercial status to shield the company from governance inquiries such as requests to disclose its contracts, income, and dealmaking. Rather than resulting in an accountable and transparent business, Gécamines' transformation into a commercial enterprise led to minimal governmental oversight and public scrutiny.

This lack of oversight has allowed significant anomalies in Gécamines' bookkeeping. According to Gécamines' records, some US\$750 million that Gécamines should have received from its joint venture partnerships between 2011 and 2014 does not seem to have been registered in Gécamines' partnership accounts. Based on the Carter Center's research, about half of this unaccounted partnership revenue can be traced to specific destinations, including debt repayments, asset acquisitions, and modest infrastructure investment. The Carter Center was not able to track the remainder.

### **Looking Forward**

Gécamines still controls vast stretches of unexploited land in Congo's copper belt and holds minority stakes in approximately 20 joint venture companies. As the country faces a critical election period, these assets could be sold off at any time with little scrutiny. As revenues from these deals might impact or even obstruct the democratic process, heightened scrutiny is warranted. To safeguard potential benefits from the country's resource wealth, greater transparency and accountability are urgently needed on the part of government, civil society, and the international community to push for a more robust accountability system. This report recommends several key areas of reform, including but not limited to the following.

#### **Public Information Disclosure**

- Given that recent deals may have resulted in a financial payout for Gécamines of over half a billion dollars, it is necessary for the Ministry of Mines to publish the full contractual terms and the

destinations of the revenues for at least these three large transactions:

- 2016 sale of Gécamines' stake in Metalkol to Eurasian Resources Group
- 2016 strategic partnership and 2017 agreement with China Nonferrous Metal Mining (Group) Co. (CNMC) for Deziwa
- 2016 deal regarding the shareholder change at Tenke Fungurume Mining (TFM)
- In addition, the Ministry of Portfolio should submit annual reports to Parliament on asset sales by state-owned enterprises and make these reports public.
- To improve the transparency of Gécamines' finances beyond individual mining deals, the Congolese Parliament should commission an independent audit of Gécamines' financial statements and make the resulting report public.
- To conform to the DRC's commitments under international transparency initiatives, Gécamines should make key information publicly accessible, including audited financial statements and partnership accounts, information on existing assets and investments, and detailed accounts of revenues and expenditures.

#### ***Institutional Oversight and Accountability***

- To restore oversight over Gécamines' dealmaking, Parliament should adopt an interpretative state-ment clarifying that the law on state asset sales applies to the privatization of state-owned companies' assets. For future asset sales, the prime minister should ensure compliance with this law, requiring state asset sales be subject to a public tender process, be approved by the Council of Ministers, and have proceeds allocated to a special fund of the public treasury.
- Parliament should also hold public hearings on the management of state-owned mining companies and set up a special Commission of Inquiry to evaluate Gécamines' financial practices.
- The Ministry of Mines should apply the full

provisions of the Mining Code to all state-owned enterprises, particularly as it relates to the number of exploitation permits allowed, the payment of surface rents, and compliance with all operational, social, and environmental requirements.

- To advance greater accountability of Gécamines' management team, the Ministry of Portfolio should ensure that Gécamines executives are recruited competitively, sign performance contracts, and are sanctioned or removed when they do not meet their contractual expectations.
- Gécamines' executive team should submit quarterly reports to the Ministry of Portfolio and the Council of Ministers and submit major company decisions for approval by the Council of Ministers.

#### ***Due Diligence of Payments***

- To avoid corruption risks, mining companies should practice due diligence when making payments to state-owned companies, their representatives, or state officials, ensuring they are based on clear legal provisions and are paid only to official accounts. Further, mining companies should publicly disclose any material payment to state-owned companies or the Congolese government at the time the payment is made.
- Congolese, foreign, and correspondent banks should ensure sufficient due diligence before engaging in business in the DRC mining sector.
- Law firms should refrain from banking activities through client accounts of state-owned companies and should carry out additional beneficial ownership investigations whenever their work involves large cash transactions. They should refrain from setting up corporate structures that might facilitate criminal activity or hamper official investigations.

#### ***International Donor Engagement***

- To promote revenue transparency and public accountability in the DRC, donors should conduct due diligence reviews of state-owned company governance for all large-scale funding programs to the DRC state.

- Before providing direct budget support or funding for governance programs, donors should require the disclosure of important unpublished natural resource contracts, Gécamines' financial statements and audits, and the publication of the 2015 and 2016 EITI reports prior to December 2017.
- If presented with credible allegations of bribery or money laundering, donors should initiate rigorous criminal investigations of companies registered in their jurisdictions. Such investigations should be actively supported through international judicial cooperation.
- If there is sufficient evidence that DRC state or state-owned company funds have been misappropriated, donors should consider imposing targeted sanctions on the appropriate DRC officials and complicit business partners.

## Case Studies: Congo's Lucrative Mining Deals

This report includes four case studies of some of the most important investments in the DRC copper belt. The case studies shift the focus from the state-owned company to the investors with whom it partnered, tracing how these investors changed over time and highlighting features of these investments that warrant greater attention.

The case studies selected include Congo's most significant copper projects in terms of production, mineral reserves, or tax payments as well as some of the most controversial Gécamines partnerships. Notably, each case study also involves a larger parent company that is or was listed on a major stock exchange.

The four case studies examine Kamoto Copper Company, Mutanda Mining, Tenke Fungurume Mining, and the former projects of First Quantum Minerals. Note: These case studies will be released under separate cover in late 2017.

## Kamoto Copper Company In the Red: Limited Benefits From Congo's Heavily Indebted Former Flagship Mines

Kamoto Copper Company (KCC) acquired Gécamines' core assets in Kolwezi and is currently operated by the Swiss commodity trader Glencore. During the highly politicized post-war period, the KCC project was subject to a decade-long ownership battle among businessmen with various political connections. This competition among investors for some of Congo's highest-grade deposits should have resulted in better terms for Gécamines. Instead, KCC's spiraling debt and the state-owned company's own business decisions have jeopardized the revenues flowing from KCC to Gécamines and the DRC state. Indeed, it seems that the DRC's financial benefits from the project will be far below expectations for the decade to come.

## Mutanda Mining Strictly Private: Lost Opportunities in the Early Sales of Congo's Stakes in the World's Largest Cobalt Mine

Relatively unknown to the general public until 2011, the Mutanda Mining joint venture is now the largest cobalt producer in the world. This case study revisits Gécamines' decision to divest from Mutanda, covering the widely criticized deal that was signed before the 2011 elections as well as a lesser-known but equally problematic deal in 2007. The case study documents the competition between the Bazano family and Dan Gertler's Fleurette group to partner with the current operator, Glencore.

## Tenke Fungurume Mining Reading the Fine Print: Repeated Negotiations to Split the Benefits From Congo's Largest Copper Project

Tenke Fungurume Mining (TFM) operates what used to be Gécamines' most important greenfield site, which was intended to ensure a long life for Gécamines' operations after the Kolwezi assets were depleted. One of the first concessions to be privatized,

the TFM project sat idle for almost a decade but has since grown to become the largest copper producer in the country. Operated by American multinational Freeport-McMoRan until late 2016, the TFM joint venture has been the subject of fierce battles over how its revenues should be split among shareholders. This case study analyzes the successive contract renegotiations that shifted the balance of benefits derived from TFM's operations. It also examines the consultancy fees that the private investor and Gécamines have been receiving. These fees increase operating costs and therefore reduce profit taxes paid to the DRC treasury.

### **First Quantum Minerals Hard to Heal: The Long Aftermath of Congo's Decisions to Cancel Two Fast-Growing Mining Projects**

Until their cancellation in 2009 and 2010, First Quantum Mineral's (FQM) projects (Kolwezi tailings and Frontier) were the type of successful investments that the Mining Code aimed to attract. But state-owned companies like Gécamines and its smaller peer, Sodimico, were sidelined in the initial project development and operations. Both projects were canceled at the end of the contract review in 2009–2010, which resulted in huge losses for the DRC treasury but generated contractual revenues of at least US\$120 million for Gécamines and Sodimico. After years of legal ownership battles across the globe and deals involving Gertler's Fleurette group that generated controversy in the media, the Kazakh-based Eurasian Natural Resources Corporation (now Eurasian Resources Group) took control of the mining projects. This case study documents the current owner's fundraising difficulties that have delayed the start of production and subsequent revenues for the state by more than eight years. The case study offers a nuanced account of both the reasons and the consequences of the cancellations.

### **Common Findings**

A key conclusion of the four case studies is that technical proficiency and a strong track record of

financial management are not sufficient for success in the competition for the DRC's best copper and cobalt sites. Even investors whose projects demonstrated

**A defining feature of successful investors in the DRC seems to have been the willingness to make significant payments to state-owned companies and other parastatal entities rather than to the official agencies that collect taxes for the treasury.**

steady operational progress and positive economic impacts were not safe from politically motivated threats or license cancellation.

Instead, a defining feature of successful investors in the DRC seems to have been the willingness to make significant payments to state-owned companies and other parastatal entities rather than to the official agencies that collect taxes for the treasury. In several instances, short-term, one-off payments to Gécamines were privileged over long-term tax revenues.

In many cases, investors insulated themselves from the risk of politically motivated retribution through partnerships with individuals or entities with close ties to the Congolese political elite. These case studies describe how, after a decade of fierce competition among those with such political connections, Gertler's Fleurette group has out-maneuvered competitors like George Forrest and his partners at KCC, the Bazano group at Mutanda, and Billy Rautenbach at Boss Mining.

The increasing dominance of Gertler's Fleurette group coincided with its willingness to transfer large sums of money to Gécamines at critical times.

Fleurette has publicly confirmed that in 2011, a presidential election year, it paid Gécamines over US\$200 million and gave a loan of a comparable amount in 2012, apparently without concern over how this money was ultimately used.

At other times, Fleurette maintained an edge over its competitors through the acquisition of Gécamines' assets at prices that the Africa Progress Panel and others have suggested are well below market value. These transactions have led to accusations from nongovernmental organizations and others that Fleurette secured and maintains its privileged position via corrupt means, including paying bribes to high-level government officials. While Gertler rejects these allegations and has denied any wrongdoing, one of Fleurette's former investment partners, the hedge fund Och-Ziff, admitted in a settlement agreement with the U.S. Department of Justice in September that its "DRC Partner"—whose description resembles that of Gertler—had made frequent payments to top

Congolese decision makers in order to acquire mining assets. A key table in the settlement agreement showed that these payments included over US\$10 million to "DRC Official 1" and at least US\$20 million to "DRC Official 2," the profiles of whom seem to match those of Congolese President Joseph Kabila and the late Augustin Katumba Mwanke, one of Kabila's most influential presidential advisers. Several of Gertler's deals are the subject of criminal investigations in the United States and the United Kingdom.

Reputational damage aside, the most successful investors in DRC to date are those who have been prepared to deal with Gécamines and the political elite on their terms. This pattern often results in less scrupulous investors dominating the mining sector in DRC, and it undoubtedly feeds the cycle of corruption that siphons Congo's natural resource wealth away from the Congolese people.

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# About This Report

Over the past two decades, Congo's copper and cobalt industry has transitioned from a fully state-owned sector to a patchwork of private operations with Chinese, Swiss, American, Kazakh, and other investors. Scattered along a 500-kilometer geological fault in the southeastern tip of Congo, these operations produce enough copper to wire 5 million homes each year<sup>1</sup> and supply no less than half of the world's cobalt,<sup>2</sup> an essential component for rechargeable batteries in smartphones and electric cars.<sup>3</sup> Until the mid 1990s, the concessions almost all belonged to one state-owned mining company: the Générale des Carrières et des Mines (Gécamines). This report assesses how Gécamines has used its position as gatekeeper to Congo's best mineral deposits and how it has managed the revenues resulting from the protracted privatization process. The report provides a comprehensive retrospective of copper privatization in the country and identifies concerns about deficiencies in transparency and accountability that are relevant to ongoing and future transactions and to governance of the extractive industries in general.

When Gécamines first started selling its permits to foreign investors, international headlines highlighted the political nature of the deals. In 1997, the New York Times reported on rushed copper deals that allowed Laurent-Désiré Kabila and his rebels to reach the capital and topple then-dictator Mobutu Sese Seko.<sup>4</sup> Six years later, a U.N. panel investigating the links between natural resources and the ongoing conflict described how the government allegedly handed out mining assets to compensate regime allies for their military contributions.<sup>5</sup> In 2005, just before the country's first democratic elections in more than 30 years, interim President Joseph Kabila and Vice President Jean-Pierre Bemba ignored calls from media, a coalition of national and international nongovernmental organizations pushing for a "Fair Share for Congo," and Congolese parliamentarians to stop the hasty mining sector privatization, instead granting

the most important remaining copper concessions to companies with strong, and sometimes competing, political connections.

From 2005 onward, attention shifted to the lost revenues resulting from Gécamines' contracting practices, and nongovernmental organizations launched campaigns for mining contracts that would generate a "Fair Share for Congo." This sparked a sector-wide contract review process to improve the terms for the Congolese signatories. Yet, in 2013, Kofi Annan's

**Based on more than five years of in-depth investigation into Gécamines' transactions and operations, this report shows that Gécamines' revenues warrant much closer scrutiny.**

Africa Progress Panel estimated that the country had lost US\$1.36 billion between 2010 and 2012 due to undervalued asset sales.<sup>6</sup>

While greater attention to these deals is warranted, the exclusive focus on Congo's losses in these transactions has cast Gécamines as a weak entity, a victim of stronger foreign corporations and starved of resources. Indeed, these losses support Gécamines' assertion that it is gaining "nothing" from its partnerships. Yet few analyses have examined Gécamines' claim that it has received little since the contract review process concluded, and even fewer have attempted to track the revenues that Gécamines *did* collect.

Based on more than five years of in-depth investigation into Gécamines' transactions and operations, this report shows that Gécamines' revenues warrant much closer scrutiny. Several important points emerge in the analysis. First, Gécamines' revenues

are higher than commonly known or acknowledged. Second, the state-owned company has actively shielded its revenues from public, parliamentary, or other governmental oversight, even as concerns about potential revenue diversion have grown. Third, the privatization of the copper-cobalt sector is not over. Indeed, Gécamines' remaining assets could generate billions of dollars in additional revenue. Given the current electoral context and the significant revenues that do not seem to have arrived in Gécamines' accounts, it is the Carter Center's view that this additional revenue could be at risk of going unreported and diverted to serve narrow personal or political interests rather than serving the greater public interest of the Congolese people.

## Report Structure

The study contrasts Gécamines' actual practices with reform efforts—backed by Western donors—that were designed to make the company more competitive, better run, and more accountable. A common theme throughout the Carter Center's analysis is the divergence between the political elite's professed commitment to reform and its actual practice. The government agreed to the Mining Code, the contract review process, and the transformation of Gécamines into a commercial enterprise. Each of these actions was undertaken ostensibly to make the company more competitive. However, at the same time, it is difficult not to conclude that the DRC's political leadership has allowed Gécamines to retain its special privileges within the liberalized mining industry in conflict with both the intent and the letter of the laws designed to curtail such privileges.

The section "Mining Code Reform and the Parallel Mining Registry" focuses on Gécamines' role in transferring key mining assets to private investors. This was not the role envisioned for Gécamines in the DRC's 2002 Mining Code. On the contrary, the code established an independent administrative institution, the Mining Registry, that would allocate concessions in a transparent manner, giving preference

to investors with a proven financial and technical track record. Yet, as this section shows, Gécamines maintained full control of its best concessions as well as the ability to sell them and, starting in 2009, was allowed to further expand its portfolio in direct violation of Mining Code provisions.

"Contract Review and the Parallel Treasury" investigates the bonuses, royalties, and fees that Gécamines has collected from its asset portfolio. In the early days of privatization, these revenues were quite limited. Following the 2006 national elections and the contract review process, Gécamines became more aggressive in negotiations. This section examines these transactions and estimates the cash payments Gécamines should have received between 2009 and 2014, whether for transferring mining licenses as compensation for selling its stakes in existing projects, or to settle its objections to third-party asset sales in its joint ventures.

"Transformation into a 'Commercial' Company: Cementing the Parallel Governance Track" looks at how Gécamines used its revenues over the years, and how much—or how little—of those funds have been transferred to the state treasury. This analysis is set against the backdrop of the ostensible revival of Gécamines' commercial production. In an effort to increase its profitability and its contribution to the DRC treasury, Gécamines announced in 2011 that it would reinvest the income from its partnerships and asset sales to revive its operational infrastructure and regain its position as a leading copper producer in the region. This section assesses these plans and concludes that Gécamines has thus far failed to achieve any of its production targets and that public oversight of Gécamines' spending has decreased even as the company's revenues have continued to grow.

The report concludes with a set of specific recommendations regarding ways to make Gécamines' management more efficient and transparent and increase its contribution to the DRC's economic development.

## Background and Methodology

The seed for this report was planted following the Carter Center's initial involvement in the DRC mining sector, beginning just after the 2006 presidential election. At that time, the new government launched a sector-wide contract review process to examine joint venture mining deals signed during the war and political transition. The Carter Center monitored the review process between 2007 and 2009, in collaboration with Columbia Law School's Human Rights Clinic and the International Senior Lawyer's Project, carrying out independent contract analyses and advocating for greater civil society oversight to ensure a transparent review process that would be fair and beneficial for the country.<sup>7</sup>

Contract renegotiations ultimately took place behind closed doors, and the resulting contracts were not immediately disclosed. In 2010, The Carter Center opened a field office in the copper belt's capital, Lubumbashi, in part to find answers to essential questions about the results of the contract review. Did contractual terms increase the DRC's share of mining sector revenue? If so, did the DRC properly use the funds generated by the process? The Carter Center focused on the copper-cobalt sector and the most prominent state-owned company, Gécamines, given their historical and present importance for the country's economy. For more than three years, The Carter Center systematically advocated for the disclosure of the reviewed contracts, working closely with reform-minded officials from the Ministry of Mines, the prime minister's office, and international financial institutions.

Prior to the release of any of the reviewed contracts, a second privatization wave began, coinciding with the run-up to the controversial 2011 presidential election. During this period, according to the 2013 Africa Progress Report, Gécamines sold assets for prices deemed below their fair market value,<sup>8</sup> with the majority sold to entities associated with Dan Gertler, a businessman with close ties to the DRC president. As a result, The Carter Center expanded

**In 2010, The Carter Center opened a field office in Lubumbashi to find answers to essential questions about the results of the contract review. Did contractual terms increase the DRC's share of mining sector revenue? If so, did the DRC properly use the funds generated by the process?**

its analysis of the contract review results to include a broader economic and political analysis of mining privatization in the Congo, with a special focus on the expansive portfolio of Gécamines. This report is based on rigorous research on the activities of both Gécamines and its most important partnerships.

The report draws from the following sources:

- In-depth review of over 110 Gécamines contracts from 1996 until 2015, with most published on the Ministry of Mines website
- Analyses of over 1,000 corporate records obtained from DRC institutions (e.g., incorporation documents and bylaws, board and General Assembly minutes), stock exchange releases, and other corporate publications from multinational investors and their subsidiaries
- Substantive analysis of Congo's scoping reports and final reports published through the Extractive Industries Transparency Initiative (EITI), covering 2007 through 2014
- More than 200 interviews with key stakeholders, including 12 chief executive officers and/or chairmen of multinational investors and their DRC-based subsidiaries, seven former Gécamines directors, 10 high-level government officials, and lawyers, sector analysts, and other observers

Links for any publicly available sources of information are available on the Carter Center's Congo

Mines website ([www.congomines.org](http://www.congomines.org)). In the absence of publicly disclosed financial statements from Gécamines, The Carter Center compiled a database to support its revenue analysis, in which it included all expected payments to Gécamines based on available partnership and asset sale agreements. Using that information, the Center compared this data to: (1) EITI declarations, (2) Gécamines' internal partnership revenue database, and (3) public declarations by Gécamines' investment partners in official press releases or stock exchange publications.

Given the extremely sensitive nature of the issues addressed in the report, many sources agreed to share their insights only on the condition of anonymity. These exchanges provided invaluable insight into the political and economic background of the many deals covered in this report.

To ensure that all stakeholders had an opportunity to correct any factual errors and to respond to any claims relevant to them, The Carter Center sent out more than 800 questions between May and September 2016 to over 25 individuals and/or entities—including companies, government officials, and state-owned entities—to provide them with a right-of-reply.<sup>9</sup> In addition, The Carter Center provided right-of-reply opportunities between September 2016 and July 2017 for stakeholders who had not responded to earlier requests or that were involved in recent news reports. The Carter Center is extremely grateful to those who took the time to provide responses and insights. Their input improved the content and accuracy of the report.

Regrettably, despite an initial commitment to respond to the Carter Center's inquiries, neither Gécamines' current chairman, Albert Yuma Mulimbi, nor interim chief executive officer, Jacques Kamenga Tshimuanga, responded to numerous requests for interviews in 2014, nor did they respond to requests for written responses between August 2015 and September 2016. Similarly, the minister of portfolio between 2012 and 2016, Louise Munga Mesozi (who represented Gécamines' sole shareholder, the DRC state), declined to be interviewed after multiple requests in 2014 and did not respond to written questions submitted in 2016.

Lacking such responses, the Center has had to rely on relevant excerpts from official business plans and public speeches as a guide to the current leadership's views. In addition, the report includes information from a range of current and former Gécamines directors and board members who provided insiders' perspectives.

Finally, The Carter Center is thankful for the off-the-record information that Dan Gertler and Fleurette group staff provided, including an informative review of the beneficial ownership of many (but not all) subsidiaries involved in the group's transactions with Gécamines. This allowed The Carter Center to gain greater insight into some of the transactions between Fleurette group and Gécamines. However, The Carter Center regrets that despite multiple interactions over the course of a five-month time frame, Fleurette group declined to have Dan Gertler interviewed on the record and declined to respond to specific questions about the many Fleurette–Gécamines transactions.

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# Mining Code Reform and the Parallel Mining Registry

The 2002 Mining Code was the first major reform aimed at fundamentally transforming the Congolese mining landscape from a state-dominated sector into one controlled by private operators. Actively encouraged by the World Bank, the new law was designed to provide an investment-friendly framework for the mining sector. The code was an attempt to break with the haphazard privatization trend that started in the mid-1990s at the end of the Mobutu era and flourished during Laurent-Désiré Kabila's regime. Throughout this period, the country's elite began selling off some of Gécamines' assets to junior investors and military businessmen who turned a blind eye to the allocation of signing bonuses they paid to obtain the contracts. The code aimed at curbing this trend through a transparent, objective process to allocate mining permits through a new, central Mining Registry. It tried to create a level playing field in which all investors—including state-owned companies—would be subject to the same concession allocation rules and a uniform tax regime.

However, the code's transitional regime allowed Gécamines to retain the most sought-after permits and control their allocation to private investors. As a result, almost all operators entering the mining sector in the DRC's copper belt have dealt with Gécamines in some way. More recently, the government has taken deliberate action to ensure that Gécamines retain its mining permits even when it fails to comply with the Mining Code provisions governing their validity.<sup>10</sup> Given that Gécamines still exclusively controls nearly 100 exploitation permits covering a large portion of unexploited sites in the DRC copper belt, other interested parties will almost necessarily have to work with the state-owned company.

## Haphazard Privatization (1995–2001)

Copper and cobalt in southeastern Congo have been and still are the country's most strategic minerals.<sup>11</sup> Their share of DRC exports and tax contributions have dwarfed those of other minerals such as tin, tungsten, and tantalum.<sup>12</sup> For most of Mobutu's presidency (1965–1997), these copper and cobalt deposits were in the hands of a single, state-owned company, Gécamines. Soon after Gécamines inherited the deposits from its colonial predecessor,<sup>13</sup> it boosted production and kept levels high for the next two decades. This was Gécamines' *belle époque*, and the state-owned company was a symbol of status and pride. "We breathed Gécamines. We lived from

**"Gécamines was Mobutu's *vache laitière*, its dairy cow," a former Gécamines chief executive officer said. "If you keep milking the cow but stop feeding it, the cow dies."**

Gécamines. We dreamt about Gécamines," wrote Augustin Katumba Mwanke, a Congolese politician who later would have a tremendous impact on the destiny of the company.<sup>14</sup> Foreign mining companies played a peripheral role in those days. Companies tied to old colonial interests competed with newcomers such as former Glencore Chief Executive Officer Marc Rich for the rights to buy and sell Gécamines' copper and cobalt<sup>15</sup> but rarely owned the concessions themselves.<sup>16</sup>

Because the state-owned enterprises answered to Mobutu's political demands rather than those of running a successful mining business, fewer and fewer profits were reinvested in the company's infrastructure.<sup>17</sup> "There was money for Mobutu but not enough for fuel or spare tires," a former Gécamines engineer recalled.<sup>18</sup> Technical staff drafted ambitious rehabilitation plans, only to see them systematically downsized or postponed indefinitely.<sup>19</sup> The bubble popped in 1990 when one of Gécamines' largest assets, the Kamoto underground mine, physically collapsed.<sup>20</sup>

"Gécamines was Mobutu's *vache laitière*, its dairy cow," a former Gécamines chief executive officer said.<sup>21</sup> "If you keep milking the cow but stop feeding it, the cow dies." Two waves of pillaging in 1991

and 1993 by Mobutu's angry, unpaid military forces hastened Gécamines' downfall. So did 1993's ethnic violence by Katangans against people from the Kasai province, who had dominated Gécamines' senior management for years and were forced to flee the xenophobic violence.<sup>22</sup> The full disintegration of the company's industrial complex soon followed.<sup>23</sup>

Gécamines' collapse led to the disintegration of the social safety net it provided to its employees. For years, it had provided accommodation, subsidized food supplies, free education for workers' children, and health care for the whole family.<sup>24</sup> In just a few years, those who had once been served all-you-can-eat *bukari* (corn meal) could no longer secure a meal for their children.<sup>25</sup> To fight famine, workers started



Ever since the disintegration of the state-owned company's social safety net in the 1990s, artisanal miners have been digging and washing ore on Gécamines' abandoned sites. (Kipushi 2010)

selling Gécamines' freight and spare parts and began digging with shovels and chisels for copper and cobalt on the abandoned concessions.<sup>26</sup>

Gécamines' workers were not the only ones who had to look for alternative ways to pay their bills: So did President Mobutu. The Kamoto collapse coincided with the end of the Cold War, which made support to Mobutu less of a priority for Western creditors.<sup>27</sup> "To neutralize Mobutu you had to neutralize Gécamines," according to an ex-Gécamines chief executive officer. "We used to have a credit line of about US\$500 million from donors like the World Bank. Overnight, no one wanted to lend money to Gécamines anymore."<sup>28</sup>

As Gécamines' production collapsed, the piecemeal privatization of its concessions became an alternative mechanism to raise funds. Mobutu's penultimate government developed plans to sell off a few important undeveloped sites, making sure to preserve Gécamines' crown jewels around the city of Kolwezi, in particular the collapsed Kamoto underground mine and the neighboring Kamoto Olive Virgule (KOV) mine.<sup>29</sup> Hence, privatization of the copper belt began as a matter of necessity rather than a policy choice.

By the time the first privatization contracts were being finalized, Mobutu was under increasing military pressure from Laurent-Désiré Kabila's rapidly advancing rebel army. In April 1997, the rebels took Lubumbashi and held talks at the Grand Karavia hotel with some of the investors who had already signed preliminary agreements with Mobutu.<sup>30</sup> According to the Wall Street Journal, a senior rebel tasked with fundraising for Kabila's final push against Mobutu told investors, "[I]f you believe in us, come work with us. If you are a little bit hesitant, stay on the sidelines. But by the time you make up your mind, I think those who trust us today will have a jump-start on you."<sup>31</sup>

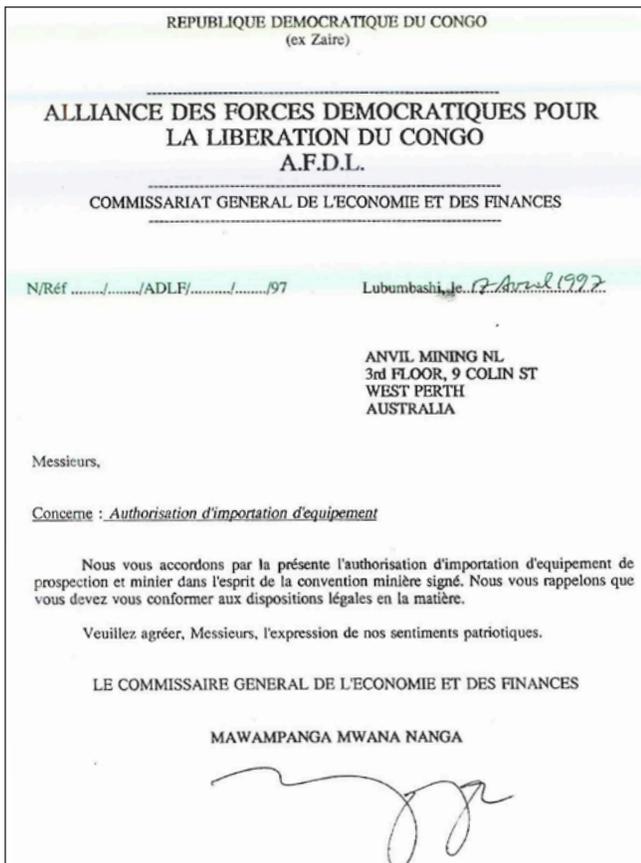
Among those taking a jump-start was American investor Jean-Raymond Boule. According to media reports, the "treasure hunter" lent Kabila his company's leased jet during the march to Kinshasa and gave him US\$1 million ostensibly as an advance for taxes and fees associated with future mining contracts.<sup>32</sup>

After the Karavia meetings, Boule told journalists that he had secured a "US\$1 billion" contract for the rich copper tailings in Kolwezi,<sup>33</sup> which contained ore that had already been processed but still contained significant mineral reserves. It took Boule another seven years to finalize the terms.<sup>34</sup>

Another investor in talks with the rebels was Adolf H. Lundin, as discussed in his biography.<sup>35</sup> Mobutu's government had selected Lundin's small Swedish-Canadian mining firm in a tender for the massive unexploited Tenke and Fungurume deposits on the basis of Lundin's signing bonus offer, which was larger than that of other candidates.<sup>36</sup> Kabila confirmed the preliminary agreement that Mobutu had initiated with Lundin, which, according to the Tenke Fungurume Mining Convention, generated a US\$50 million upfront payment that came at a time when money was hard to come by.<sup>37</sup> "Most of that money will go to the war effort," Kabila's finance adviser, Mawampanga Mwana, told the Wall Street Journal at the Karavia hotel.<sup>38</sup> "What good is investing in the mines if we don't win the war?"<sup>39</sup> Two years later, Lundin declared *force majeure*, suspending its contractual obligations.<sup>40</sup> The project then lay dormant for over seven years.<sup>41</sup>

**"Most of that [signing bonus] money will go to the war effort," Kabila's finance adviser said. "What good is investing in the mines if we don't win the war?"**

Also in attendance at the Karavia Hotel was Augustin Katumba Mwanke. He had just joined HSBC South Africa and was in talks with Kabila's rebels to grant a US\$30 million loan to Gécamines.<sup>42</sup> Before the deal was done, HSBC seconded Katumba to the DRC Ministry of Finance, the start of a 15-year-long career as one of Congo's top public



Laurent-Désiré Kabila's rebel group, the Alliance of Democratic Forces for the Liberation of Congo, signed mining deals and started granting export licenses a month before it reached Kinshasa to overthrow President Mobutu.

finance managers and key decision makers in the mining sector.

In May 1997, a month after the Karavia meetings, Kabila toppled Mobutu in Kinshasa.<sup>43</sup> But the coup did not end the conflict: In 1998, the Second Congo War began after Kabila turned his back on his former supporters, Rwanda and Uganda. As they threatened to capture the copper belt, Kabila found new allies in Zimbabwe to fend off the invasion. Gécamines' asset portfolio again helped alleviate the urgent need for cash. "Around that time, a large ministerial delegation came to visit Gécamines, and I started explaining how I envisioned relaunching our production," a former Gécamines director recalled.<sup>44</sup> "Vous êtes fou, you are crazy," they said; "The Rwandans will be

here. They needed the assets for the Zimbabweans." To compensate Zimbabwe for its military assistance, Kabila allocated some of Gécamines' copper mines to businessmen with close ties to president Mugabe's regime.<sup>45</sup>

In 2001, the U. N. Security Council established an expert panel to look into the links between mining contracts and the war.<sup>46</sup> The panel wrote that "the elite network of Congolese and Zimbabwean political, military, and commercial interests (...) transferred ownership of at least US\$5 billion of assets from the state mining sector to private companies under its control in the past three years with no compensation or benefit for the state treasury of the Democratic Republic of Congo."<sup>47</sup> Although the figure is arguably inflated, the connection between Gécamines' asset sales and Zimbabwe's military support seems difficult to deny.<sup>48</sup>

Laurent-Désiré Kabila did not appear to have a long-term mining tax policy in mind when he started privatizing Gécamines' concessions. "People ask me about tax structure, I tell them it can wait," one of his advisers told the Wall Street Journal in 1997. "The World Bank came to see me about the foreign debt; I told them to come back later."<sup>49</sup> According to the Lutundula Commission Report, the directors of state-owned companies dutifully followed presidential instructions to sign the contracts, albeit sometimes against their will.<sup>50</sup> Contract by contract, deposit by deposit, they saw Gécamines' former monopoly shrink. They were required first and foremost to secure significant upfront payments, such as signing bonuses, in exchange for which they accepted long-term tax exemptions that often lasted for 15, 20, or even 30 years.<sup>51</sup> Several of Gécamines' assets were split up, despite the fact that it probably would have been more efficient to grant them as a package to one single technically and financially strong investor—of which there were not many due to general insecurity. The authorities also privatized some of the same assets twice or more.<sup>52</sup> For instance, the license for the Etoile mine on the edge of Lubumbashi—historically the first to be mined in Katanga<sup>53</sup>—was handed out to at least three different companies.<sup>54</sup>

## Mining Code: A Common Framework for All Investors and Operators (2002–2003)

After a few years in power, Kabila's shifting allegiances had upset many former allies. The president had so many enemies that the question of who ordered his assassination in January 2001 is still subject to debate. His son, Joseph Kabila, took over power and soon curtailed some of his father's policies, such as his hostility to international institutions. The new president welcomed assistance from the United Nations for peacekeeping, bilateral donors for aid, the World Bank for economic revival, and the International Monetary Fund (IMF) for financial stability.<sup>55</sup> As a result, the World Bank came back after a decade-long absence.

In line with the post-Washington Consensus policies that international financial institutions began implementing in the 1990s, the World Bank promoted mining sector privatization. However, its vision of privatization was radically different from the politicized fashion in which Congo's leaders had gone about it. The bank believed in a standardized legal framework, consistently applied to all operators, which would limit political maneuvering.<sup>56</sup>

Shortly after Joseph Kabila became president, the DRC Parliament, with the World Bank's assistance, adopted a new legal regime for the mining sector.<sup>57</sup> The 2002 Mining Code instituted a standardized, competitive, liberal regime with a clear division of labor: The state would regulate and supervise the sector, and private operators would be responsible for actual mining operations.<sup>58</sup> Instead of negotiating deals with state-owned companies, the operators were meant to acquire mining titles from a new Mines Registry (Cadastre Minier, also known as CAMI). The Mines Registry was responsible for allocating titles on a first-come, first-served basis, using predefined, objective technical and financial criteria.<sup>59</sup> A system of incentives was introduced to ensure that licenses stayed in the hands of operators able to demonstrate operational progress.<sup>60</sup>

In other countries, and in the DRC before the

Mining Code, companies would often negotiate a convention with the state between the exploration phase and the exploitation phase. Under the new law, all operational, fiscal, and environmental provisions are prespecified in the Mining Code and associated mining regulations.<sup>61</sup> In particular, the code enacted a binding fiscal regime applicable to all titleholders, including private investors, state-owned companies, and joint ventures between the two.<sup>62</sup> All taxes would flow straight to the state treasury and not to the state-owned companies.<sup>63</sup> Those with a convention predating the code could choose whether to keep their existing fiscal regime or to apply for a license under the new Mining Code.<sup>64</sup> Since the code's tax regime was particularly favorable to investors,<sup>65</sup> most of the conventions were renegotiated under the new regime.<sup>66</sup>

One of the key, investor-friendly features of the Mining Code was that significant payments to the state are not due until after production. Once the mine begins to produce, a royalty is paid on production; later, once the company becomes profitable enough to have overcome initial losses, a tax is paid on profits.<sup>67</sup> In 2002, production was at a record low, and it would take another decade for new investors to match Gécamines' exports of the late 1980s. Concretely, this meant that the treasury was not to expect any major income from the sector for at least half a decade after its adoption. The code left the government little leeway to change this.<sup>68</sup> The only way to get a signing bonus or other additional revenues before production would be to organize a public tender to sell or dispose of a mining asset—but the code restricts that possibility to exceptional cases.<sup>69</sup>

As soon as the new system was set up, companies with creative names like Abba Jeans Mining and Baobab Minerals rushed to the Mines Registry to obtain licenses.<sup>70</sup> Within a few years, the Mines Registry had granted over 4,300 research permits, 97 percent of which went to private companies.<sup>71</sup> For them, there was no contract to negotiate: A simple ministerial decree—the content of which was little more than a repetition of the code and regulations—would grant the permit to the applicant and

define all its obligations.

Most investors, however, were not looking for research permits.<sup>72</sup> They wanted *exploitation* permits for identified reserves that would allow them to fast-track the exploration phase and start digging, refining, and exporting minerals. By 2007, the Mines Registry had issued 471 such exploitation permits, with private companies holding only 35 percent of them. The rest involved state-owned companies to some degree.<sup>73</sup>

### **Gécamines Comes Back Through the Back Door (2003–2004)**

If the Mining Code was intended to liberalize the sector, how did nearly two-thirds of the exploitation permits still involve Gécamines and other state-owned companies? Ostensibly, the code does not grant state-owned companies specific privileges, as they are supposed to abide by the same rules as other titleholders.

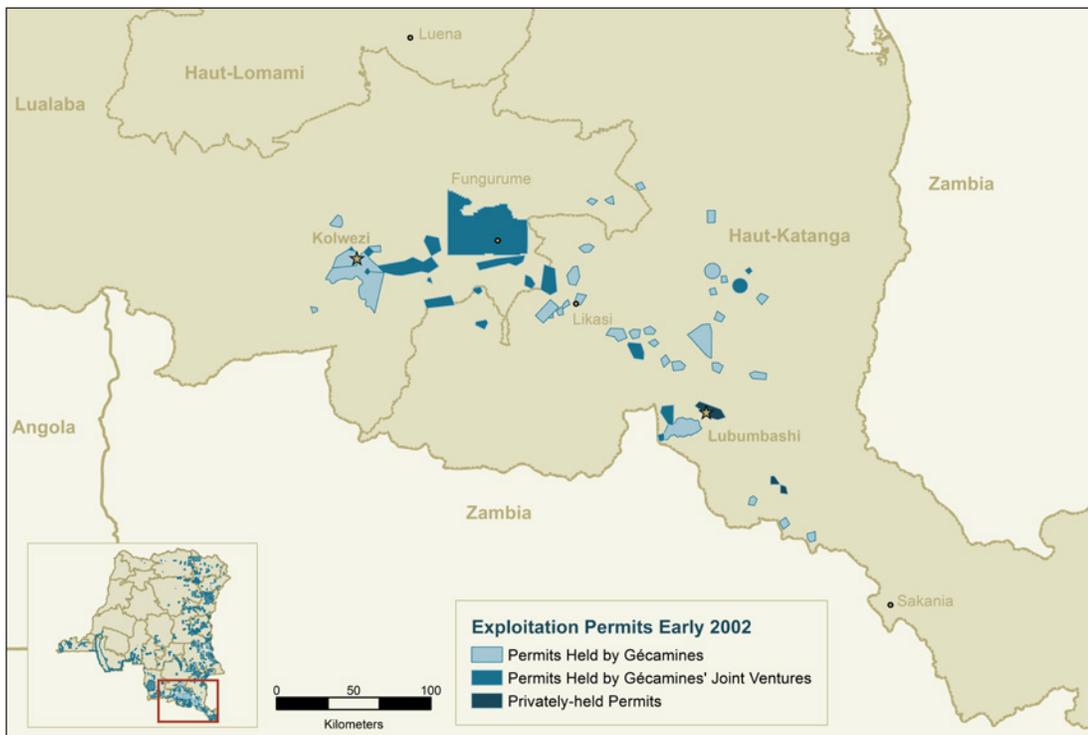
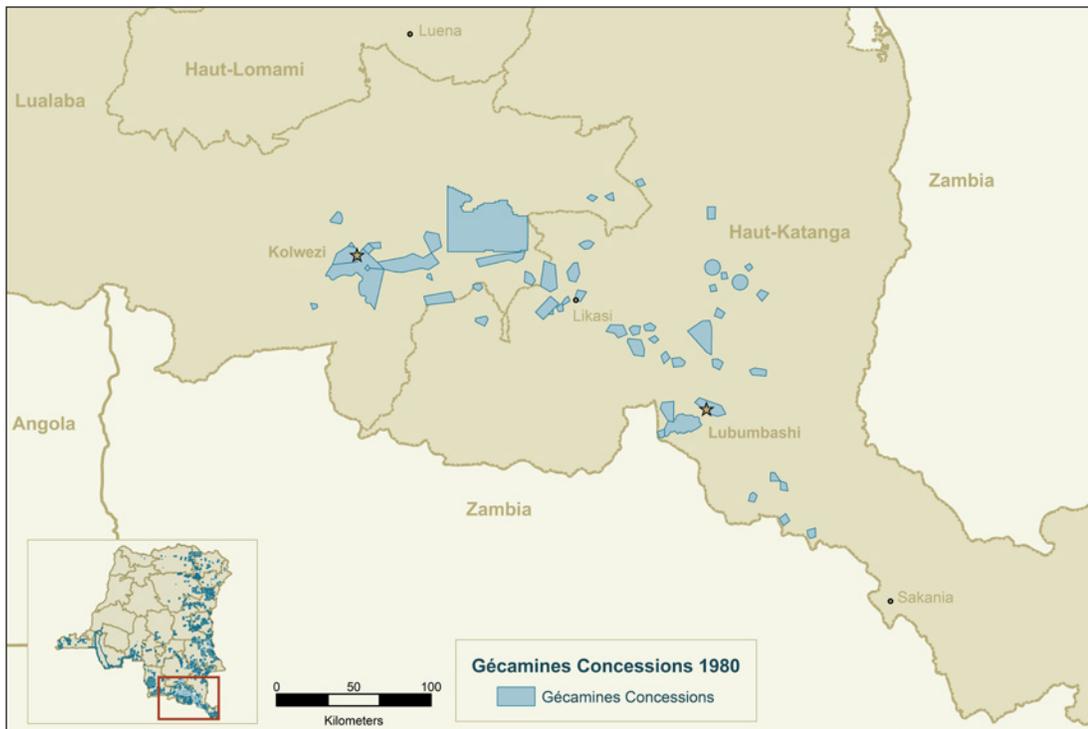
The legal answer lies in a subtle transitional clause of the Mining Code with far-reaching consequences: State-owned companies were allowed to retain ownership of a certain number of permits but would have to comply with the new law.<sup>74</sup> As a result, Gécamines selected its most valuable concessions and converted them into new Mining Code exploitation titles.<sup>75</sup> This provision preserved Gécamines' position as the *de facto* gatekeeper of some of the country's most promising mineral deposits. The new law also allowed any titleholders, including state-owned companies, to sell or lease their Mining Code titles to other companies.<sup>76</sup> Using these provisions, Gécamines conceded some of its titles to fully private companies. More often, however, Gécamines would only partially privatize its titles. In such cases, it would concede one or several titles to a joint venture in which it would get a minority stake. In the joint venture agreement, Gécamines and the investor would agree on share capital, respective contributions to the partnership, and compensation rules—as in a joint venture between two private companies.

One high-level government administrator said,

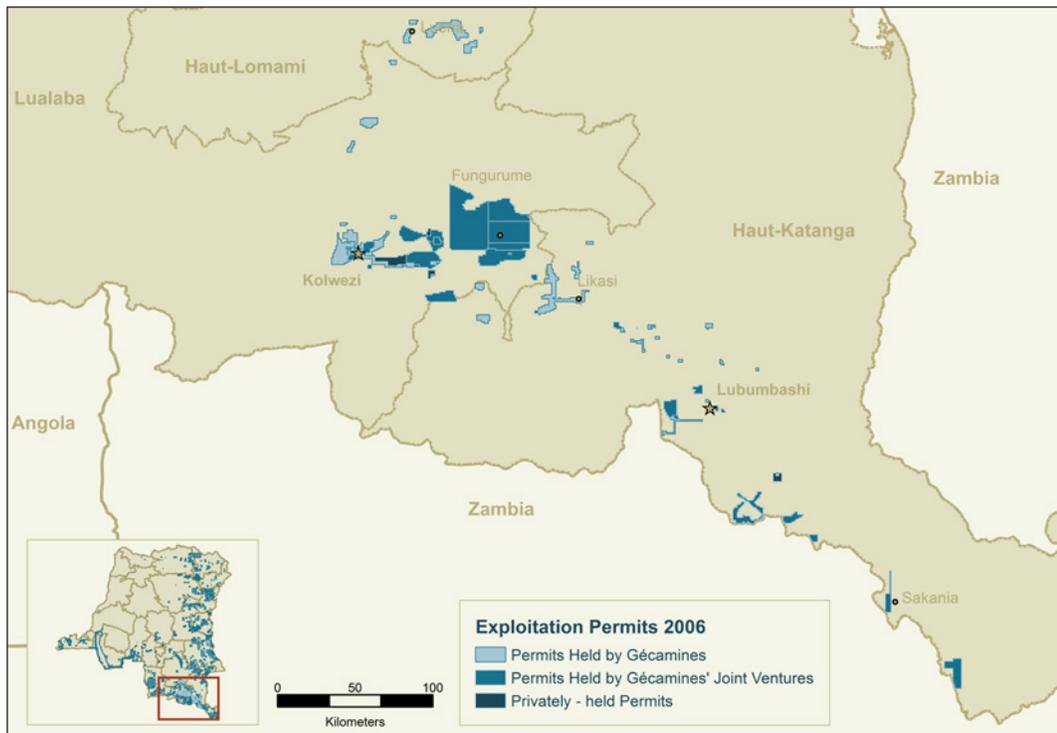
“When new investors came to see us, we first sent them to the new Mines Registry. They went, came back, and said, ‘No, we want well-known deposits.’ So we told them to get in touch with Gécamines and negotiate one of their titles.”<sup>77</sup>

The Carter Center's analysis shows that the Mining Code, in sum, left room for the continuation of negotiations and politicized dealmaking—not directly with the Congolese government, but with its state-owned companies. Its transitional provisions effectively institutionalized the power of Gécamines and those who had a say in its management to distribute the country's best titles without public tendering, relying on provisions that regulated title transfers from one investor to another rather than from the state to a private party. Just like before, Gécamines' permits could be used to compensate local construction companies for roads they had built or to reimburse foreign arms traders for the military assistance they had provided.<sup>78</sup>

This was a far cry from the competitive, well-organized licensing system that the World Bank had envisaged at the adoption of the 2002 Mining Code. In 2002–2003, the bank funded a team of consultants to audit Gécamines' operations and contracts. The consultants were shocked by the government's continuing political interference in Gécamines' affairs and recommended replacing the company's board with an international management team.<sup>79</sup> They believed such a team could implement a “rapid revival” business plan for Gécamines' KOV open pit mine in Kolwezi and kick-start the company's production relaunch. The plan required a relatively small investment of US\$150 million.<sup>80</sup> But while the World Bank agreed with the consultants' recommendation to replace the board with an international management team, it did not trust Gécamines to pay back a loan and declined to provide the necessary guarantees.<sup>81</sup> Instead, it commissioned two more studies to improve Gécamines' contracting practices while it prepared the terms of reference for international managers.<sup>82</sup>



In 1980, Gécamines held vast concessions across the copper belt. Between 1997 and 2001, Laurent-Désiré Kabila's regime began privatizing some of the concessions in an uncoordinated way. After the adoption of the 2002 Mining Code, Gécamines converted many of its concessions into new exploitation permits and preserved its role as gatekeeper to the best deposits of Katanga.



## The Pre-electoral Privatization Wave (2005–2006)

While the World Bank studies were in motion (and before an international management team could be installed), the government again turned to Gécamines' asset portfolio as a source of funding outside of the state budget. The overall political context had changed. In July 2003, a year after the adoption of the Mining Code, a transitional "1+4" government of national unity was sworn in, consisting of President Joseph Kabila and four vice presidents from different factions of the opposition, including rebel leader Jean-Pierre Bemba. Investors who wanted a Gécamines title first had to negotiate with the state-owned company. They then had to get approval from the economy and finance (eco-fin) ministerial commission headed by Bemba. Finally, they would seek ratification from Bemba's chief rival, President Kabila.<sup>83</sup> With elections on the horizon, these rival parties were looking for financial backers. "The first time Jean Pierre Bemba came to Lubumbashi as vice president, he really targeted Gécamines," a former

Gécamines director recalled.<sup>84</sup> "He wanted to know where the money from our joint venture partnerships went."

A parliamentary commission recognized that the upcoming elections increased the risk of quickly selling off Gécamines' assets on poor terms to preferred investors and recommended a ban on new contracts until after the polls.<sup>85</sup> The transitional government ignored

the recommendation. According to government officials, both President Kabila and Vice President Bemba began shepherding specific deals through the system.<sup>86</sup> "Key political and economic actors are currently dismantling Gécamines to assert control over the mining sector," wrote an American diplomat in a cable to Washington in 2005, the year before the presidential elections. "Proposed joint ventures (...) would take the most valuable of Gécamines assets and leave the company with few options for further development."<sup>87</sup> Later that year, Kabila ratified a package of three significant joint venture deals that effectively deprived Gécamines of its most important deposits.<sup>88</sup> In later years, political heavyweights, including the former minister of mines, the central bank governor, the minister in charge of state-owned enterprises, and a former DRC ambassador to the United Nations took board positions in one of the three joint ventures.<sup>89</sup>

One of them was the joint venture for the KOV mine that World Bank consultants had identified as Gécamines' life preserver. Among the beneficiaries

of the KOV agreement was Dan Gertler, today one of the most powerful businessmen in the country. According to Bloomberg, Gertler had secured a diamond contract under Laurent-Désiré Kabila after committing US\$20 million in cash to the regime.<sup>90</sup> He lost the contract after Joseph Kabila came to power, despite having been friends with him since 1997.<sup>91</sup> Regardless, Gertler agreed to assist the young president in peace talks with Rwanda. The strategy paid off. Four years after the original diamond contract cancellation, Kabila's administration allocated the KOV mine to a joint venture between Gécamines, Gertler, and his business partners.<sup>92</sup>

In the meantime, Bemba was actively supporting the renegotiation of the Tenke Fungurume Mining (TFM) agreement.<sup>93</sup> U.S.-based Phelps Dodge was keen to buy a majority stake in the TFM joint venture that Lundin and Gécamines had set up in 1997, but

only if there were significant contract amendments. Alexis Thambwe, minister of planning, then part of the Bemba camp, told the U.S. ambassador that he was "committed to getting the project off the ground" and that he asked Bemba "to recommend to the president [Kabila] that Gécamines be forced to agree."<sup>94</sup> A representative of TFM rejected the allegation of political bias in favor of Bemba: "We negotiated with all sides. That's probably why it took us so long."<sup>95</sup> A Lundin spokesperson commented that interactions with Bemba were rare and related to his government mandate.<sup>96</sup> After the ratification of the renegotiated TFM agreement, high-level delegations of U.S. investors and diplomats visited Bemba to "thank him for the help and support of his office."<sup>97</sup>

The same day he ratified the TFM deal, Kabila also approved the joint venture agreement for the partially collapsed Kamoto underground mine in



After Gécamines' production plummeted in the early 1990s, successive governments engaged in the piecemeal privatization of the state miners' deposits and often dilapidated infrastructure, such as the copper-zinc site in Kipushi.

Kolwezi. Several investors had pursued the site for years.<sup>98</sup> Among them was George Arthur Forrest, a well-connected businessman whose family had been present in the region since 1922<sup>99</sup> and who had briefly served as Gécamines' chairman under Laurent-Désiré Kabila. Forrest teamed up with a Canadian gold company, Kinross Gold, and despite fierce criticism against the deal, secured a preliminary agreement for Kamoto.<sup>100,101</sup> A letter between ruling officials of Kabila's party attests to Forrest's political ties: "Let us emphasize that Mr. George Arthur Forrest and his Groupe [Forrest] stick out [among the political backers], for he has accompanied us all along, step by step, in the party's campaign launch."<sup>102</sup> "[Kabila's party] wasn't the only party I supported; there were about 10 of them," Forrest commented.<sup>103</sup> Several investors confirmed Forrest's multiple allegiances.<sup>104</sup> "DCP was Kabila, TFM was Bemba, but Forrest was both," according to a former senior government official.<sup>105</sup>

The World Bank was uncomfortable with this new privatization wave. An internal memo appears to indicate that the bank was aware of the flaws in the contracts for KOV, Kamoto, and the Tenke Fungurume concessions and even feared its own reputation might be damaged if it were seen to be supporting the deals.<sup>106</sup> As the World Bank-sponsored legal consultants were presenting their recommendations for improved contracting at a workshop in Lubumbashi, Gécamines board members were approving 10 new partnerships in a different part of town.<sup>107</sup> Meanwhile, the bank continued pushing for the hire of an international management team as a way to curb political interference. Several interviewees said the government purposefully delayed the international managers' appointment until after Gécamines had signed away its most strategic deposits.<sup>108</sup> A month after Gécamines entered into a range of new joint venture agreements (see Table 1), the government finally appointed the new chief executive officer, Canadian lawyer Paul Fortin, to manage what was now more of an asset portfolio of minority stakes than a mining company focused on production.

**Table 1 — Joint Venture Contracts Signed, 2005–2006**

Joint Venture	Type of Contract	Execution Date
Shituru Mining Corporation (SMCO Sprl)	New contract	7/25/2005
Kamoto Copper Company (KCC) (for the Kamoto Underground Mine)	New contract	8/4/2005
Tenke Fungurume Mining (TFM)	Renegotiated convention	8/4/2005
<b>World Bank tender for new management team</b>		8/8/2005
DRC Copper and Cobalt Project (DCP) (for KOV)	New contract	10/13/2005
Ruashi Mining	Amendment	12/8/2005
Minière de Kalumbwe Myunga (MKM)	Amendment	12/8/2005
Anvil Mining Concentrate Kinsevere (AMCK)	New contract (lease)	12/8/2005
Compagnie Minière de Tondo (CMT Sprl)	New contract	12/8/2005
Compagnie Minière de Musonoï (COMMUS Sprl)	New contract	12/8/2005
Compagnie Minière de Kasombo (MIKAS Sprl)	New contract	12/8/2005
Société d'exploitation minière de Chabara	New contract	12/8/2005
Congo Zinc SPRL	New contract	12/8/2005
<b>Appointment of international manager Paul Fortin (SOFRECO)</b>		January 2006
Compagnie Minière de Luisha (COMILU Sprl)	New contract	4/7/2006, 7/28/2006
<b>Presidential and Parliamentary Elections</b>		7/30/2006

Gécamines struck a number of deals to further privatize its mining assets, often via joint ventures, in the lead-up to the 2006 elections.

## Keeping the Parallel Mining Registry Alive (2007–Ongoing)

By 2006, Gécamines had ceded Kolwezi, Tenke Fungurume, and most of its other important assets to joint venture companies. It had about 38 relatively small exploitation permits left. By the end of 2015, it had ceded about half of those to joint ventures;<sup>109</sup> the other half was arguably not attractive enough to private investors. One would perhaps have expected that going forward, Gécamines would lose its role as a gatekeeper to the sector and that new investors would simply turn to the Mines Registry to obtain a title on a first-come, first-served basis as originally intended. In recent years however, the government has taken action that has ensured that Gécamines could preserve its gateway role, specifically by requiring the Ministry of Mines to allow Gécamines to convert its research permits into exploitation permits. Indeed,

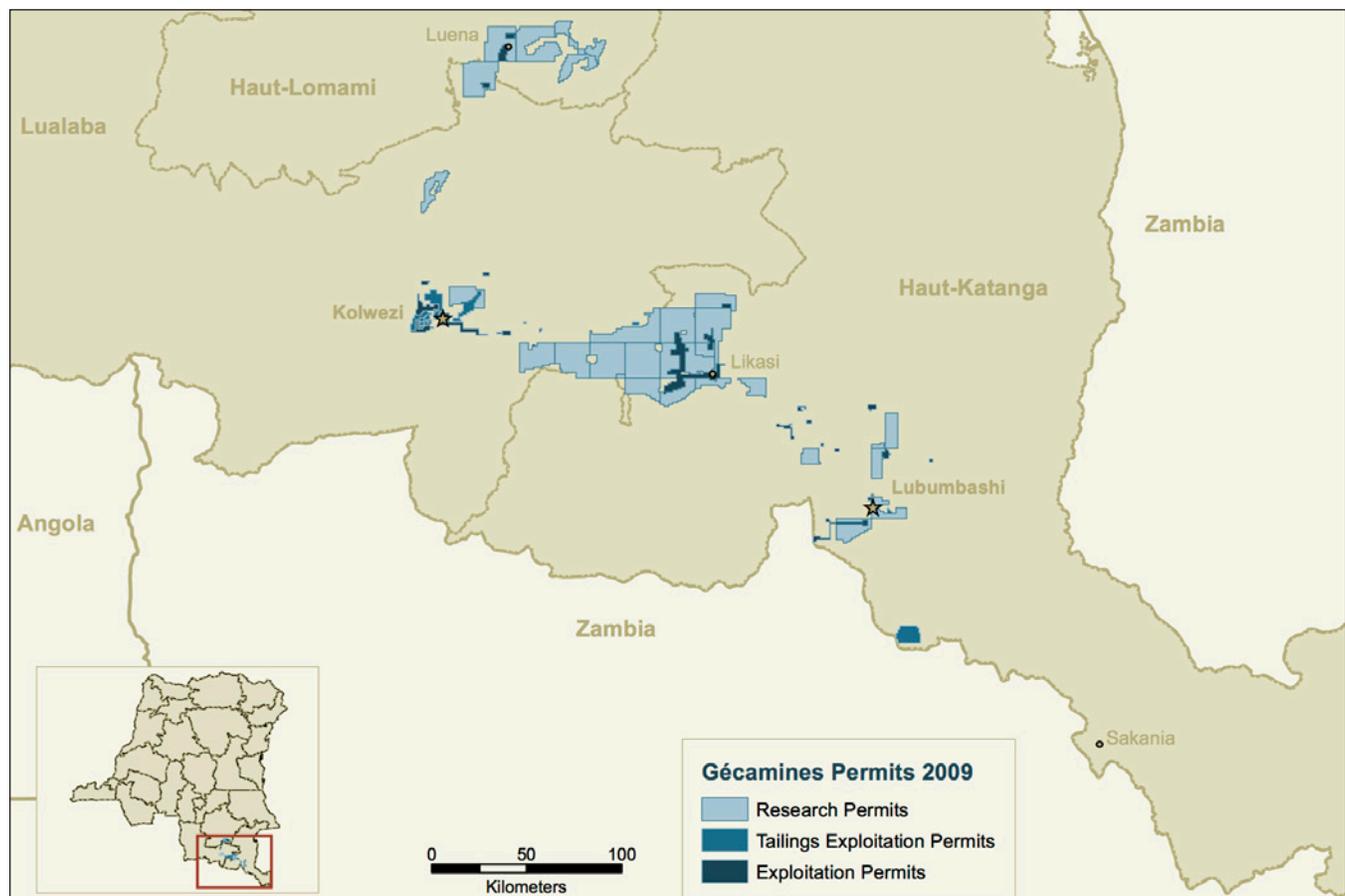
since 2006, the total number of Gécamines exploitation permits has gone up, not down. In 2009, Gécamines owned 38 exploitation permits and 40 research permits. By the end of 2015, it owned 93 exploitation permits and only four research permits.

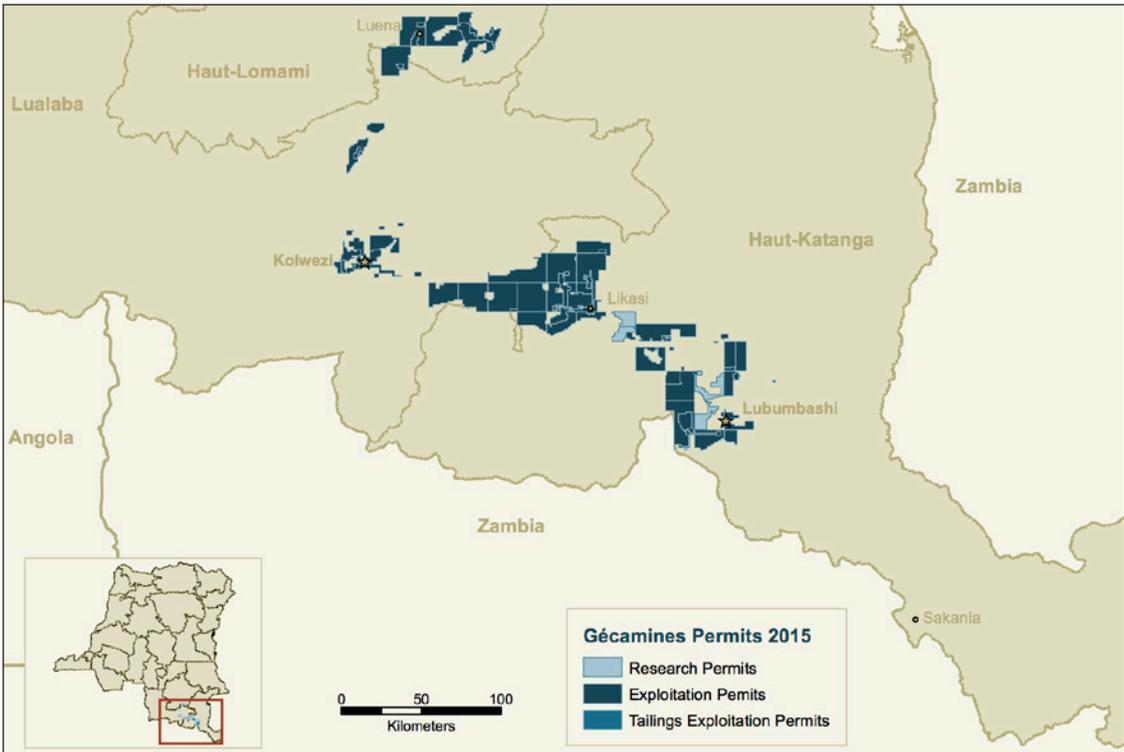
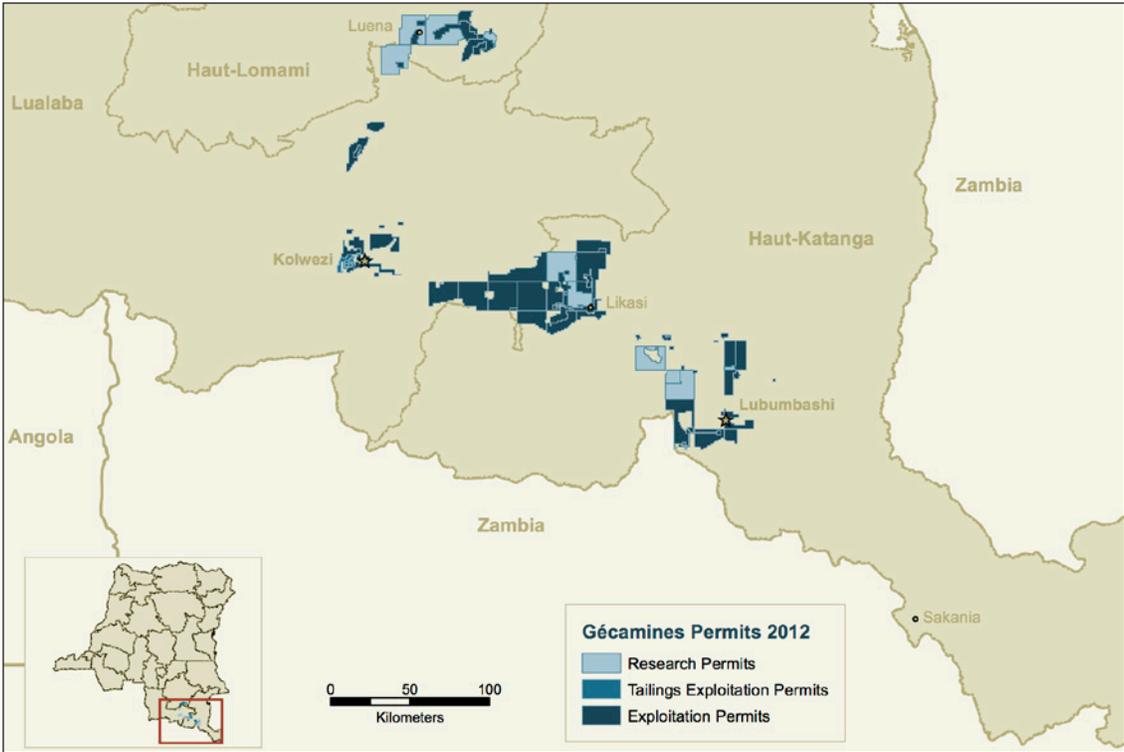
**Table 2—Gécamines' Mining Permits, 2009, 2012, 2015**

Year	Research Permits	Exploitation Permits
2009 <sup>110</sup>	40	38
2012	11	73
2015	4	93

Between 2009 and 2015, Gécamines was allowed to convert nearly all its research permits into exploitation permits.

Conversion of Gécamines' permits has typically disregarded the stringent set of requirements in the Mining Code. Legally, a conversion of a research permit into an exploitation permit requires the





Gécamines' conversion of research permits into exploitation permits enables it to hold on to vast prospective mining zones for another 30 years. As a result, newcomers may have to negotiate access with the state-owned company rather than apply for a title with the Mines Registry.

titleholder to submit a feasibility study and an environmental impact assessment, consult the local community, provide proof of financial and technical capacity, and comply with a range of other strict conditions.<sup>111</sup> Mines Registry data show that between 2010 and 2014, Gécamines converted a long list of research permits into exploitation permits. A high-level official at the Mines Registry conceded that the feasibility studies, an essential part of the application for an exploitation permit, were “a fantasy.”<sup>112</sup> He explained that the conversions were done to prevent Gécamines from losing its titles. According to the Mining Code, research permits have to be renewed every five years and, when renewed, titleholders have to give up half of the area covered by the title.<sup>113</sup> Exploitation permits, by contrast, are valid for 30 years.<sup>114</sup>

“We granted exploitation permits to *la grande entreprise qu’est la Gécamines* [the great enterprise Gécamines] so that it could develop its concessions,” Minister of Mines Martin Kabwelulu said in an interview.<sup>115</sup> “It risked losing its titles, so we gave it that privilege so that it could immediately start production on its concessions. This is why we are now disappointed: It did not start production.”<sup>116</sup> Like Gécamines, other state-owned companies have benefited from such special privileges.<sup>117</sup>

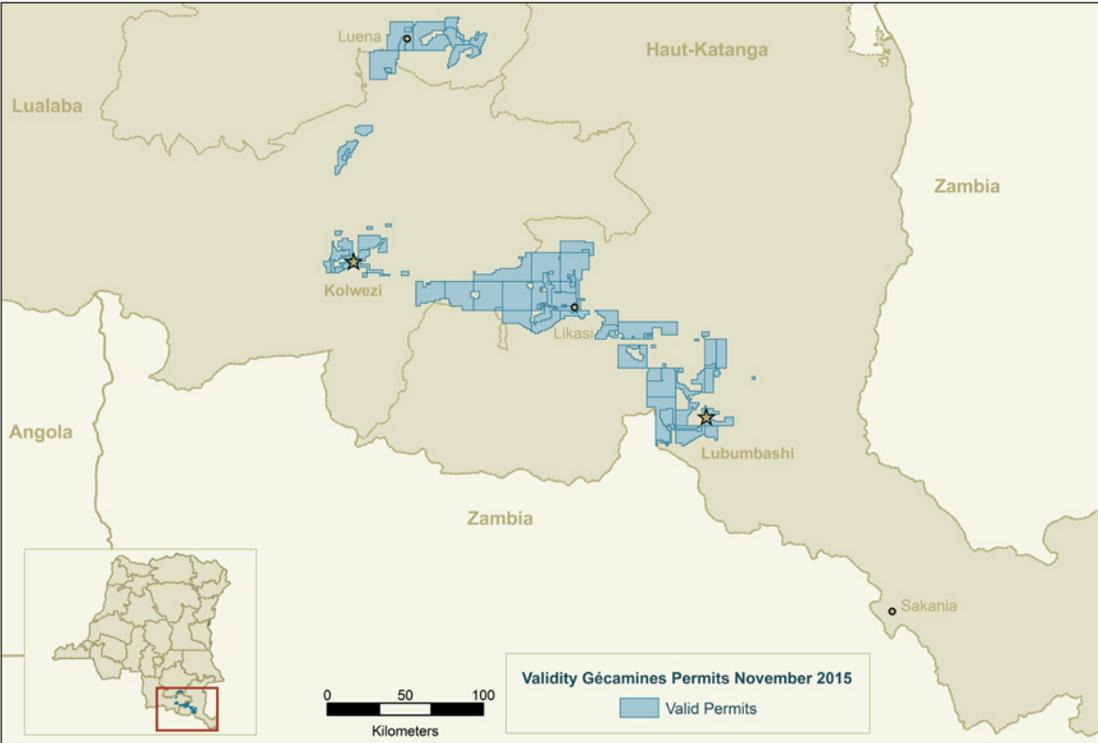
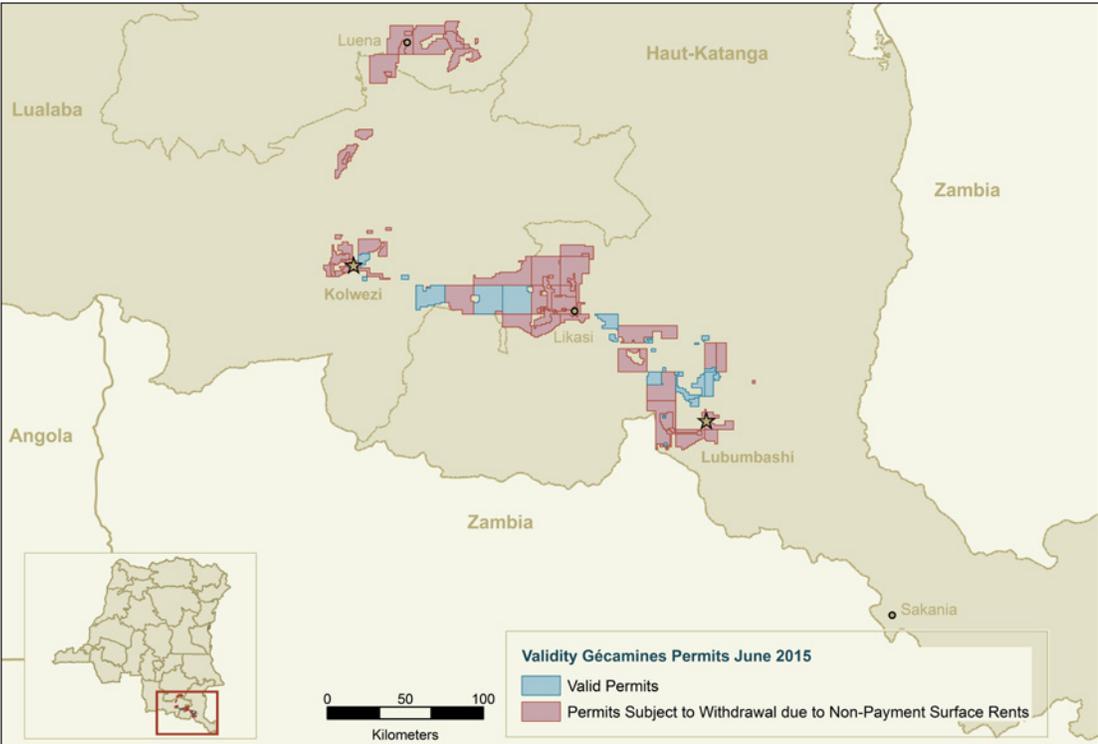
Problematically for Gécamines, surface rents for exploitation permits are almost 10 times more expensive than for 5-to-10-year-old research permits.<sup>118</sup> The higher cost is meant to test the financial capacity of titleholders and to incentivize them to keep only the zones they want to exploit. According to the Carter Center’s research, Gécamines owed an estimated US\$4.14 million in annual surface rents in 2015.<sup>119</sup> By June 2015, the Mines Registry’s website indicated that Gécamines had failed to pay surface rents for 70 out of its 90 permits.<sup>120</sup> The nonpayment of surface rents is one of the rare obligations in the Mining Code that is punishable by the withdrawal of the permit. As such, the minister of mines should have automatically withdrawn those 70 permits.<sup>121</sup> Yet, by November 2015, not only had the status of the

permits been renewed as “active” but Gécamines also had acquired more permits.<sup>122</sup>

Thanks to this series of privileges, Gécamines still owned over 98 exploitation permits in March 2016, according to the Mines Registry’s website. Not only is this more than any other mining company, it also exceeds the Mining Code’s limit of 50 permits per type of permit.<sup>123</sup> These permits cover the majority of the nonprivatized zones in the copper belt. Therefore, investors who want to acquire permits for unexploited or even unexplored zones will almost necessarily have to work with Gécamines—operating as a parallel registry—rather than solely with the Mines Registry.

Keeping a parallel, informal registry allows for the selection of investors based on criteria other than the Mining Code’s technical requirements. It also allows for the negotiation of extra revenues *in addition* to the fixed tax regime provided for in the Mining Code. It should be noted that the Mining Code itself provides for the possibility to negotiate extra revenues “on an exceptional basis,” namely when the government decides to organize a public tender for deposits of particularly important value “when the public interest so requires.”<sup>124</sup> The tender procedure involves a wide range of actors, including a body of technical experts, the minister of mines, the president of the republic, and an interministerial commission. This cumbersome procedure is there for a good reason: at stake are the most important mining assets of the country. Acting through Gécamines bypasses some of these institutions and restricts oversight of revenues from mining privatization. The following section of this report will show that these revenues have grown considerably following the 2006 elections.

**Gécamines owned 98 exploitation permits in March 2016, almost twice as many as the Mining Code’s limit of 50 exploitation permits.**



In June 2015, Gécamines defaulted on the payment of its surface rents for a large number of its permits that, according to the Mining Code, should lead to immediate title withdrawal. Yet by November 2015, the titles had been reactivated.

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# Contract Review and the Parallel Treasury

After the first decade of privatization (1995–2005), there was widespread criticism from the media, a coalition of national and international nongovernmental organizations pushing for a “Fair Share for Congo,” and even a Congolese parliamentary commission, of Gécamines’ partner selection and of the lopsided nature of its deals, which jeopardized long-term revenue for the country. This criticism led to a call to review the contracts, generate more

revenues for their Congolese signatories, root out speculators who failed to demonstrate operational progress, and increase overall transparency in the sector.

Kabila’s party and opposition groups had already agreed to such a review during the peace talks in 2003, and it was featured among the action items of the 2003 Sun City peace agreement.<sup>125</sup> But the process was not set in motion until after 2006, when



By the time of the 2006 elections, Gécamines’ most important assets—such as the Lubumbashi tailings heap pictured here—had been transferred to joint venture companies on terms that were deemed grossly imbalanced by media, a coalition of national and international nongovernmental organizations pushing for a “Fair Share for Congo,” and even a Congolese parliamentary commission. In 2007, the DRC government engaged in a sector-wide contract review process. These and other measures enabled the state-owned company and its supervisors to access significant and previously unavailable revenue flows.

the country held multiparty elections for the first time in 30 years. Joseph Kabila defeated Jean-Pierre Bemba in the second round, regained full control of the government and the state-owned companies, and launched the review the following year. However, instead of increasing transparency in the sector and promoting a more rational selection of investor partners, the “revisitation,” as the process came to be known, served mainly to strengthen Gécamines’ business position in its partnerships. It increased the likelihood of short-, medium-, and long-term financial benefits and also laid the basis for more lucrative deals for Gécamines going forward.

**The “revisitation,” as the DRC contract review process came to be known, served mainly to strengthen Gécamines’ business position in its partnerships and increase the likelihood of financial benefits.**

Just after the review and shortly before the 2011 presidential elections, Gécamines embarked on a new wave of privatization, selling off minority stakes in some of its most strategic joint ventures. While the new deals again attracted fierce criticism, they also generated significant additional income for the state-owned company. According to Carter Center estimates based on analyses of contracts and announced deals, the review, subsequent negotiations with investors, and asset sales resulted in over US\$1.5 billion for Gécamines between 2009 and 2014. Allocation of these funds was subject to limited public oversight.<sup>126</sup> This figure contrasts sharply with frequent press statements from Gécamines leadership that Gécamines receives barely anything from its joint venture partnerships.<sup>127</sup>

## Setting the Stage for Contract Review (2003–2006)

As Congolese citizens looked back on a decade of war and economic instability, talk of *contrats léonins* (grossly imbalanced contracts), *bradage* (swindling), and *saucissonnage* (chopping up Gécamines’ portfolio like salami) became commonplace. The U.N. Panel of Experts, several World Bank consultancy teams, a former Gécamines director,<sup>128</sup> and a DRC parliamentary commission headed by Christophe Lutundula all vilified the deals before the 2006 elections.<sup>129</sup>

These critics also blamed Gécamines for having partnered with the wrong investors. Some pointed to the early speculators that attended the 1997 meetings at the Karavia hotel and reportedly provided quick, upfront signing bonuses that helped finance the coup. Others to the Zimbabwean businessmen who allegedly served as cash conduits to compensate Mugabe’s regime for its military support to Kabila in 1998–1999. Many cited the well-connected investors that navigated the complex transitional government’s structure to acquire some of Gécamines’ key assets before the 2006 elections. A common denominator of the criticism was that political considerations appeared to have mattered more than the investors’ technical and financial track records.

Observers, including media, a coalition of national and international nongovernmental organizations pushing for a “Fair Share for Congo,” and a Congolese parliamentary commission, said the contracts were systematically lopsided in favor of the investor. This was partly a result of the political context but also an indication of the lack of expertise within Gécamines to define compensation for the mining permits and infrastructure Gécamines contributed to the joint ventures.<sup>130</sup> Some investors argued that mere license possession was not worth much,<sup>131</sup> even though the market typically indicated the contrary.<sup>132</sup> Some are also accused of downplaying the value of Gécamines’ old industrial infrastructure, even though it still had significant production capacity and, in some cases, saved investors hundreds of millions of dollars.<sup>133</sup> Gécamines could have hired independent experts to

carry out additional feasibility studies and assess the value its assets, taking into account a wide range of parameters.<sup>134</sup> Alternatively, a public tender could have helped determine the market value of the asset.<sup>135</sup> In the course of Gécamines' hasty privatization rush, none of these valuation mechanisms were employed.<sup>136</sup>

**The logic, it seemed, had been that a little instant cash directly in the hands of state-owned companies mattered more than larger sums for the state treasury in some distant future.**

While the Mining Code upheld a crucial role for Gécamines, it also negatively affected its negotiating position. Before the code, parties could negotiate the fiscal regime for individual concessions. This allowed Congolese negotiators to offer long-term tax exemptions in exchange for promises to receive upfront signing bonuses and relatively large equity stakes for the state-owned mining companies. According to consultants hired by the World Bank to assess Gécamines' business strategy, the logic, it seemed, had been that a little instant cash directly in the hands of state-owned companies mattered more than larger sums for the state treasury in some distant future.<sup>137</sup> With the advent of the Mining Code, however, joint ventures between Gécamines and investors could no longer negotiate exemptions, as they had to respect the code's fixed tax regime. Consequently, many investors sought to reduce Gécamines' original benefits in exchange for forfeiting their old tax exemptions.<sup>138</sup> "The view of the industry is that it would not be a problem paying tax, but we can't afford that *and* giving Gécamines an interest," an investor told the press before the code was adopted.<sup>139</sup> The impact on Gécamines' position in the joint ventures was considerable. Gécamines' equity share in existing joint

ventures was often halved, and some of its signing bonuses were significantly reduced.<sup>140</sup>

While these amendments might have been justified from the investors' perspective, they amplified the call from external observers to secure a "fair share for Congo."<sup>141</sup> There was economic momentum to correct past wrongs, as the growing demand for raw materials, particularly in China, increased copper prices.<sup>142</sup> Moreover, the international perception that a more stable political regime had taken control in Kinshasa put the government in a strong negotiation position with investors.



To stop the contracting-out of Gécamines' best assets, a coalition of national and international nongovernmental organizations launched the Fair Share for Congo campaign.

Most importantly, a contract review offered the government a chance to address a major shortcoming of the Mining Code, namely that it did not provide for significant tax revenue until well after production

**A contract review offered the government a chance to address a major shortcoming of the Mining Code, namely that it did not provide for significant tax revenue until well after production began.**

began.<sup>143</sup> In 2006, few of the investors had started production, so working through Gécamines seemed like a good short-term remedy to generate a supplemental revenue generation stream.

The Kabila government set up the revisitation

commission in April 2007 to examine the 63 mining contracts its state-owned companies had signed with private investors during the war and political transition, including 28 Gécamines joint venture deals.<sup>144</sup> The World Bank was unsure about whether to back the review, which ended up taking almost four years to complete.<sup>145</sup> It is not clear, however, that the Congolese government would have accepted international assistance had it been offered. In fact, the only legal assistance came from Emery Mukendi Wafwana & Associés, a Congolese law firm involved in a World Bank-funded Gécamines study before the elections. The government seems to have kept other external support at bay.<sup>146</sup> For instance, it rejected an offer of pro bono support to analyze the original contracts from a specialized law firm with which The Carter Center previously worked.<sup>147</sup>

## Revisitation: Upping the Ante (2007–2010)

In March 2008, the revisitation commission issued a report recommending that all the contracts be either renegotiated or canceled.<sup>148</sup> Martin Kabwelulu, the minister of mines, subsequently directed the renegotiation teams to carefully assess the value of the contributions of each joint venture party and to increase the stake of the state-owned companies to 51 percent—twice the equity they possessed in most of the joint ventures at the time.<sup>149</sup> In reality, there was neither the time nor the money to do a rigorous evaluation of the contributions, according to a lawyer who participated in the renegotiations.<sup>150</sup> Gécamines' ownership stake rarely went up by more than a few percentage points.<sup>151</sup> Instead of increased shareholding, the renegotiations focused on three main factors to improve Gécamines' compensation: signing bonuses, royalties, and dividends.

### Signing Bonuses

Signing bonuses, also known in Congo as *pas de porte*, are bulk payments often disbursed in several installments and usually in excess of US\$1 million.<sup>152</sup> During the renegotiations, Gécamines asked all of

its partners to pay a signing bonus of US\$35 per ton of copper that Gécamines brought to the joint venture.<sup>153</sup> If in the future the joint venture identified additional reserves on top of the amount recognized in the contract, an extra signing bonus would be paid according to the same “US\$35/tCu” formula.

There were a number of flaws with this approach. Few contract amendments specified what exactly counts as “a ton of copper.” It could be a ton of copper reserves or copper resources, a ton of contained copper or copper ore, a ton of proven reserves, or reserves with a lesser degree of certainty.<sup>154</sup> Moreover, factors other than just copper (such as the occurrence of cobalt) should have been taken into account in defining Gécamines' contribution.<sup>155</sup> The exclusive reliance on copper gave the Congolese negotiators an incentive to promise more copper than they actually had. In total, Gécamines promised more than 37 million tons of copper resources, even though the company had estimated in 2002 that it held roughly 33 million tons of measured and indicated resources.<sup>156</sup> The contracting parties usually relied on historic estimates that overestimated the resources compared to the more rigorous international standards that currently apply in the sector.<sup>157</sup>

For all its limitations, the simplicity of the US\$35/tCu formula had the advantage of facilitating negotiations, since nearly all partners accepted it.<sup>158</sup> In total, Gécamines' contract amendments after the review show that its partners committed approximately US\$322 million in new signing bonuses, one-third of which was payable upon signature of the amended agreements.<sup>159</sup> The total of these new signing bonus commitments was roughly equivalent to the entire mining sector's tax contribution to the DRC treasury in 2010.<sup>160</sup>

### Royalties

In addition to signing bonuses, Gécamines also negotiated royalty payments for the depletion of its ore deposits.<sup>161</sup> Royalties are usually a “payment to the owner of the mineral resource in return for the removal of the minerals from the land.”<sup>162</sup> Since the minerals belong to the DRC state,<sup>163</sup> the Mining



A staff member in the emblematic Gécamines uniform keeps records at the company's dilapidated Lubumbashi plant.

Code requires a royalty, called the *redevance minière*, be paid to the state treasury to compensate for the depletion of Congo's natural resources.<sup>164</sup> In addition to these Mining Code royalties to the state, Gécamines pushed to standardize *contractual* royalties paid to Gécamines.<sup>165</sup> "It didn't make any sense to pay this to Gécamines," one investor commented. "Gécamines is not the people of Congo."<sup>166</sup> Yet many investors agreed to pay these royalties to Gécamines, often pegged at 2.5 percent of sales.<sup>167</sup>

Between 2009 and 2014, Gécamines was entitled to an estimated US\$284 million in royalties.<sup>168</sup> Unlike signing bonuses, royalties provide returns for the operational lifetime of the project (as long as Gécamines does not sell its interest).

### Dividends

A third way to improve Gécamines' compensation was to increase the likelihood that its joint ventures

would eventually be profitable and thus generate dividends. Before the revisitation, investors found many ways to inflate their costs and delay profits,<sup>169</sup> to the point that some lawyers who examined the contracts judged Gécamines' dividends to be "practically an illusion."<sup>170</sup> Investors would subcontract work to their own subsidiaries without Gécamines being able to control the costs, or they would set up a management subsidiary that excluded Gécamines from daily decision making.<sup>171</sup> In some cases, Gécamines did not even have the right to see the operator's financial statements.<sup>172</sup> To prevent cost inflation to the benefit of the investor, most contracts now specify that subcontracts for affiliated parties be as efficient as contracts with any other contractor.<sup>173</sup> One investor's practice was to levy high management fees,<sup>174</sup> which Gécamines also tried to get rid of during contract renegotiations.<sup>175</sup>

Another factor delaying Gécamines' dividends was that investors had to inject very little of their own money into the joint ventures in the form of equity.<sup>176</sup> Instead, the investors often promised to secure funds, in many cases almost exclusively borrowed, a practice known as "thin capitalization."<sup>177</sup> Interests on those loans increased the costs for the joint venture. Any available cash flows would go to reimbursing the shareholder loans prior to paying dividends, and these reimbursements could easily take five years. One of the investors expected that financing the joint venture through loans yielded 3 to 11 times greater net present value for the investor than if the investor had provided financing through equity.<sup>178</sup> As the Lutundula Commission noted, "[I]n the end, the only contribution of the private partner is her credibility and guaranty to the bank or lending institution."<sup>179</sup> World Bank consultants found this financing structure "very inventive and hardly orthodox."<sup>180</sup>

According to most renegotiated contracts, investors can no longer solely rely on loans. They have to inject capital in the amount of US\$10 million for each million ton of copper reserves Gécamines brings to the joint venture.<sup>181</sup> While most of Gécamines' partners accepted this commitment, they usually required Gécamines to contribute too. But since Gécamines did not have the money to contribute its pro rata share of the capital, the investors typically provided Gécamines with interest-free loans to do so. This increased Gécamines' own debt by an estimated US\$80 million.<sup>182</sup> The loans are to be repaid through money Gécamines is entitled to down the road—usually its dividends but occasionally royalties or part of a signing bonus.<sup>183</sup> For the remainder of the investment, Gécamines' partners could still rely on loans, but most contracts capped the financial costs of those loans.<sup>184</sup> Another change was that part of the available cash flow, usually 30 percent, would go toward paying dividends, with the remainder allocated to the repayment of shareholder advances.

It should be noted that these overall positive trends for Gécamines—greater signature bonus payments, royalties, and dividends—do not show the significant disparity of outcomes that exists between projects.

### Need for a Contract-by-Contract Analysis

A closer look reveals that the largest investors managed to circumvent changes that smaller investors commonly accepted. Their bargaining had and still has a major impact on Gécamines' partnership revenues. For example, Kamoto Copper Company (KCC) did not use the standard benchmark to calculate its signing bonus. According to KCC's contract and documents from the Ministry of Mines, it secured permits that covered an estimated 16.6 million tons of copper resources,<sup>185</sup> almost half of what Gécamines held in 2002.<sup>186</sup> Using the standard US\$35 per ton formula, The Carter Center estimates that the investor would have owed Gécamines a US\$581 million signing bonus.<sup>187</sup> Instead, it negotiated a bonus of US\$140 million, less than US\$8.50 per ton.<sup>188</sup> KCC's private investors also did not accept the same stringent interest rate caps others did.<sup>189</sup> Following the review, KCC's debt ballooned to more than US\$5 billion dollars by 2014.<sup>190</sup> KCC shareholders Katanga Mining Limited and Glencore stated that these loans were negotiated at arms' length and approved by an independent committee.<sup>191</sup> As the company will spend years if not decades reimbursing its shareholders,<sup>192</sup> it is unlikely that Gécamines will receive dividends from KCC in the near future.<sup>193</sup>

Similarly, Tenke Fungurume Mining (TFM), one of the two most productive projects in the copper belt since the project began in 2009, did not agree to make royalty payments on its production like most other joint ventures.<sup>194</sup> If it had, it would have had to pay over US\$20 million in annual royalties to Gécamines.<sup>195</sup> Instead, the investor—and not Gécamines—is entitled to a "marketing royalty" equivalent to 1.25 percent of gross sales.<sup>196</sup> TFM has managed to keep this royalty as well as other management fees, thus eroding the profit tax base.<sup>197</sup> It also managed to raise rather than decrease its interest cap,<sup>198</sup> and it minimized the initial reserves estimate so that it pays signing bonuses more gradually than other joint ventures. TFM's shareholders said other advantages for Gécamines compensated for these factors, such

(continues)

as an extra 2.5 percent stake for Gécamines, payments for newly discovered reserves, and a new consultancy agreement.<sup>199</sup> The consultancy agreement has generated approximately US\$14 million per year for Gécamines.<sup>200</sup>

Mutanda Mining, currently the second biggest copper exporter in Congo and the largest cobalt producer on earth, managed to negotiate its royalty rate of 4.5 percent down to 2.5 percent. Gécamines' stake in the venture actually went down to 20 percent from 40 percent, even though the contract review process was generally meant to strengthen Gécamines' position in its partnerships.<sup>201</sup> Mutanda operator Glencore commented that these changes aligned the contract with other joint venture agreements across the sector.<sup>202</sup>

Despite these and other inconsistencies among joint ventures,<sup>203</sup> the revisitation resulted in overall better terms for Gécamines, generating short-, mid-, and long-term financial benefits. Signing bonuses have been harmonized across most contracts, most projects now generate royalties for Gécamines, financial costs generally have been capped, and equity generally has been increased. In addition, contracting parties adopted a range of measures to stimulate faster dividend payments, although it should be noted that joint ventures had not yet declared any such payments under EITI for the years 2010–2015.<sup>204</sup> The signing bonuses and royalties alone have entitled Gécamines to over US\$600 million between 2009 and 2014.<sup>205</sup>

### **After the Review: Keeping the Parallel Treasury Alive (2009–Ongoing)**

Signing bonuses and royalties were far from the only revenues Gécamines collected after the contract review. Numerous ownership changes in the copper-cobalt sector generated new opportunities for state-owned miners to raise funds.

Between 2006 and 2013, new foreign investors sought to enter the Congolese copper belt. The metal

was selling at three times its historic average and more, with only a brief dip during the global financial crisis in 2009. A stable geopolitical setting and the new legal framework encouraged investors to enter the market. Gradually, major multinationals replaced military backers, speculators, and political connections as Gécamines' joint venture partners. Large state-backed Chinese investors such as the China Railway Engineering Group and Sinohydro attracted special attention, in part because of the new “minerals for infrastructure” formula they negotiated with the DRC government. No less influential were investors such as the Swiss trading giant Glencore<sup>206</sup> as well as the now-notorious Eurasian Natural Resources Corporation (ENRC) from Kazakhstan.<sup>207</sup>

### **Gradually, major multinationals replaced military backers, speculators, and political connections as Gécamines' joint venture partners.**

Sometimes, new investors would set up a joint venture with Gécamines for exploitation titles that Gécamines had either never privatized (which was rare) or that it had taken back during or after the revisitation. Alternatively, investors could buy a majority stake from an already-present private investor. Another option was to buy Gécamines' minority stake, which brought privatization to a new level: it implied Gécamines would exit the project entirely for a one-off lump sum, foregoing the steady revenue flows it had negotiated in the contract review.

The renewed interest in Congo's minerals presented a great opportunity to get projects off the ground and start generating significant tax revenue. However, based on the outcome, it is hard not to conclude that Gécamines' priority in its deal

making lay somewhere other than tax revenue for the country's budget. What Gécamines did secure were significant additional revenues that would flow to the state-owned company rather than the state treasury. But this approach sometimes meant delaying mining projects for months or years, often at a further expense to the state budget. In some cases, this strategy even generated short-term revenues at the expense of long-term revenues for Gécamines itself, as was the case in a number of asset sales and the China minerals-for-infrastructure deal.

### One Dollar for Gécamines Rather Than Two for the Treasury

The clearest case of revenues for the state-owned company being prioritized over long-term income for the treasury was the Kolwezi tailings, heaps of ore processed decades ago that contained significant amounts of copper and cobalt. In 2009, the government took back the tailings site from Canadian mining company First Quantum Minerals (FQM) and the World Bank's International Finance Corporation (IFC) and subsequently ceded the site to shell companies associated with Dan Gertler.<sup>208</sup>



The cancellation of the Kolwezi tailings contract resulted in quick revenue flows to Gécamines—in this case a US\$60 million signing bonus—at the expense of hundreds of millions in tax income for the state treasury. The plant, pictured here a year after its construction was suspended, was supposed to start processing copper in 2010. The new operators do not plan to launch production until 2018 at the earliest.

Present in the DRC copper belt since the late 1990s, FQM had been a champion of the Mining Code. For one of the areas in which it wanted to invest, FQM had deliberately waited for the adoption of the code before going to the Mines Registry to acquire a few dozen more research permits, discover new deposits, and develop them with “innovative technical expertise.”<sup>209</sup> In line with the code's philosophy, FQM primarily channeled its tax payments to the central treasury and was among the largest tax contributors in the sector. The IFC had sponsored FQM's Kolwezi tailings project and acquired a small stake to showcase that a project could thrive under the Mining Code.

FQM was reluctant to pay anything outside of what was foreseen in the code, including to state-owned companies. In fact, in two out of its three projects, there was no state-owned company at all and, therefore, no entity entitled to bonus payments, royalties, or other contractual payments.<sup>210</sup> While Gécamines had a stake in the Kolwezi tailings project, the state-owned company still felt sidelined, especially after contract renegotiations in 2004 slashed its 40 percent stake to 12.5 percent and reduced its US\$130 million signing bonus to US\$15 million.<sup>211</sup>

Although FQM tried to grant Gécamines additional benefits during the contract review, the government canceled the deal in August 2009. A few months later, Gécamines entered into a new Kolwezi tailings joint venture with five British Virgin Islands companies associated with Gertler.<sup>212</sup> This led to an international outcry: FQM had already invested several hundred million dollars in the project and never before had an IFC project been canceled. Further, some claimed that the Gertler deal caused the DRC to lose several billion dollars.<sup>213</sup> In reality, the contractual terms of the new Gécamines–Gertler deal followed the standards of the contract review—a 30 percent stake, a 2.5 percent royalty, and a US\$60 million signing bonus.<sup>214</sup> For Gécamines, this seemed better than the terms with FQM, but it was a disaster for the state treasury.<sup>215</sup> The change in ownership delayed hundreds of millions in annual revenue by several years.<sup>216</sup> The Kolwezi tailings project should

have started producing copper in 2010; instead, it will not be operational until at least 2018.

### **In cases in which one investor wanted to buy out another, Gécamines required the buyer to pay several million dollars in fees or advances to Gécamines.**

Gécamines did not always have to go as far as canceling contracts and flipping projects to other investors to reap financial benefits from ownership changes. In cases in which one investor wanted to buy out another, Gécamines required the buyer to pay several million dollars in fees or advances to Gécamines. “In all these transactions that take place on foreign stock markets, Gécamines has never seen the least bit of revenue from these deals, and this needs to end,” Gécamines chairman Albert Yuma said in 2011.<sup>217</sup> To achieve this goal, Gécamines relied on its preemption right, also known as the right of first refusal, which had been included in all contracts during the revisitation process. The preemption right clause provides that when a third party wants to buy the stake from one of the joint venture partners for a given price, the existing partner(s) have the right to buy that stake for the same price being offered to the third party. Such preemption was arguably only intended for cases in which the existing partner could match the third party's offer. Nonetheless, for large international acquisitions it could not afford to match, Gécamines requested that the new investor pay a fee for Gécamines *not* using its preemption right.<sup>218</sup>

In 2011, for instance, a bidding war broke out for control of Ruashi Mining and Kinsenda Copper Company (KiCC), two sites in the vicinity of the copper belt's capital, Lubumbashi. Jinchuan, a

Chinese company, outbid Brazil's Vale with an offer of US\$1.32 billion.<sup>219</sup> Gécamines then announced it would “negotiate a deal” with Jinchuan before approving the takeover.<sup>220</sup> Although the parties never published the content of the deal,<sup>221</sup> it seems that Ruashi paid an estimated US\$6 million advance on future royalties<sup>222</sup> plus a lump sum “signing bonus” of US\$10.5 million to have the acquisition accepted.<sup>223</sup> Around the same time, another Chinese investor, Minmetals Resources (MMG), initiated a takeover of Anvil Mining for US\$1.3 billion.<sup>224</sup> After six months of negotiations during which the deal almost collapsed, MMG agreed to pay Gécamines US\$55 million for a preemption right waiver.<sup>225</sup>

This seems to have become standard practice for Gécamines. In 2016, Freeport-McMoRan and Lundin, the shareholders of TFM, ran into similar challenges as they attempted to sell their indirect stakes in TFM to China Molybdenum for US\$2.65 billion and US\$1.1 billion, respectively.<sup>226</sup> Gécamines argued that it needs to provide explicit approval. “As long as the rights of Gecamines are not respected, THERE WILL BE NO DEAL,” Gécamines Albert Yuma wrote in a text message to Reuters' DRC correspondent in November 2016.<sup>227</sup> According to several sources involved on both sides of the negotiations, “respecting” Gécamines' rights comes down to paying a preemption waiver akin to those in the Anvil and Metorex transactions. Ultimately, parties settled in December 2016, when the investors reportedly agreed to pay US\$100 million to clear the transaction.<sup>228</sup>

Gécamines became even more assertive when a company called FG Hemisphere (FGH) attempted to acquire one of its assets and significant revenue flows by legal order. Sometimes referred to as a “vulture fund”—a notion FGH rejects—this Delaware-registered company allegedly paid US\$3.3 million in 2001 to buy two debts that the state (then Zaire) had incurred in the 1980s for electricity infrastructure, including a hydroelectric plant close to Mobutu's hometown of Gbadolite.<sup>229</sup> While the debts totaled about US\$30 million, the creditor claimed more than

US\$100 million, including costs and interest, under two 2003 International Chamber of Commerce arbitration judgments.<sup>230</sup> FGH's director said his company repeatedly attempted to reach a friendly settlement with the DRC government to no avail.<sup>231</sup> After it allegedly declined to pay a 15 percent commission to a government-affiliated lawyer, FGH sued the DRC and its entities in courts across the globe.<sup>232</sup>

Among the revenues FGH pursued was Gécamines' foreign income in Hong Kong and the British Channel island of Jersey. In the Jersey lawsuit, FGH tried to claim Gécamines' shares in the Groupement du Terril de Lubumbashi (GTL), a joint venture that processes the cobalt-rich Lubumbashi tailings.<sup>233</sup> FGH also pursued GTL's payments to Gécamines for the tailings, worth tens of millions of dollars a year.<sup>234</sup> The key issue was whether Gécamines, as a state-owned company, could legally be considered an organ of the DRC state and thus liable for Congo's debt. FGH tried to prove that Gécamines' assets were used for state purposes,<sup>235</sup> while Gécamines argued that its links to the DRC state were limited. After a series of decisions in favor of FGH,<sup>236</sup> the U.K. Privy Council ruled that a state-owned company could only be assimilated to the state in "quite extreme circumstances," which it found had not been met in the case of Gécamines.<sup>237</sup> Meanwhile, the Congolese government successfully fought off a parallel lawsuit from FGH in Hong Kong. In that case, FGH tried to block the second half of a US\$350 million signing bonus Chinese investors owed for Sicominex, the large minerals-for-infrastructure project.<sup>238</sup>

Following these two legal victories, Gécamines chairman Yuma announced that Gécamines expected to receive a total of US\$269 million—US\$175 million from the Sicominex signing bonus and an initial payment of about US\$94 million from the GTL slag heap payments, both of which had been held in escrow accounts during the course of litigation.<sup>239</sup> This amount is roughly equivalent to Congo's annual health budget.<sup>240</sup>

### **One Dollar for Gécamines Today Rather Than Two Dollars for Gécamines Tomorrow**

While Gécamines was fighting to prevent FGH from claiming its GTL stake and preventing partners from selling their stakes to new investors (unless the partners paid Gécamines a significant fee), it allowed one particular investor, Dan Gertler, to acquire stakes (including Gécamines' own shares) in a range of other joint ventures and then sell them to multinationals without much resistance. Gertler had obtained a diamond monopoly west of the copper belt in the Kasai province in the year preceding Laurent-Désiré Kabila's death. Joseph Kabila canceled the contract shortly after he succeeded his father as the head of state, but Gertler remained loyal to the new president, whom he considered a friend.<sup>241</sup> This loyalty allowed him and his business partners to acquire the rights to the KOV mine in Kolwezi shortly before the 2006 presidential elections as well as a string of other assets in subsequent years. By the end of the contract review process, he was involved in at least six mining operations in the DRC copper belt.<sup>242</sup> From 2010 to 2011, Gécamines transferred its minority stakes in at least four more joint ventures to Gertler-associated companies.<sup>243</sup>

**While Gécamines was preventing partners from selling their stakes to new investors (unless the partners paid Gécamines a significant fee), it allowed one particular investor, Dan Gertler, to acquire stakes and then sell them to multinationals without much resistance.**



Artisanal miners climb the tailings hill in Lubumbashi. Gécamines' revenues from the tailings became the subject of a fierce legal battle with FG Hemisphere, a distressed debt fund that tried to recover an old Congolese debt. Ultimately, Gécamines won this and another case and was entitled to US\$94 million in such revenues and to US\$175 million in revenues from another project, all of which had been held in escrow during arbitration.

Observers, including British watchdog organization Global Witness,<sup>244</sup> Bloomberg News,<sup>245</sup> Kofi Annan's Africa Progress Panel,<sup>246</sup> and a mysterious organization called Congo Leaks,<sup>247</sup> argued that the assets were sold to Gertler's Fleurette group at bargain prices. For instance, in the first half of 2010, Gertler bought a Gécamines asset for US\$15 million and sold it just a few months later for US\$75 million.<sup>248</sup> In June 2011, Gécamines conceded another joint venture stake to a Gertler-associated company, seemingly without any compensation.<sup>249</sup> The Africa Progress Panel estimated Congo lost US\$1.36 billion in asset sales to Gertler between 2010 and 2012.<sup>250</sup> Meanwhile, Gertler

built his fortune, estimated at US\$2.5 billion after the sales.<sup>251</sup> In a 2012 feature piece about Gertler in Bloomberg's Business Week titled "Rich Man, Poor Country," Gertler denied any wrongdoing. "I should get a Nobel Prize," he said about his investments in the DRC.<sup>252</sup> Gertler's Fleurette group explicitly declined to take the blame for Gécamines' poor negotiating and has argued that the valuation methodologies used for estimating alleged losses were flawed.<sup>253</sup>

Media outlets such as *Jeune Afrique* have also suggested that Fleurette was able to engage in such deals because it allowed Congolese politicians to own shares in Fleurette's subsidiaries. Gertler

structures his transactions through dozens of shell companies in secrecy jurisdictions such as the British Virgin Islands (BVI),<sup>254</sup> which allow the identity of beneficial owners to be kept secret. As a result, Gertler's companies "could be covering for corrupt Congolese officials," according to Global Witness.<sup>255</sup> Gertler's close links to the late presidential adviser, Augustin Katumba Mwanke, exacerbate this suspicion. "Everything went through Katumba," observers commonly agreed, especially with regard to the mining sector and Gécamines' transactions.<sup>256</sup>

Gertler has denied that anyone other than his family members are beneficiaries of his shell companies.<sup>257</sup> "Off-shore companies have never been used to hide Fleurette ownership," Fleurette wrote to The Carter Center, stating that the main purpose of the off-shore companies is tax efficiency.<sup>258</sup> It added that the companies also are used "to legally isolate high-risk projects/assets from other companies in the group and allow other investors to take a share of the risk, enabling separate single-purpose financing and structuring of investment and debt and keeping assets together with all permits and licences required to operate them as a self-contained entity."

**U.S. court files suggest that Gertler might have courted government officials more directly with bribes to top officials. "For us an attack on Gertler is an attack on the Congo," a presidential spokesman commented. "We don't want one Gertler, we want 10 Gertlers."**

Regardless of the beneficial ownership question, a settlement agreement between New York hedge fund

Och-Ziff Capital Management Group and the U.S. Department of Justice suggests that Gertler might have courted government officials more directly with bribes to top officials. According to the court filings released in September 2016, Och-Ziff agreed to pay a fine of US\$412 million to avoid prosecution under the U.S. Foreign Corrupt Practices Act for supporting the acquisition of mining concessions in several African countries using bribery and frequently relying on intermediaries who engaged in high-level, corrupt practices.<sup>259</sup> Och-Ziff's "DRC partner," whose description matches that of Gertler, is referenced 101 times in the documents.<sup>260</sup> According to an email cited in the settlement agreement, this DRC partner wrote in 2008 that the "DRC landscape is in the making, and I am shaping it like no one else. (...) I just need flexibility on the drawing board to create full value for our partnership." From the rest of the document, it appears that "flexibility" refers to the freedom to spend Och-Ziff loans as needed, including on bribes. The documents describe how the DRC partner paid over US\$20 million in bribes to DRC Official 2, who can be none other than Katumba<sup>261</sup> and another US\$10.75 million in bribes to DRC Official 1, whose description matches that of President Joseph Kabila.<sup>262</sup> Fleurette disputed "all allegations of wrong-doing in any of [its] dealings in the DRC, including those with Och-Ziff" and "any allegation of bribery."<sup>263</sup> In turn, President Kabila's spokesman, Kikaya Bin Karudi, commented that "for us an attack on [Gertler] is an attack on the Congo."<sup>264</sup> "We don't want one Gertler, we want 10 Gertlers," Kikaya added.

Glencore and ENRC, two recent entrants into London's most elite capital market listing, the FTSE-100, became other trusted partners in Gertler's investments during this period. Further, while Jinchuan, MMG, and Freeport-McMoRan paid preemption fees when selling their stakes in joint ventures with Gécamines, there were no preemption fees disclosed in EITI reports after Gertler's Fleurette holding sold its various interests in joint ventures with Gécamines to Glencore and ENRC.

### Gertler's Business Partners: ENRC and Glencore

Between 2009 and 2012, ENRC committed US\$3.3 billion to acquire mining assets in Katanga from companies that at least partially belonged to Dan Gertler.<sup>265</sup> Despite having cut ties with Gertler in late 2012,<sup>266</sup> ENRC still faces the consequences of dealing with the controversial businessman, as its Congo deals helped trigger a formal investigation by the U.K. Serious Fraud Office, an investigation that was ongoing at the time of writing. After the investigation began, the value of ENRC's shares plummeted,<sup>267</sup> and the company's three founders bought out its minority shareholders and delisted it from the London Stock Exchange.<sup>268</sup> Since the delisting, ENRC has experienced difficulties developing its projects or raising sufficient funds to do so, particularly at FQM's former Kolwezi tailings site.<sup>269</sup> There have been recurrent rumors that ENRC might sell off some of its DRC projects to Glencore,<sup>270</sup> although ENRC managers have denied this.<sup>271</sup>

Glencore's links to the DRC date back to the 1970s, when the company's founder, the late Marc Rich, established a parallel commercialization channel for Gécamines' copper and cobalt output, reportedly to pay for Mobutu's prestige projects like his palace in Gbadolite.<sup>272</sup> Glencore's international trade and control over commodity supply chains have grown exponentially over the years, and in 2011, Rich's successor, Ivan Glasenberg, took the company public, apparently to give Glencore more "firepower" to buy new mining assets.<sup>273</sup> Among

Glencore's targets were copper and cobalt projects in the DRC, including KCC and Mutanda, which together accounted for approximately one-third of the mineral exports from Katanga in 2014,<sup>274</sup> with reserves that can support production for decades. Until February 2017, Gertler's shell companies held substantial stakes in both KCC and Mutanda.<sup>275</sup>

In contrast to Gertler's split from ENRC, he and his staff played an active role in the Glencore projects for many years, especially regarding the company's government relations. For example, Fleurette's office in Kinshasa liaised with the DRC migration department on visa issues, lobbied the state-owned electricity company to alleviate the energy deficit, and provided political advice for Glencore's projects.<sup>276</sup>

However, when Och-Ziff settled with the U.S. authorities for allegations of corruption in the DRC, Glencore changed its tone, stating that it is "aware of the matter and the allegations against Mr Gertler. Glencore takes ethics and compliance very seriously and is considering this information."<sup>277</sup> In February 2017, less than six months after the settlement, Glencore bought out Fleurette's stakes in KCC and Mutanda for nearly US\$1 billion.<sup>278</sup> However, Fleurette is still entitled to royalties from both projects.<sup>279</sup> In the case of Mutanda, royalties have generated at least US\$25 million annually since 2013.<sup>280</sup> Glencore declined to comment on how much revenue Fleurette receives in KCC royalties.<sup>281</sup>

A less noticeable but equally fundamental feature of the Gertler deals is that Gécamines has preferred to negotiate a one-off final payment instead of retaining the long-term royalties, signing bonus installments, and dividends it had fought for in the contract renegotiations. This trade-off was most striking in the sale of Gécamines' 20 percent stake in Mutanda to a Gertler-associated company in March 2011.<sup>282</sup> By 2014, Mutanda became the second most productive copper mine in Congo and was closing in on TFM and exceeding KCC<sup>283</sup> as the single largest cobalt

exporter on the planet.<sup>284</sup> It has at least 20 years of reserves and untapped underground possibilities that could further stretch the life of the mine.<sup>285</sup> Royalties and dividends for the state could have amounted to millions if not hundreds of millions of dollars each year. Instead, Gécamines sold its stake in the Mutanda and neighboring Kansuki projects for a lump sum of somewhere between US\$137 million to US\$240 million. Parties to the transaction published conflicting information on the exact price.<sup>286</sup>

Observers estimated the losses for Gécamines on

the Mutanda and related Kansuki sales at US\$629.6 million to US\$920 million,<sup>287</sup> but Gertler's Fleurette group disputes these allegations. "The Mutanda project highlights the gross inaccuracies of the valuations used to justify accusations that Fleurette somehow 'underpaid' for assets," a Fleurette spokesperson wrote to The Carter Center.<sup>288</sup> The company blamed critics for excluding the lowest—and according to them "the only truly reliable"—valuation from their estimates and further criticized analysts for not taking into account the substantial debt of Mutanda. "Mutanda, at current valuations, is worth considerably less than the amount Fleurette initially paid. Gécamines, and therefore the state of the DRC, realized a significant gain on its investment as a result of the actions taken by Fleurette." Still, at the time of the sales, Mutanda's royalties alone were worth US\$230 million, roughly the same amount as Gertler paid for the Mutanda and Kansuki stakes, including rights to not only royalties but also outstanding signing bonus installments and future dividends.<sup>289</sup>

Public attention to how much revenue state-owned companies *lost* eclipsed scrutiny of how much they actually *made*. In 2011, the year President Kabila secured his second presidential term, Gécamines and other state-owned companies collected more than one-third of all fiscal and parafiscal revenues from all mining companies combined. That year, according to EITI data, Gertler's shell companies made nearly one-quarter of all payments in the mining sector, the bulk of which was associated with the Mutanda–Kansuki acquisitions from Gécamines.<sup>290</sup> A decade after the adoption of a mining code that was intended to standardize the applicable fiscal regime by channeling all state revenues to the state treasury through transparent taxation, revenue collection via the state-owned companies' project-specific dealmaking seemed more prevalent than ever. The tracability of these and other contractual, off-budget revenue flows has proven particularly challenging.

### **One Borrowed Dollar for Sicomines Today Rather Than One Dollar for the Treasury Tomorrow**

No project is more illustrative of how some transactions have emphasized upfront revenues not destined for the state treasury than the China minerals-for-infrastructure project, Sicomines. After his 2006 electoral victory, President Kabila needed funds to implement his campaign promises. The Mining Code offered few prospects: In 2006, most companies had not even started production, let alone become profitable.<sup>291</sup> This meant that production- and profit-based tax revenue, i.e., the bulk of Mining Code income for the state, was only expected well after President Kabila's first term.

The Sicomines deal signed in 2008 offered a solution. Under this alternative minerals-for-infrastructure model, two major Chinese state-owned investors, the China Railway Engineering Group and Sinohydro, promised the DRC loans of up to US\$3 billion dollars for infrastructure projects<sup>292</sup> in exchange for the establishment of a joint venture with Gécamines that would operate mines in the copper belt and use the profits to reimburse the loans. To speed up the loan repayment, the Sicomines mining project would be tax exempt until the loans were reimbursed.<sup>293</sup> Since this radically broke with the compulsory, fixed tax regime of the Mining Code, the agreement required a special law to validate the tax exemptions. This "public-private partnership" law took the DRC Parliament six years to adopt.<sup>294</sup>

Between 2008 and 2014, the Chinese investors granted an estimated US\$1.16 billion in loans to Sicomines for infrastructure projects.<sup>295</sup> The agreement also provided for a bonus payment of US\$350 million.<sup>296, 297</sup> This was more than all the signing bonuses resulting from the revisitation combined and a testimony to the power of the purse of China Exim Bank, the state-owned bank that provided most of the loans. Combining the loans and the signing bonus meant that approximately US\$1.5 billion was

available to Congolese entities before Sicominex' production even started. By comparison, TFM, one of two operational copper projects in the DRC, paid less than US\$150 million to Congolese entities before production. Six years after it began production, TFM's total tax and contractual payments equaled US\$1.26 billion.<sup>298</sup>

The Sicominex loans do not transit through the state treasury, which will forego taxes for more than a decade. Instead, the loans arrive in bulk sums into the Sicominex account. Sicominex then disburses smaller sums for specific infrastructure projects. In other words, the joint venture operates like a financial platform that receives and disburses infrastructure money, comparable to a treasury that would receive and disburse tax money. Sicominex' key political oversight body is the monitoring and coordination office for the Sino-Congolese program (Bureau de Suivi et de Coordination du Programme Sino-Congolais, BCPSC or China Bureau), a tightly controlled entity. In response to The Carter Center's questions on the limited governmental and parliamentary oversight of the program, the BCPSC indicated that decisions on infrastructure projects are made in agreement with the minister of infrastructure, and that a governmental evaluation took place in February 2016 at the instruction of the Office of the Prime Minister.<sup>299</sup> However, the quarterly coordination meetings the BCPSC should have with an interministerial committee, according to the BCPSC decree, rarely take place in practice.<sup>300</sup> In addition, although there is a certain level of oversight on spending, monitoring of *incoming* loans seems more limited.<sup>301</sup> In essence, a review of BCPSC data indicates that Sicominex controls an average of US\$150 million each year in public infrastructure funds that do not pass through the state treasury.

## **Sicominex controls an average of US\$150 million each year in public infrastructure funds that do not pass through the state treasury.**

Less known is that the project has heavily indebted Gécamines. In order to grant the Chinese investors deposits rich enough to reimburse the loans, Gécamines had to retrieve some of the permits it had already ceded. To do so, Gécamines turned to KCC, which had received permits to so many rich concession areas in 2005 that it did not expect to exploit some of the sites until 2020 at the earliest. Gécamines retrieved two KCC permits, for the Dikuluwe and Mashamba West pits (DIMA), "for state reasons"<sup>302</sup> and transferred them to Sicominex.<sup>303</sup> But Gécamines promised KCC it would identify "replacement reserves" totaling nearly 4 million tons of copper.<sup>304</sup> If Gécamines cannot find the reserves, it will owe KCC US\$285 million,<sup>305</sup> which is equivalent to US\$73 per ton of copper reserves, more than double the standard rate of US\$35 per ton and eight times the rate used to calculate KCC's signing bonus.<sup>306</sup> Gécamines has so far failed to identify the 4 million tons of copper it promised to KCC as compensation for DIMA.<sup>307</sup> Because of these and other debts tied to the KCC stake, it is unlikely that Gécamines will collect any revenue from KCC in the short- or medium-term.<sup>308</sup> This, apparently, is the price to pay to access US\$165 million in China-backed loans per year.

## Assessing the Benefits of Gécamines' Contracting

The revisitation earned Gécamines financial benefits from signing bonuses and royalties. During 2010–2011, the company agreed to asset sales that have been heavily criticized but that garnered the company hundreds of millions of dollars. In 2012, it collected preemption fees from new investors and won important lawsuits that safeguarded hundreds of millions of dollars. Compared to the decade of war and political transition during which the initial privatization deals were signed, joint venture contracts have been much more lucrative for Gécamines in the years following the 2006 presidential election.

How much had Gécamines' partnerships generated? "Absolutely nothing," Yuma told local journalists in 2015.<sup>309</sup> Yet a detailed analysis of officially released contracts, EITI data (covering up to 2014 at the time of writing), and stock exchange publications from investors portray a different picture. The evidence shows that Gécamines was entitled to an average of US\$262 million per year from its partners between 2009 and 2014. Each year, Gécamines' revenues represent between one-tenth and one-third of all revenues collected by all state entities from all industrial mining companies combined. When adding the Sicominés infrastructure loans, which also are managed outside of the regular political institutions, these revenues make up about one-third of mining revenues each year.

**Table 3—Gécamines' and Sicominés' Contractual Revenues as a Portion of Revenues Received by DRC State Parties, 2009–2014, in US\$ Millions**

Payments	2009 (estimated)	2010 (EITI)	2011 (EITI)	2012 (*EITI exception)	2013 (*EITI exception)	2014 (EITI)	TOTAL 2009–2014
Signing bonuses, revisitation	84.25	126.76	38.28	17.42	37.2	18.44	322.33
New signing bonuses	175	3	0	176.68	0	0	354.68
Royalties and rent	15.66	21.35	51.98	45.09	51.75	98.41	284.20
Nonpreemption fees, consultancy fees	0	0	10	73.71	16.15	17.45	107.31
Slag heap payments	n/a	n/a	0	92.8*	22.8*	16.44	132.04
Asset sales	0	15	189.33	20	0	111	335.33
Dividends	0	0	30	0	0	0	30
<b>TOTAL Gécamines</b>	<b>274.91</b>	<b>166.11</b>	<b>289.58</b>	<b>425.66</b>	<b>111.74</b>	<b>244.29</b>	<b>1,575.89</b>
TOTAL DRC revenue from mining	n/a	875.94	947.47	1,136.66	1,286.39	1,348.45	5,594.91
Percent Gécamines income of total DRC income	n/a	18.96%	30.56%	37.45%	8.69%	18.12%	23.9%
Sicominés infrastructure loans	350 (2008 or 2009)	118	8.99	0	563.06	123	1,163.05
TOTAL DRC revenue from mining (including Sicominés loans)	n/a	993.94	956.46	1,136.66	1,849.45	1,471.45	6,407.96
Percent revenues outside of the state budget	n/a	28.58%	31.22%	37.45%	36.49%	24.96%	32.78%

EITI reports indicate that Gécamines received over US\$1.5 billion from its partners between 2009 and 2014 or an average of US\$262 million per year. Data marked with an (\*) is based on stock exchange publications rather than EITI reports because this specific revenue flow was blocked in an escrow account due to the Jersey court case. EITI reports assume that payments and receipts occur at the same time, while in this case the receipt of amounts that had already been paid was delayed for over one year. Stock exchange data provides a clearer account of how much was owed to Gécamines in this case.<sup>310</sup>

Each year, a few big payments boosted Gécamines' revenues. In 2009, the first half of the Sicomines signing bonus came in, worth US\$175 million. In 2010, the Kolwezi tailings bonus and a range of renegotiated bonuses were due, worth US\$120 million. In 2011, Gécamines sold Mutanda and Kansuki for at least US\$189 million. In 2012, the second half of the Sicomines signing bonus generated another US\$175 million, Gécamines was entitled to US\$92 million after winning its lawsuits against FGH, and the state-owned company also received a large payment from Minmetal Group of US\$55 million for not exercising its preemption right. In 2014, it was entitled to US\$111 million from another asset sale.<sup>311</sup> The only year in which there was no such exceptional income was 2013, the year Gécamines' executives tried but failed to sell the KCC stake (see next section, "Transformation into a 'Commercial' Company: Cementing the Parallel Governance Track").

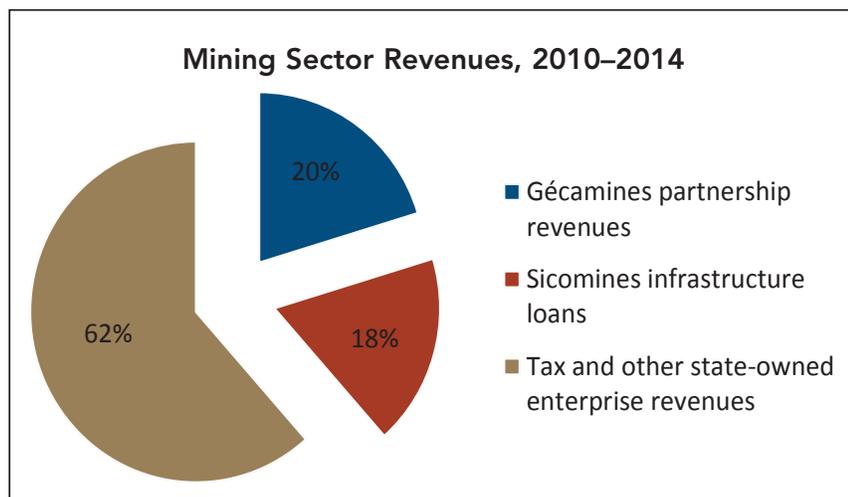
Gécamines can be expected to continue to earn approximately one-quarter of a billion dollars per year in partnership revenues even if one-off exceptional payments remain minimal, as some of the joint ventures will finally start paying increasingly large dividends in the coming years.<sup>312</sup> If Gécamines continues to sell its remaining assets, the annual income from partnerships could even be higher.

## Donors' Unease

International financial institutions such as the IMF and the World Bank have faced considerable challenges in understanding these revenue flows to both Gécamines and Sicomines. Fearing excessive debt, the IMF frequently requests updates on the loans Sicomines has received thus far for infrastructure projects. The different files the IMF has received over time do not match from one version to the next, even for years long past. For instance, according to a file the BCPSC provided the IMF in 2014, Sicomines had spent US\$98 million on infrastructure in 2009 and US\$257 million in 2010. In a file of the same format obtained from the BCPSC in 2016, Sicomines spent US\$226 million on infrastructure in 2009 and US\$127 million in 2010.<sup>313</sup>

The BCPSC figures also conflict with those Sicomines has published under EITI, making it difficult to assess the debt level and trace how the money has been spent. According to EITI, the Chinese Exim Bank provided Sicomines with an estimated US\$1.163 billion in infrastructure loans between 2008 and 2014, of which US\$1.04 billion has been spent. However, according to data the BCPSC transferred to the IMF, less than half a billion has been spent on infrastructure.

In response to the Carter Center's request for clarification of the conflicting figures, Sicomines responded that "no government service has asked us to respond to your questions" and referred the Center instead to Congolese authorities, in particular, BCPSC.<sup>314</sup> After multiple exchanges between 2013 and 2016 about these figures with BCPSC Executive Secretary Moïse Ekanga,<sup>315</sup> the BCPSC eventually provided The Carter Center with another version of the data, reflected in Table 4.<sup>316</sup>



Revenues outside of the state budget managed either by Gécamines or through Sicomines represented over one-third of all DRC revenues from the mining sector between 2010 and 2014 (insufficient data available for 2009).

**Table 4—Sicomines Loans and Expenditures, 2008–2014, in US\$ Millions**

Infrastructure Revenue Flows	Source	2008	2009	2010	2011	2012	2013	2014	Total
Incoming loans to Sicomines	EITI 2010–2014; BCPSC 2017	350	0	118	9	0	563	123	1.163
Sicomines spending on infrastructure	EITI 2010–2014	0	0	502	83	55	327	47	1.014
Sicomines spending on infrastructure	BCPSC 2017	32	195	128	50	32	2	41	478

According to EITI data, an estimated US\$1.16 billion in infrastructure loans was received between 2008 and 2014, of which an estimated US\$1.014 billion has been spent. According to separate information the BCPSC provided to The Carter Center, however, only about half a billion has been spent on infrastructure.<sup>317</sup> BCPSC did not provide an explanation of the discrepancy or of the allocation of the remaining US\$685 million (~US\$1.16 billion minus ~US\$0.5 billion).

This latest data set matches Sicomines' EITI declarations in terms of incoming loans: between 2008 and 2014, Sicomines received US\$1.163 billion to spend on infrastructure.<sup>318</sup> The data on spending, however, resembles those shared with the IMF: less than half a billion has been spent. The BCPSC did not clarify how the remainder of the received infrastructure loans—about US\$685 million dollars—was spent.

**Gécamines was entitled to an average of US\$262 million per year between 2009 and 2014. In 2011, the year President Kabila secured a second mandate, state-owned companies received one-third of all revenues collected from the mining sector.**

It is equally difficult to track which assets Gécamines has sold and for how much. As detailed below, the tension between the government and international donors over this particular issue escalated to the point that the IMF decided to halt its lending program at the end of 2012.

The first major clash came with the cancellation of First Quantum's Kolwezi tailings contract. Never before had a national government canceled a project that involved the IFC. Paul Fortin, the World Bank-selected international manager, resigned from his position as Gécamines CEO a month after the cancellation,<sup>319</sup> and the bank considered suspending all its programs.<sup>320</sup> Negotiations to cancel billions of Congo's debt almost broke down.<sup>321</sup> To get the disbursements back on track, the World Bank and the government negotiated an economic governance matrix (EGM). This DRC-specific tool features a list of measures the government should implement to promote better economic governance, including transparency in the mining, oil, and forestry sectors.<sup>322</sup> The Congolese government worked to tackle some of the benchmarks, but the World Bank resumed its funding before all measures were fully implemented.<sup>323</sup>

Among the measures included as part of the matrix was the obligation to publish all mining contracts. Each time journalists would report on a new controversial Gécamines deal, international financial institutions would request the publication of that one deal and move on.<sup>324</sup> Because of their focus only on contested deals, donors accepted the government's claim that it had complied with the contract transparency requirement as soon as the contested Metalkol contract for the Kolwezi tailings was published in 2011, even though only six out of more than 100 contracts adopted during or after the

revisitation were available on the Ministry of Mines' website.<sup>325</sup> Gécamines has since become increasingly resistant to releasing contractual terms: When the IMF asked it to publish the Mutanda and Kansuki asset sales agreement in 2011, Gécamines CEO Ahmed Kalej argued that the company no longer needed to disclose its agreements since it had become a commercial enterprise.<sup>326</sup> Gécamines also invoked confidentiality clauses and claimed its partners might sue for disclosing the terms.<sup>327</sup> In reality, that risk was minimal.<sup>328</sup> A 2011 ministerial decree, after all, had made contract disclosure a legal obligation, and other state-owned enterprises, such as state-owned gold mining company SOKIMO, were already complying with it.<sup>329</sup>

**According to EITI data, an estimated US\$1.16 billion in infrastructure loans have been received between 2008 and 2014... According to separate information BCPSC provided to The Carter Center, however, only about half a billion has been spent on infrastructure.**

When the news broke in mid-2012 that Gécamines had given up a stake in Comide a year earlier,<sup>330</sup> the IMF had had enough. This time, it insisted that *all* contracts be published.<sup>331</sup> As a result of this increased pressure, Gécamines eventually transferred a large number of contracts to the Ministry of Mines for

publication, and dozens of contractual documents appeared on the ministry's website over the following months.<sup>332</sup> For the Comide deal, however, the government claimed there was no written contract for the transaction.<sup>333</sup> Although the IMF was not convinced,<sup>334</sup> it gave the government a chance to publish a descriptive note of the transaction in lieu of the contract.<sup>335</sup> The Ministry of Mines and the Ministry of Finance subsequently issued a rather confusing explanatory memo,<sup>336</sup> which the IMF ultimately found unsatisfactory. After high-level internal discussions, the IMF canceled its outstanding loan program with the DRC, halting the disbursement of the remaining US\$225 million.<sup>337</sup> Following suit, the African Development Bank decided not to grant US\$87 million in unrestricted funds meant to assist nations with budgetary shortfalls.<sup>338</sup> There is no new IMF loan agreement at the time of writing. Meanwhile, an estimated 70 contracts still remain unpublished, including several in which Gécamines apparently secured a good deal.<sup>339</sup>

The World Bank still has a range of programs running in the DRC. Among them is a mining governance assistance program called Promines. Despite Gécamines' persistent influence on investments and the proportion of revenues it still collects, Promines explicitly excluded the reform of state-owned companies from the scope of the project.<sup>340</sup> Since the IMF withdrew its funding, it does not seem that the bank has closely followed whether or not the transparency benchmarks included in the EGM have been implemented. The World Bank did not respond to the Carter Center's request for comments. The World Bank appears to hope that another type of reform will help make state-owned mining companies more transparent, accountable, and profitable: their transformation into "commercial" enterprises. This transformation is far from reaching its purported goal.

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# Transformation into a “Commercial” Company: Cementing the Parallel Governance Track

Over the past five years, Gécamines was entitled to over US\$1.5 billion in revenue flows from private investors. Does this mean Congo is finally reaping sufficient benefits from the privatization of its copper assets? The answer depends on how the money is spent.

As detailed in this report, there seems to be a pattern of allocating Gécamines’ revenues for non-business imperatives. Gécamines sold assets when Laurent-Désiré Kabila’s Alliance of Democratic Forces for the Liberation (known by its French acronym AFDL) rebels needed funds to topple Mobutu, when Kabila’s regime had to compensate Zimbabwe for its military assistance, when competing political movements sought to fund their election campaigns, and when Joseph Kabila’s regime needed cash for infrastructure projects. The proceeds of the company’s asset sales have been tightly controlled by top government officials. When Gécamines sold its stake in the Société Minière de Kabolela et Kipese (SMKK) joint venture, it received instructions from then-Prime Minister Adolphe Muzito to transfer the proceeds to Kinshasa, even though Gécamines had already spent the money.<sup>341</sup> Gécamines had barely signed the amendments following the contract revision process when the prime minister instructed Gécamines to send half of the new signing bonuses and royalties to a special treasury account.<sup>342</sup>

As Gécamines’ revenues grew, so did the push from international donors such as the World Bank to halt political interference with Gécamines’ finances and ensure that the state, as a shareholder, would collect revenues from Gécamines in the form of dividends only after Gécamines became profitable, like other companies. In response, the Congolese government initiated a reform to transform Congo’s public companies into transparent, competitive, “commercial” enterprises.<sup>343</sup> This meant that state-owned companies

should comply with corporate law like other companies, they should become profitable businesses or else go bankrupt, and they should not distort competition by exercising special privileges. Similarly, the state should hold state-owned companies accountable (but with a focus on key issues relevant to its role as a shareholder), of which the most important should be profitability and generating dividends for the treasury.

However, just as the 2002 Mining Code failed to prevent the persistence of a special role for Gécamines, so did Gécamines’ transformation into a commercial company fail to render it more transparent and accountable. On the contrary, oversight of Gécamines was further limited to a handful of select politicians. The president still nominates and revokes key Gécamines executives, but government ministries, including the Ministry of Mines and the prime minister’s office, have lost much of their influence. The only exception is the minister of portfolio, who has strategic and financial oversight of state-owned enterprises. The minister of portfolio until early 2017 left Gécamines’ top managers with the freedom to decide on major asset sales without explicit governmental approval, contractual documents show.

In practice, the new management team has had access to an average of US\$262 million annually to allocate and spend with limited governmental or parliamentary oversight. Since early 2011, this money officially has been allocated to revive Gécamines’ own commercial production. After a few years of ostensible progress in 2012–2013, however, Gécamines’ financial statements turned “red” and its production collapsed. It is doubtful that all revenues have been spent on the revival of production as stated. In fact, of the approximately US\$1.1 billion that Gécamines was contractually entitled to between 2011 and 2014, an estimated two-thirds, or US\$750 million, seems to never have been registered internally as received.

Only a small group of people apparently knows how and to whom those funds were disbursed. It is equally difficult to trace what the company has done with revenues that have been registered.

### **Restricting Governmental Oversight to a Small Group of People**

Formerly, the presidency and the government actively managed the state-owned company on an almost-daily basis. Before Gécamines' and other state-owned companies' transformations into commercial entities, the president appointed board members and executives of state-owned mining companies, and both the minister of portfolio and the minister of mines exercised daily administrative supervision. Following the transformation, oversight is now the exclusive mandate of the minister of portfolio and is limited to typical shareholder functions: validating financial statements, approving the company's overall strategy, and other major decisions.

The president still has the power to select the key executives of the state-owned companies, based on a short list of candidates the Council of Ministers<sup>344</sup> pulls from a database of profiles.<sup>345</sup> In practice, both before and after the reform, Katumba, one of the president's closest advisers, was the key politician in charge of overseeing Gécamines. All major deals went through him. After his death in a plane crash in February 2012, the international press ran obituaries that called him "the kingmaker" and "the man who whispered in Kabila's ear."<sup>346</sup>

#### **The Inner Circle**

"I only dreamed of one thing: [to] become (...) the CEO of Gécamines," Katumba wrote about his teenage ambitions in his posthumous autobiography.<sup>347</sup> He was Gécamines' shadow CEO for at least the half-decade preceding his death in 2012. Katumba first became involved in mining deals in 1997 after he joined HSBC South Africa in Johannesburg. In April 1997, the young Congolese businessman accompanied his boss to a meeting with Laurent-Désiré Kabila's rebels, who were holding talks with potential

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investors at Lubumbashi's Karavia hotel. During negotiations for a US\$30 million loan to Gécamines, Kabila's finance adviser, Mawampanga Mwana, urged Katumba to be in service of his country rather than the private sector.<sup>348</sup> Katumba subsequently joined the Kabila government as an adviser to the minister of finance in July 1997 while remaining on HSBC's payroll. "Magical, no? This is what one would call a win-win deal," Katumba wrote.<sup>349, 350</sup>

A few years later, Katumba attended Gécamines board meetings in his capacity as Katanga governor (1998–2001). The U.N. Panel of Experts called him a "key power broker in mining and diplomatic deals" and criticized him for transferring lucrative mining concessions to Zimbabwean military allies.<sup>351</sup> Joseph Kabila asked Katumba to take a step back after the report hit the news,<sup>352</sup> but Katumba soon returned to politics, playing a central role in peace negotiations, establishing the transitional government, and running Kabila's 2005–2006 election campaign. Between 2006 and 2008, Katumba also facilitated the China minerals-for-infrastructure agreement, Sicominex, which provided the DRC with hundreds of millions of off-budget loans, and he named one of his most loyal collaborators, Moïse Ekanga, as the head of the Sicominex oversight body.<sup>353</sup>

Katumba was also close to Gertler, whom he called his "twin brother."<sup>354</sup> Indeed, Katumba dedicated the last 10 pages of his book to their friendship,<sup>355</sup> and footage from Katumba's funeral shows Kabila and

Gertler in the front row, mourning his loss. Staff at the Kiubo resort in central Katanga expressed their grief over the loss of Katumba, their *patron*, during a visit by The Carter Center in the weeks after his death.<sup>356</sup> A few months later, Gertler took Bloomberg journalists to Kiubo Falls to show them Katumba's

**In November 2010, President Kabila followed Katumba's advice and selected Albert Yuma as Gécamines' new chairman and Ahmed Kalej as its new CEO, ignoring the shortlist of candidates submitted by the Council of Ministers.**

lodge, which he referred to as his own.<sup>357</sup>

The news magazine *Jeune Afrique* has suggested that Katumba's role was instrumental in facilitating Gertler's deals and that Katumba was a beneficiary of some of Gertler's many shell companies in the British Virgin Islands.<sup>358</sup> However, the evidence of Katumba's tangible interests in Gertler's holdings is circumstantial at best and based on personal connections rather than hard proof of shareholding.<sup>359</sup> For instance, Katumba's brother-in-law, former Minister of Mines Simon Tuma Waku, worked for various Gertler companies. He was once accidentally referred to as the "CEO of the Gertler Group" in a high-level meeting of the EITI.<sup>360</sup> But while there is no proof of actual Katumba shareholding in Gertler's Fleurette subsidiaries, the U.S. Department of Justice settlement agreement with the hedge fund Och-Ziff, one of Fleurette's former investment partners, indicates that an Israeli businessman whose description seems to match Gertler's made frequent payments of US\$1 million or more to several senior officials during periods when he was signing contracts with

Gécamines. The profile of one of these officials, "DRC Official 2," resembles that of Katumba. Gertler has systematically denied any wrongdoing or allegations of corruption.<sup>361</sup>

Regardless of whether Katumba directly benefited from Gertler's transactions, it likely helped to have Katumba's friendship when dealing with Gécamines. Indeed, four different Gécamines directors confirmed that Katumba was the "presidential adviser" they reported to for all major decisions.<sup>362</sup> Several Gécamines directors interviewed described Katumba's style as "very aggressive,"<sup>363</sup> like the "mafia,"<sup>364</sup> and still another said, "It was terrorism: everyone was traumatized."<sup>365</sup> When the Gécamines CEO Paul Fortin resigned a few weeks after the government canceled the First Quantum Mining's Kolwezi tailings project in August 2009, Katumba's uncle, Calixte Mukasa, became the interim CEO for a year-and-a-half, signing the deal granting the tailings to Gertler's companies registered in the British Virgin Islands.<sup>366</sup> In late 2010, when members of his management team showed their discomfort at Katumba's request to cancel another deal, the entire board was removed.<sup>367</sup>

In November 2010, President Kabila followed Katumba's advice and selected Albert Yuma as Gécamines' new chairman and Ahmed Kalej as its new CEO,<sup>368</sup> ignoring the shortlist of candidates submitted by the Council of Ministers.<sup>369</sup> In a break with past practice, neither Yuma, Kalej, nor any of the new Gécamines administrators had a background in mining.<sup>370</sup> "Katumba Mwanke said it was a new experiment to hire economists, business men from other sectors to overcome the conservative mindset of Gécamines' senior managers," a Gécamines director said.<sup>371</sup> Albert Yuma had been the president of the Congolese Business Association (*Fédération des Entreprises Congolaises*) and a Central Bank mandate-holder (functions he preserved as Gécamines chairman), and he was on good terms with Katumba.<sup>372</sup> Kalej, also a top Central Bank official, had been Katumba's economic adviser when he was the governor of Katanga province and "one of [his] most effective collaborators."<sup>373</sup>

Following its appointment, the new management team put great effort into presenting Gécamines as a commercial rather than state company. In public meetings, Gécamines representatives objected to being called a state company despite being entirely owned by the state, insisting that Gécamines should be called a commercial company instead.<sup>374</sup>

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“Now that they’re... a commercial company, they don’t tell us anything,” complained the head of the audit board of the National Assembly’s economic and financial committee shortly after Yuma and Kalej took on their roles.<sup>375</sup> According to Minister Kabwelulu, “After the transformation, I barely had any contact with Gécamines for two years. I only got to see their business plan because I asked for a copy. We know we cannot interfere, but at least we want to know what is going on.” Kabwelulu indicated that this approach was the result of a unilateral decision taken by the current managers. “The president of the republic convened several meetings to say that Gécamines should keep the Ministry of Mines informed. But that does not mean they’re doing it.”<sup>376</sup>

### **Control Over Gécamines’ Assets**

Gécamines has received significant help from the government to improve its asset portfolio. According

to the Mines Registry, Gécamines has been allowed to transform dozens of research permits into exploitation titles—despite limits in the Mining Code—and has organized a contract review to make its minority stakes in joint ventures more valuable. But when Gécamines wants to dispose of these assets, such as a mining title or a stake in a joint venture, it considers that it should be able to do so by a simple board decision without involving its sole shareholder, the state.

This practice has led to clashes on more than one occasion. First, when Gécamines sold its stake in Mutanda Mining shortly after Yuma and Kalej took over, it did so without approval of the Council of Ministers. Matata, who was the minister of finance at the time, and the then-minister of portfolio, Jeanine Mabunda, subsequently wrote to all state-owned companies to remind them that a 2008 law explicitly requires that state asset sales are subject to government approval.<sup>377</sup> Gécamines disputed that the law applied, claiming that Gécamines’ assets are not “state” assets.<sup>378</sup> Two months later, it transferred the company’s stake in the Comide joint venture to an off-shore Gertler company.<sup>379</sup> The secrecy surrounding this transaction led the IMF to halt its loan to the DRC in December 2012, thus negatively affecting the DRC treasury. In response, Matata, who had since become the prime minister, lashed out at Gécamines.<sup>380</sup> He said he would not tolerate Congo being accused ever again of selling “assets that have been underestimated, and the government not knowing what is happening with its state-owned enterprises.”<sup>381</sup>

Yet, six months later, Gécamines again apparently attempted to sell another one of its stakes, this time in KCC. Yuma stated that KCC’s value was somehow “negative.”<sup>382</sup> It was a curious selling strategy for the chairman to stress that the asset for sale was unimportant, especially for mines that had been at the core of Gécamines’ success during the 1970s and 1980s.<sup>383</sup> Key members of government initially seemed unaware of the planned KCC sale,<sup>384</sup> but soon enough, senior government officials, civil society organizations, and even KCC’s shareholder, Glencore, opposed the



The International Monetary Fund (IMF) became increasingly insistent in its demands for full compliance with the mining contract transparency benchmarks set in its agreement with the DRC. Prime Minister Matata's government had great difficulties convincing Gécamines management to comply with the IMF's demands. The IMF ultimately halted its loan program over the unpublished Comide agreement in late 2012. (Cartoon by Thembo Kash)

transaction. Gécamines eventually buckled under the pressure and backtracked.<sup>385</sup> However, while the KCC deal fell through, contractual documents and KCC financial reports show that Gécamines found alternative ways to transfer its KCC revenues to Gertler's company, Africa Horizons Investment Limited, again without the government being aware.

### United Front Against the Kamoto Copper Company Asset Sale

After the minister of mines heard about the potential deal from a national civil society organization that Gécamines planned to sell its KCC stake, he sent a strongly worded letter to Gécamines executives: "I would like to remind you that Gécamines, even in its [new status as a commercial company], is still a state enterprise, insofar that the state is still its sole shareholder. It is in that context that members of the government of the Republic are frequently called to account in Parliament. I therefore warn you that Gécamines mandate holders will be fully responsible for decisions they take alone with regard to asset sales."<sup>386</sup> National civil society actively opposed the deal in a collective press statement.<sup>387</sup> Former U.S. President Jimmy Carter wrote letters to President Kabila and Prime Minister Matata to urge them to reconsider the transaction.<sup>388</sup> Matata ordered a halt to asset sales by state-owned companies six weeks after the story about Gécamines' KCC plans broke.<sup>389</sup> Even Glencore, KCC's controlling parent company, was unhappy. It had not forgotten Gécamines' promise to provide KCC with replacement reserves to compensate for the DIMA permits. In case of default, KCC would withhold US\$285 million from the rental payments, royalties, and dividends Gécamines expected from KCC.<sup>390</sup> "After re-evaluating the situation, Gécamines has put that option on standby and is currently assessing other modes of financing," Yuma told the Wall Street Journal in June 2014.<sup>391</sup>

While sales to Gertler have become more challenging as a result of these controversies, Gécamines has continued to sell assets to other investors. In September 2014, Gécamines gave up its 40 percent stake in Société d'exploitation de Kipoi (SEK) to the project's operator, Tiger Resources. The sale price was US\$111 million, with Gécamines retaining the right to royalty payments on production.<sup>392</sup> In April 2016,

Gécamines secretly sold its 25 percent stake in the Kolwezi tailings project to Eurasian Resource Group, the majority owner of the project, on terms undisclosed at the time of writing.<sup>393</sup>

**According to the legislation on state-owned companies, supervision rests with the minister of portfolio alone, who has the power to call Gécamines management to account at any time. Minister of Portfolio Louise Munga has not seemed to tightly supervise Gécamines' activities.**

Questioned about the troublesome relations with the DRC government, Kalej replied that Gécamines sends monthly and quarterly reports to the minister of portfolio.<sup>394</sup> Indeed, according to the legislation on state-owned companies, supervision rests with the minister of portfolio alone, who has the power to call Gécamines management to account at any time.<sup>395</sup> As a member of the government, however, the minister of portfolio should liaise with other government agencies and follow the order of the prime minister and the Council of Ministers. Instead, while Matata has

talked tough, Minister of Portfolio Louise Munga has not seemed to tightly supervise Gécamines' activities.<sup>396</sup> On asset sales, she backed Gécamines rather than Matata, agreeing that the board can decide to sell Gécamines' assets without governmental consent. For the SEK transaction in 2014, Munga wrote that Gécamines' board has "all powers and is solely competent" for such decisions.<sup>397</sup> Before becoming minister of portfolio, Munga was a Gécamines board member under Yuma's chairmanship.<sup>398</sup> Since a handful of Gécamines executives can now decide on the piecemeal sale of Gécamines' remaining asset portfolio, this means they can generate hundreds of millions of dollars in revenue without the government's consent or knowledge. Munga did not respond to the Carter Center's requests for interviews or written comment.

### **Spending Partnership Revenue**

As a commercial entity, Gécamines should pay two types of revenues to the state: taxes and dividends. As for partnership revenues, Gécamines maintains it has a right to keep them.<sup>399</sup> Consequently, Gécamines' management contested Prime Minister Muzito's 2009 demand to transfer half of its signing bonuses and royalties to the treasury.<sup>400</sup> Although the country's Parliament in 2014 endorsed legislation requiring an even split between Gécamines' and the state's coffers,<sup>401</sup> EITI reports seem to indicate that Gécamines has kept all its royalties and signing bonuses through 2014.<sup>402</sup> The company has also openly broken with the tradition of transferring the proceeds of its asset sales to the central treasury. Here again, Gécamines' view is that the money should stay with Gécamines.<sup>403</sup>

**Table 5—Gécamines' Direct Contributions to the DRC State, 2009-2014, in US\$ Millions**

	2009	2010	2011	2012	2013	2014
Partners' Payments to Gécamines	274.91	166.11	289.58	425.66	111.74	244.29
Dividends or "contribution effort" from Gécamines to the state budget <sup>404</sup>	0.16	0.43	0.18	3 <sup>405</sup>	0.41	0.30

While Gécamines collects significant revenues annually, the returns to its sole shareholder, the DRC state, via dividends or other contributions have been minimal.

As Table 5 indicates, it seems Gécamines' dividends have been nearly nonexistent so far: on average, Gécamines transferred less than US\$750,000 per year in dividends, representing just 0.3 percent of Gécamines' partnership revenues. When adding up Gécamines' revenues from its partnerships and its own production and comparing these to its tax and dividend payments, it appears that the DRC state has received few financial benefits, as Gécamines is transferring only a fraction of its income to the DRC treasury.

Since Gécamines brings in an average of US\$262 million annually from its partnerships but does not generate significant dividends for the state, how has Gécamines used that money in its attempt to become profitable? According to its business strategy, partnership revenue and other income should be allocated to "awakening the giant," that is, reviving Gécamines'

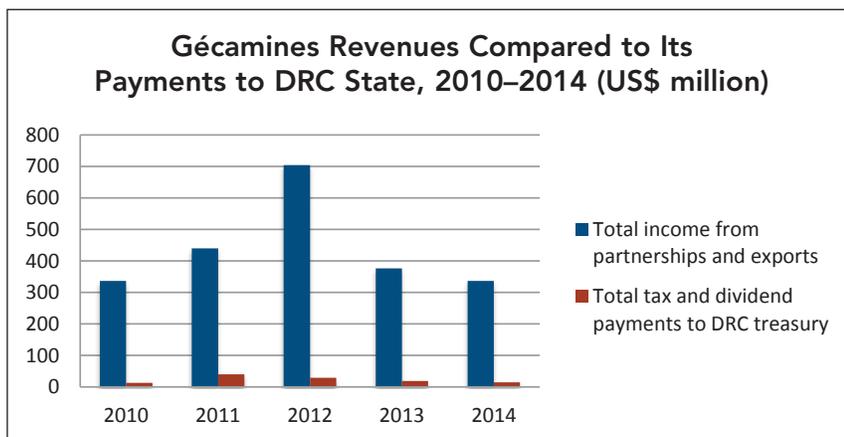
own production. So far, this strategy seems to have failed, as costly outsourcing of production seems to have further increased Gécamines' debt. Moreover, according to Gécamines' records, almost half of

**The state-owned miner has claimed that it has invested its partnership revenues in the revival of its own production. So far, this strategy seems to have failed.**

Gécamines' partnership revenues are not registered internally as such and that at least part of it might have been spent on other purposes.

**"Awakening the Giant"**

The state-owned miner has claimed that it has invested its partnership revenues in the revival of its own production after previously failing to follow the upward production trend of its private peers, as DRC Central Bank statistics show.<sup>406</sup> In 2010, the DRC exported six times more cobalt and 17 times more copper than in 2005.<sup>407</sup> It exported almost half a million tons of copper in 2010. By



Between 2010 and 2014, Gécamines has transferred only 5.34 percent of its income from partnerships and its own production to the DRC state treasury, mainly as tax payments. Despite collecting an average of US\$262 million from its partners each year, its dividend payments usually do not exceed half a million dollars.

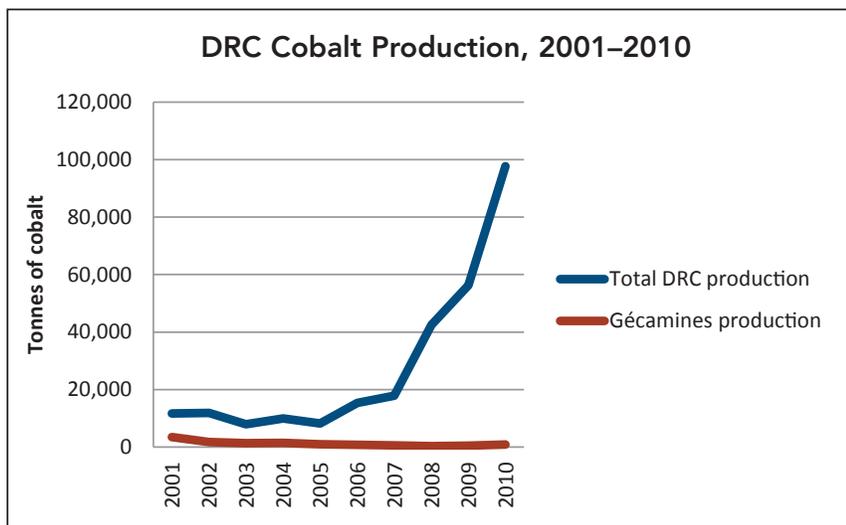
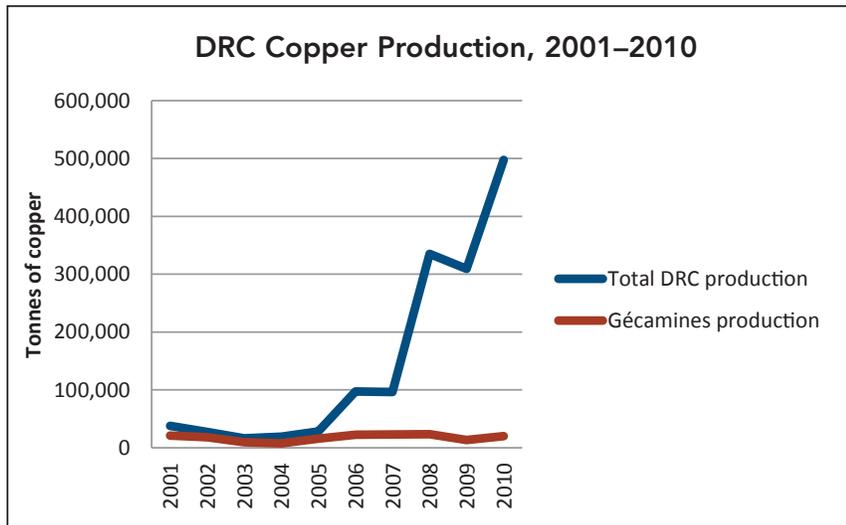
contrast, Gécamines' copper production had stagnated at around 20,000 tons.<sup>408</sup> The state-owned miner's share of copper exports from the DRC decreased from 56 percent in 2005 to 4 percent in 2010.<sup>409</sup> "There was little doubt about the strategy," a Gécamines manager involved in the strategic planning said.<sup>410</sup> "If Gécamines could see others thrive on its concessions, why wouldn't it be able to thrive too?"

Instructions to focus on its own production came from the highest levels. In July 2012, Yuma's words were unmistakable: "If we start a new project, Gecamines will no longer be a minority partner... The order the president gave me is to make Gecamines a world-class, independent operator."<sup>411</sup> Gécamines' target was to reach 35,000 tons of copper in 2012 and 100,000 tons by 2015,<sup>412</sup> up from approximately 20,000 tons in 2010.<sup>413</sup>

It wanted its cobalt output to increase from less than 1,000 tons in 2010 to 2,355 tons in 2012 and 7,482 tons in 2015.<sup>414</sup>

To reach its targets, Gécamines' management planned to carry out fresh drillings to identify and certify new copper and cobalt reserves.<sup>415</sup> "We did increase the reserves from 600,000 tons to 1 million tons [through exploration], but the most important reserve expansion was through the recuperation of our titles from partners," a Gécamines director said.<sup>416</sup> The company's strategic plan from 2011 stated that the company would "take back mining titles from joint ventures in which partners haven't upheld their contractual engagements with Gecamines."<sup>417</sup> In practice, when a partner intended to sell its joint venture stake to a third party, Gécamines would use its right to buy that stake for the offered price, thereby regaining full ownership of the project.<sup>418</sup> Thus, reserves the investor had identified would end up in Gécamines' own portfolio.

As the director explained, in many cases, "Opportunities occurred and we grabbed them, to the surprise of some of the investors."<sup>419</sup> Forrest, once praised for his support of the president's political party, was the



The Democratic Republic of Congo's copper and cobalt production in general—and that of Gécamines in particular—remained low and stable until 2005. On average, Gécamines' copper production represented 56 percent of total production during that time frame. From 2005, Congo's copper and cobalt production grew exponentially while Gécamines' stagnated, representing just 4 percent of total copper production in 2010. (Source: DRC Central Bank statistics 2001-2010)



In 2011, Groupe Forrest tried to sell its CMSK shares to South Korean investors. Gécamines pre-empted the sale and bought back the shares for US\$58 million after a year-long dispute. As a result, Gécamines became the operator of CMSK's Luiswishi mine, pictured here in 2010.

first to be surprised.<sup>420</sup> In mid-2011, he planned to sell his company's stake in the Compagnie Minière du Sud-Katanga (CMSK) joint venture and attract new funding for the project.<sup>421</sup> Events did not go as anticipated: Gécamines pre-empted the sale and sent a US\$15 million check to Forrest's company for the stake. Forrest's company initially refused<sup>422</sup> but ended up settling a year later, when Gécamines agreed to a purchase price of US\$58 million, almost four times higher than its initial bid.<sup>423</sup> "Our objective is to (...) convert [Gécamines] into a leading independent mining operator," Kalej told Bloomberg News.<sup>424</sup> "CMSK contributes to this." Forrest was less pleased:

his inability to further develop CMSK turned out to be his greatest business disappointment in Congo.<sup>425</sup>

Gécamines also blocked a change in title ownership of a much richer deposit called Deziwa. In 2005, Gécamines had partnered with a company called Platmin to explore Deziwa.<sup>426</sup> After Platmin identified abundant copper and cobalt resources, it tried to sell its 68 percent stake to a Chinese investor, the Zijin Mining Group, for US\$284 million.<sup>427</sup> In the 2010 acquisition offer, Zijin Mining announced that Deziwa had sufficient resources to produce 80,000 tons annually for 20 years.<sup>428</sup> In other words, this was a great discovery.

Congo's decision makers, however, did not appreciate Zijin's public announcement. Both the minister of mines and Gécamines officials complained that they had not been properly informed about Platmin's intentions to sell to Zijin.<sup>429</sup> They also claimed to have been misinformed of the real value of the deposit and felt the investors had tried to swindle Congo.<sup>430</sup> Soon enough, Zijin dropped its plans to take over Deziwa, and the project ran into a major deadlock.<sup>431</sup> "[O]ur so-called partner [Gécamines] and others have been (...) trying to steal the project from us for the last two years," the chief financial officer of Platmin's parent company, Copperbelt Resources, wrote.<sup>432</sup>

### How Much Copper at Deziwa?

According to Gécamines board meeting minutes from 2010, Platmin said that it had found 958,000 tons of copper reserves and 85,375 tons of cobalt reserves.<sup>433</sup> However, the interested buyer, Zijin, announced to the Hong Kong stock exchange that the project had almost 4.6 million tons of copper resources and 388,800 tons of cobalt.<sup>434</sup> While these numbers differ widely, the discrepancy might largely be the result of methodological differences. The first difference was that the contractual estimate referred to *reserves* (i.e., ore that is economically exploitable) whereas the stock exchange estimate referred to *resources* (i.e., what is present in the ground). Another difference was that the initial calculation did not include any ore below 2.5 percent copper, while the Zijin estimate used a 0.5 percent cut-off grade. Per a Platmin senior manager, government officials mixed up these technical factors and discarded them as unconvincing "word play" while continuing to block the sale.<sup>435</sup>

In August 2012, the parties finally settled. Platmin sold back the Deziwa and nearby Ecaille C permits to Gécamines for US\$185 million,<sup>436</sup> about US\$100 million less than Zijin's offer two years earlier. "If there is any justice in this country," the former chief financial officer of Copperbelt Resources wrote, "At

some stage in the future this will be the heart of an open-pit mine that will generate thousands of jobs and will bring millions of dollars in revenue, taxes, and royalties to the Congo, but that is indeed in the distant future."<sup>437</sup>

**To revive its own production, Gécamines recuperated at least six titles it had previously conceded to investors. The most valuable was Deziwa, which Gécamines identified as its flagship project in its revised business plan. The lack of access to traditional financing justified Gécamines' insistence that it needed to rely instead on partnership revenues for the company's revival.**

Gécamines subsequently recuperated the titles of two more joint ventures, Mutoshi<sup>438</sup> and Kasonto–Lupoto Mines (Kalumines),<sup>439</sup> bringing the number of its exclusively held former joint venture deposits to six. The most valuable was Deziwa, which was identified as Gécamines' flagship project in its revised business plan, the so-called Plan de Redéploiement (redeployment plan), adopted in May 2013.<sup>440</sup> Together, the purchases required a hefty US\$273 million investment from Gécamines.<sup>441</sup> It appears that winning the lawsuit against FGH enabled Gécamines to carry out the CMSK purchase.<sup>442</sup> For Deziwa, however, Gécamines received a loan from Gertler's Fleurette group, which announced two years later that it was "pleased to have been able to contribute to Gécamines being able to fulfill its financing needs."<sup>443</sup> Pleased as it may have been, Fleurette nonetheless strongly securitized the loan, or so it thought, using Gécamines' shares in KCC and Metalkol, the new joint venture for the Kolwezi tailings, as collateral.<sup>444</sup> Secure, but—as it later turned out—only just.



While Gécamines' workers carry on as best as they can, the outdated production methods at its old Lubumbashi plant can hardly compete with the new technology of industrial investors in the region. In 2011, Gécamines launched an ambitious plan—which it has since struggled to implement—to catch up with its peers.

Getting the permits is one thing, but finding the money to develop them is quite another. From 2013 to 2014, Gécamines said it needed US\$800 million to produce 80,000 tons of copper per year at Deziwa<sup>445</sup> and US\$2.77 billion to implement its entire business plan.<sup>446</sup> Preliminary talks with the Development Bank of South Africa and the French Development Agency for Funding were unsuccessful.<sup>447</sup> Few banks were willing to lend money to a state-owned company in the DRC with over US\$1.5 billion in outstanding debt<sup>448</sup> and a history of default.<sup>449</sup>

The lack of access to traditional financing justified Gécamines' insistence that it needed to rely instead

on partnership revenues for the company's revival.<sup>450</sup> For example, Yuma said that the revenues from the Mutanda asset sale had been "reserved for initial investments in modernizing the industrial apparatus, restarting prospection activities, and exploring new reserves."<sup>451</sup> When Gécamines won its lawsuits against FGH in 2012, Yuma said that the company would use the money—US\$269 million in total—to "pay off debts, boost output, and seek new financing."<sup>452</sup> This was also the alleged intent of the attempted sale of Gécamines' KCC stake as well as another aborted plan to transfer all of Gécamines' minority shares to a holding company in Mauritius.

### The Failed Attempt to Move Gécamines' Interests to a Secrecy Jurisdiction

In September 2013, Gécamines' joint venture partners received a letter informing them that the state-owned company planned to transfer all its minority shares to a holding company in Mauritius.<sup>453</sup> This was a recommendation of Gécamines' two advisory partners, Renaissance Capital, a Russian-owned investment bank specialized in frontier markets, and the French branch of the global law firm Orrick.<sup>454</sup>

The proposed subsidiary could have been used to leverage new financing for Gécamines projects, but the use of such vehicles in Mauritius is also an oft-used strategy to reduce a company's tax bill. While off-shoring income to reduce tax payments may be a common strategy for private companies, many questioned the prudence of the largest state-owned mining company in one of the poorest countries in the world doing so.

Moreover, Mauritius was also considered a secrecy jurisdiction since it did not keep track of company ownership details in its official records nor did it require company accounts to be publicly available or payments to nonresidents to be declared.<sup>455</sup> The Mauritius plan would have meant that Gécamines' most important revenue and spending would have been relocated to a country that does not officially trace these things.

In response to this proposition, President Carter wrote a letter to President Kabila and Prime

Minister Matata in November 2013, stating that "the public interest is jeopardized by Gécamines' decision to transfer its shares in joint venture partnerships to a Mauritius-based subsidiary. (...) Proceeds from mining asset sales, signing bonuses, and royalties will become more difficult to track, potentially depriving the state budget of much-needed funds."<sup>456</sup> Likewise, the nongovernmental organization coalition Publish What You Pay DRC expressed concern that "the subsidiary would be used to whitewash funds that Gécamines' officials might embezzle, as it will be difficult for Congolese authorities to control this subsidiary."<sup>457</sup> Ultimately, the plan was abandoned.

However, Gécamines still retains Congolese subsidiary, Société Immobilière du Congo (SIMCO), which has been left out of transparency initiatives. While Gécamines holds 99 percent of the company (with 1 percent being held by another state-owned company),<sup>458</sup> and while SIMCO retains stakes in four important joint venture companies,<sup>459</sup> SIMCO has not been required to disclose its partnership revenues under EITI as Gécamines is required to do. The Carter Center and Congolese civil society organizations have advocated for EITI-DRC to close this loophole, which undermines state-owned company revenue transparency.<sup>460</sup>

### The Production Bubble

If Gécamines used its various partnership revenues—an average of US\$262 million a year—for the company's revival, how is it faring in its bid to be a "world-class producer"? At first, it looked as if the state miner was achieving its goals. Between 2012 and 2014, Gécamines sponsored a breakfast buffet at the annual Investment in Africa Mining-Indaba in Cape Town, South Africa, to update investors on the company's progress. At its 2013 Indaba breakfast, Kalej claimed that the company produced 35,000 tons in 2012.<sup>461</sup> "Commitment made, commitment held," he added. A research company later reported,

"Gécamines Makes Progress on Their 2012–2016 Strategic Development Plan."<sup>462</sup> At the February 2014 Indaba, Gécamines' keynote presentation was titled "A Brighter Future is Here," and it spoke of "awakening the giant."<sup>463</sup> Some journalists accepted this at face value. Metal Bulletin's subsequent story was headlined "Gécamines On Track to Reach 100,000 tpy Output Next Year."<sup>464</sup> Two months later, Kalej told the press he expected the company's output to rise in 2014 by another 46 percent.<sup>465</sup>

Yet Bloomberg reported later in 2014 that "Congo's State Copper Miner Set for Lowest Output Since 2004."<sup>466</sup> In the same year, DRC copper

producers as a whole produced 1 million tons for the first time in history.<sup>467</sup> “The copper boom in the DRC [took] place without Gécamines,” RFI wrote.<sup>468</sup> Gécamines indeed accounted for only 0.15 percent of Congo’s total, producing 15,090 tons, less than one-third of its target and even less than it produced before its transformation into a “commercial” company.<sup>469</sup> In 2015, perhaps tellingly, there was no Gécamines breakfast at Indaba.

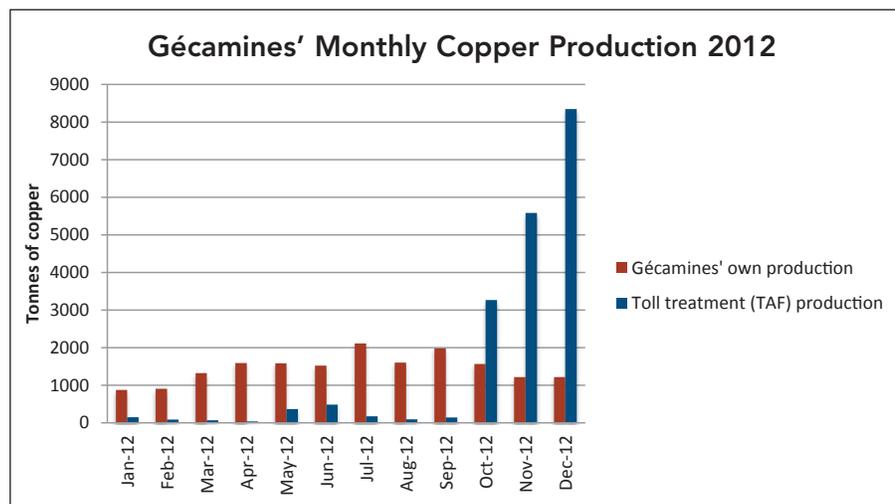
What happened? It became clear that to reach its ambitious production targets, Gécamines had not used the deposits it had reclaimed from private parties and joint ventures, but had instead relied on the help of new partners. By October 2012, Gécamines had achieved just over half its 2012 production target of 35,000 tons,<sup>470</sup> so it turned to local copper processors and signed contracts for toll treatment (*traitement à façon* or TAF) of its minerals.<sup>471</sup> In TAF contracts, companies with mineral ore agree with others owning processing facilities that the latter will extract a target percentage of copper and cobalt from the ore in exchange for a fee. Whatever the processing companies extract above the target is a bonus for them.

Gécamines’ TAF partners—one Indian-controlled and three Chinese-controlled processing companies—ended up producing nearly 20,000 tons of

copper for Gécamines in 2012, including more than 17,000 in the last quarter alone.<sup>472</sup> The terms of these contracts have not been published, but according to mining executive Raphael Ngoy, Gécamines agreed to targets as small as 39 percent of the copper contained in the ore.<sup>473</sup> Worse still, none of the four TAF contractors seems to have returned any cobalt to Gécamines.<sup>474</sup>

A former Gécamines senior executive involved in the TAF deals argued that Gécamines had relied on toll treatment before, that the use of its own ramshackle equipment represented a threat for the surrounding natural environment, and that the toll treatment peak at the end of 2012 was not an attempt to reach targets but rather the result of an accounting issue, about which he did not provide greater detail.<sup>475</sup> Yet, the strategic plan for 2012–2016 intended to rely on toll treatment only marginally in 2012 and not at all in subsequent years.<sup>476</sup> An executive of one of the TAF firms confirmed that it was a matter of reaching numbers.<sup>477</sup> “Mr Kalej came to see us; he was only at 14,000 tons and asked us to produce several thousand extra,” he said.<sup>478</sup>

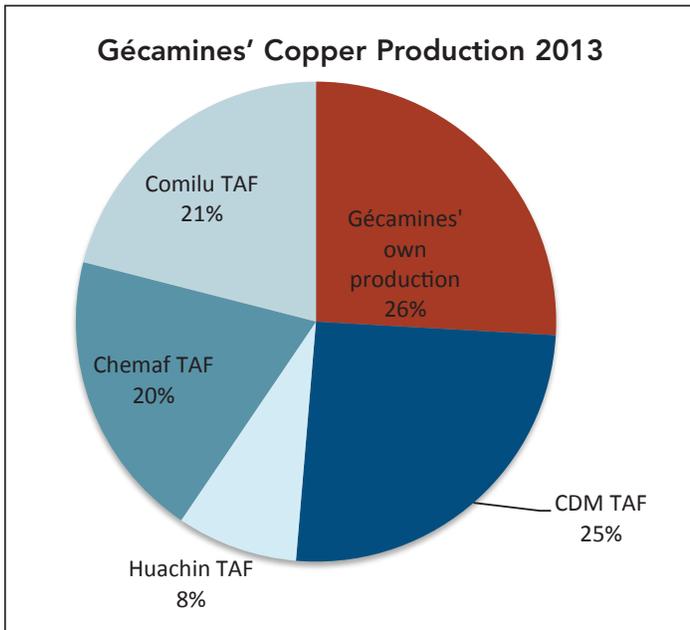
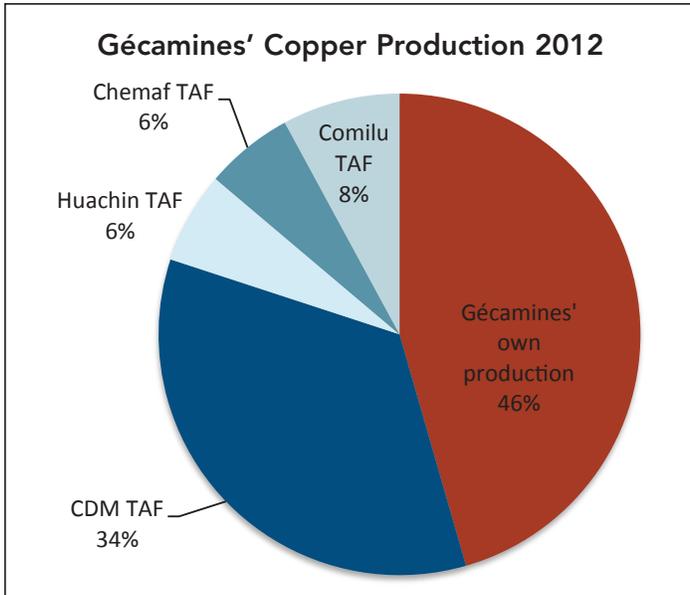
Some Gécamines staff indicated early on that the TAF contracts were costly. “The Chinese are boasting about their lucrative deals across town,” a frustrated



By the end of 2012, Gécamines relied heavily on toll treatment from several partners such as Congo DongFang Minerals (CDM). In the last three months of 2012, CDM produced more than one-third of Gécamines’ overall production of that year.

Gécamines insider told The Carter Center about some of the TAF contracts in July 2013.<sup>479</sup> The contractors may have benefited from even more than the low copper retrieval rates for Gécamines and full control of the copper byproducts. Several Gécamines staff used versions of the following disconcerting analogy:

*Gécamines acted like a man who urgently needed a suit but only had a piece of high-quality fabric. He went to the tailor and said: ‘I need you to make a suit right now.’ The tailor*



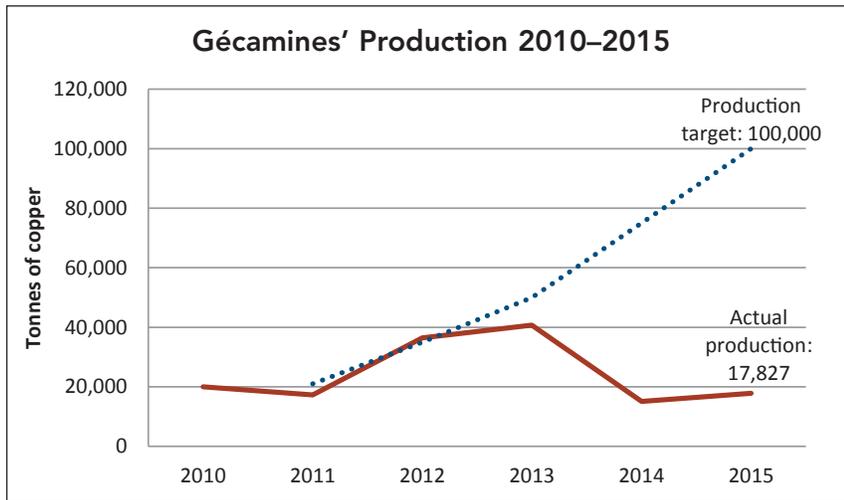
In 2012, more than half of Gécamines' production came from its toll treatment partners. In 2013, the share of toll treatment production rose even further, to almost three-quarters of Gécamines' total output. In its strategic plan, the company planned to rely only marginally on toll treatment deals.

said he couldn't make a new suit that fast but added: 'I have an old suit in my closet. If you'd like, you can have that one if I can get that piece of cloth of yours.' So Gécamines took the old suit and the tailor made five expensive new suits from its top-quality fabric in the following week.<sup>480</sup>

The explanation of the metaphor, as presented by Gécamines staff, suggests that the four contractors did not process Gécamines' ore as would be the case with a normal TAF contract but instead advanced their own production to meet Gécamines' targets, later exploiting Gécamines' rich stockpiles in return.<sup>481</sup> According to one observer's calculations, shipping Gécamines' ore to the subcontractors' factories for real toll treatment would have required over 700 truck rides from the mine to the factories and back each day.<sup>482</sup> "Such a massive ballet of engines loaded with ore would not have gone unnoticed," he wrote.<sup>483</sup>

In reality, the TAF option turned out to be a disaster. The Gécamines board admitted in the summer of 2014 that these and other malpractices had created a "financial black hole" and that "all [financial] parameters are red,"<sup>484</sup> but by then it was too late. The fourth worst copper production record in Gécamines' history was recorded in 2014.<sup>485</sup>

**To reach its ambitious production targets, Gécamines relied on a costly toll treatment scheme involving the assistance of several partners, which turned out to be a disaster: production collapsed in 2014, and the scheme created a "financial black hole."**



In 2011, Gécamines announced a plan to ramp up its own production from 20,000 tons of copper in 2011 to 100,000 tons in 2015. While it initially managed to increase its output, the short-lived success seemed to have been based on costly and unsustainable deals with external processing partners. The production bubble popped in 2014, and Gécamines produced less that year its prerevival plan.

Kalej, who according to Africa Mining Intelligence had been left “something of an orphan” as a result of his mentor Katumba’s death, took all the blame.<sup>486</sup> In July 2014, President Kabila fired him for “serious breach of duty.”<sup>487</sup> The allegation that he and some of his colleagues had bought 73 trucks second-hand and registered them as new on Gécamines’ books did not help Kalej’s case.<sup>488</sup> According to a Gécamines’ press release, one-fourth of the trucks never arrived, while another 12 were so rundown that they were impossible to refurbish.<sup>489</sup> “The engines are like objects in a museum,” a local journalist wrote.<sup>490</sup> Kalej was also blamed for the debacle of Gécamines’ first investment to increase its own processing capacity, the heavy media separation installation in Kambove, for which Gécamines used a US\$30 million advance in dividends from TFM.<sup>491</sup> The installation broke down less than two years after construction.<sup>492</sup> Although Carter Center staff saw some of the moribund trucks parked on one of Gécamines’ concessions in Kolwezi, the DRC judiciary cleared Kalej in October 2016, stating

that the trucks were of good quality and matched the purchase price.<sup>493</sup>

Chairman Yuma, by contrast, kept his chairmanship position even though he had approved the company’s financial statements for several years. He even seemed to have strengthened his grip.<sup>494</sup> In September 2014, he told a room packed with Gécamines senior staff that the board decides what happens to Gécamines and that management’s role is to execute those decisions.<sup>495</sup> “To depart from this logic means that you’re out of the system,” he added. A year later, a political faction in Lubumbashi would write an open letter to vilify Yuma’s hegemony at the helm of the company: “[Yuma] is in his own the chairman, the board, and the

CEO... Some contracts are being signed without the actual CEO being informed... Which bylaws grant the Gécamines chairman so much power?”<sup>496</sup> Between 2014 and 2016, Yuma did not respond to the Carter Center’s requests for interviews or to written requests for comment.

At the same September 2014 meeting, Yuma revived the rhetoric of Gécamines’ production relaunch, stating that it would reach “50,000 tons in 16 months,” that is, before the end of 2015.<sup>497</sup> While this represented a downward revision from its 2012 plans to produce 100,000 tons of copper in 2015, it was nonetheless an aggressive target.<sup>498</sup> Yet, the next month, the freshly appointed interim CEO Jacques Kamenga announced that Gécamines had “doubled its production.”<sup>499</sup> In April 2015, Kamenga reported another 30 percent production increase for Gécamines.<sup>500</sup> A local newspaper ran an overly optimistic headline in May 2015: “When the Giant Awakens: the Relaunch of Gécamines Is a Fact.”<sup>501</sup> In reality, Gécamines seems far from reaching its



After production levels collapsed in 2014, Gécamines Chairman Albert Yuma quickly reiterated the same targets he had announced in 2011. Since, the company has struggled to achieve them and has pushed back its ambitions year after year.

ambitions. DRC Central Bank statistics indicate that Gécamines only produced 17,827 tons of copper in 2015.<sup>502</sup> This is still less than when Yuma and Kalej took over the company at the end of 2010, and three times less than what Yuma had promised after Kalej's removal.<sup>503</sup>

Nonetheless, Yuma has continued to promise production growth, and in June 2016, he publicly declared a target of 55,000 tons of copper for 2017. This target is, in fact, a postponement of his earlier target by another two years.<sup>504</sup> While some major news outlets such as the Financial Times have had page-wide coverage of Yuma's ambitions,<sup>505</sup> others have been more skeptical. In an October 2016 interview, Jeune Afrique and Radio France International journalists asked the Gécamines chairman about the systematic postponement of its production targets. "Five years ago you already announced a revival plan with very similar ambitions as the one you shared today. Does this mean Mr. Yuma is like a magician who can revive strategic plans while in the meantime everyone has forgotten what was promised five years ago?" the journalists asked.<sup>506</sup> "Will you come again five years from now with a third revival plan?" In response, Yuma said the main challenge had been a lack of cooperation from the DRC state in alleviating Gécamines' debt burden—a claim that seems questionable.

**Despite the previously missed targets, Yuma, Gécamines chairman, has continued to promise production growth. "Will you come again five years from now with a third revival plan?," Francophone international media have asked, skeptically.**

Regardless of its debt situation, it is unlikely Gécamines will be able to reach its targets, as it does not have sufficient reserves. This is because, in 2015, Gécamines began conceding the permits it had fought so hard to retrieve from its partners. The beneficiaries seem to be its toll treatment partners. In June 2015, for instance, Gécamines sold the former CMSK permit to CDM, its major TAF partner in 2012, for US\$52 million.<sup>507</sup> It also leased the Mutoshi tailings to Chemaf, another TAF partner.<sup>508</sup> Several sources have mentioned that Yuma and his team sold the rights to process the Panda tailings in Likasi to Huachin Metal Leach, also a TAF partner, for an aggregated price of approximately US\$65 million, without informing the minister of mines.<sup>509</sup> It also allegedly sold the Lupoto site for an undisclosed amount to "a partner whose identity makes us a little uncomfortable," according to one government official.<sup>510</sup>

Most importantly, Gécamines has entered into a "strategic partnership" for the development of Deziwa and other projects with China Nonferrous Metals Mining Company (CNMC).<sup>511</sup> Very little is known about the terms of this strategic agreement for Gécamines' flagship project, which seems to have been negotiated at the highest level. A senior government official confirmed that Deziwa is "on a special list of mines that require presidential approval for their disposal."<sup>512</sup> CNMC's vice president was in touch with Congo's first lady, Olive Kabila, in July 2014.<sup>513</sup> The company's president held meetings with Joseph Kabila<sup>514</sup> as well as with Yuma and Kamenga in June 2015<sup>515</sup> and again with the Congolese president in Beijing in September 2015 to discuss the Deziwa partnership. Yuma confirmed the deal with CNMC in June 2017.<sup>516</sup>

As most of the geological portfolio Gécamines built up in 2012 and 2013 appears to be locked up in new partnerships, it is unclear how the company intends to thrive as an independent producer in the future.<sup>517</sup>

## Decoding the Black Box

If Gécamines has not revived its production despite significant partnership income, it may have allocated that income to other expenses such as salaries or debt repayments. It seems, however, that workers' pay has been haphazard at best. In May and June 2014, several groups of Gécamines employees went on strike, claiming three to four months of salary arrears.<sup>518</sup> "When [CEO Paul] Fortin arrived, he used the signing bonuses to pay our arrears and paid our salaries every month," one employee told us.<sup>519</sup> "The

## Since 2010, new debt in the amount of US\$715 million was added to Gécamines' books.

new team initially paid us regularly. Then, they would pay one month's salary every 40 days. Then every 45 days, then every 60 days. Today we have four months of salary arrears in Lubumbashi."

Another factor might be that Gécamines used the revenues to alleviate its significant debt burden, which amounted to US\$1.524 billion when the new management team arrived in late 2010.<sup>520</sup> Indeed, it seems that the company's debt decreased to US\$962 million in 2012.<sup>521</sup> However, this was mainly the result of debt cancellation rather than debt repayment. State-owned companies had a lot of mutual debts, which were canceled to the extent they overlapped. The remainder was converted into a stake in the other state-owned company.<sup>522</sup> The same was true for mutual debts with the DRC state, the only difference being that the remainder of the debt was canceled (one cannot own a stake in the DRC

state).<sup>523</sup> According to several Gécamines documents, this reduced Gécamines' debt by US\$556.6 million.<sup>524</sup> Therefore, it is striking that the Gécamines chairman invoked the lack of governmental support to reduce its debt as the main reason for the company's failure to implement its revival plan.<sup>525</sup> Likewise, the French Development Agency canceled US\$103 million of debt, representing 94 percent of two loans granted in the 1980s that Gécamines stopped repaying in 1992.<sup>526</sup>

However, by 2016, Gécamines' debt had increased dramatically to surpass even previous debt levels, reaching US\$1.579 billion.<sup>527</sup> If a total of approximately US\$660 million was canceled but the overall debt nonetheless went up by US\$55 million since December 2010, this means that new debt in the amount of US\$715 million was added to Gécamines' books.

One of the main challenges is tracking what happens to the investors' revenues once they arrive at Gécamines—if they arrive at all. Indeed, it turns out that a substantial part of the money—royalties, signing bonuses, and asset sale proceeds—never made it to Gécamines' partnership accounts. Gécamines' partnership department maintains a database in which all revenues from its more than 20 partnerships should be recorded.<sup>528</sup> About US\$450 million in payments reported under EITI for the years 2011 through 2014 were not registered in the database. Another US\$290 million in revenues that Gécamines or its partners publicly referenced cannot be traced in EITI reports or the internal database. Overall, it appears that US\$750 million was not properly registered as Gécamines partnership revenues between 2011 and 2014. This is nearly two-thirds of the total income that Gécamines was supposed to collect from joint ventures during that period.

**Table 6—Significant Partnership Revenues Apparently Missing From Partnership Records, 2011–2014, in US\$ Millions**

Partnerships	Year	Revenue flow	Expected amount <sup>529</sup>	EITI declaration <sup>530</sup>	Registered partnership revenues	Missing
AMCK / MMG	2012	(Advance on) lease payments	~63.6 <sup>531</sup>	<b>45.3</b>	5.4	39.9
	2012	Non-preemption fees		<b>15</b>		15
	2014	Lease payments	11.9 <sup>532</sup>	<b>7.3</b>	0.4	6.9
GTL (FG Hemisphere case)	2012	Tailings payments	<b>92.8</b> <sup>533</sup>	8.8	0	92.8
	2013	Tailings payments	<b>At least 22.8</b> <sup>534</sup>	12.3	0	22.8
	2014	Tailings payments	n/a <sup>535</sup>	<b>16.4</b>	0	16.4
KCC	2011	Royalties	13.9	<b>21.1</b>	8.6	12.4
	2013	Royalties	20.4	<b>21.8</b>	0	21.8
	2014	Royalties	25.6	<b>63.4</b>	0	63.4
	2013	Pas de porte	15	<b>15</b>	0	15
	2014	Pas de porte	15	<b>15</b>	0	15
Kipushi Co.	2012	Pas de porte	0	<b>5</b>	0	5
	2012	Other	0	<b>1.2</b>	0	1.2
Mutanda and Kansuki	2011	Asset sale	137 <sup>536</sup> /189 <sup>537</sup>	<b>189.2</b>	0	189.2
Ruashi	2014	Royalties	10.1	<b>7.5</b>	0	7.5
Sicomines	2012	Pas de porte	<b>175</b> <sup>538</sup>	175 (DRC)	0	175
SMK	2011	Pas de porte	7.2	<b>7.2</b>	0	7.2
TFM	2011	Advance on dividends	<b>30</b> <sup>539</sup>	0	0	30
Total						US\$736.5 million

An accounting of the most significant discrepancies between publicly reported payments to Gécamines and payments effectively registered in Gécamines' partnership accounts between 2011 and 2014 yields a total gap of US\$736.5 million that appears to be missing. Note: Table 6 includes the following as "missing:" (1) any significant difference between the amount reported in EITI and the amount registered in Gécamines' partnership accounts or (2) when the EITI report differs from prior explicit public declarations by one or several parties directly involved in the payment, the difference between those declared revenue flows, and the amount registered in Gécamines' partnership accounts. When the estimated amount is based on the Carter Center's calculations, the EITI declarations are used as a reference. The figure used in the Center's estimate of missing revenues is marked in bold in each line. Only discrepancies of over US\$1 million are reflected in this table; smaller discrepancies amount to US\$13 million in total, bringing the total of discrepancies between 2011 and 2014 to nearly US\$750 million.

Five revenue flows stand out as missing from Gécamines' internal partnership accounts:

- US\$132 million in Lubumbashi tailings payments (GTL) between 2012 and 2014
- US\$30 million in advance on dividends from TFM in 2011
- US\$115.2 million in signing bonus and royalty payments from KCC in 2013 and 2014
- US\$189 million for the sale of its stakes in Mutanda and Kansuki SPRL in 2011
- US\$175 million as second signing bonus tranche for the Sicomines project in 2012

In the absence of a response from Gécamines to a request seeking clarification of these discrepancies, The Carter Center has attempted to track the allocation of these specific revenue flows. Some of this money can be traced to specific destinations. Part of it seems to have been spent on strengthening Gécamines' asset portfolio, as claimed. For instance, Gécamines apparently used US\$56 million of the Lubumbashi tailings payments it was entitled to after the legal victory against FGH to buy back the outstanding shares in CMSK from Forrest's company.<sup>540</sup> TFM's US\$30 million advance on dividends was allegedly used for the heavy media separation installation in Kambove,<sup>541</sup> arguably not the most robust investment, as the plant broke down in less than two years.

**In the absence of a response from Gécamines to a request seeking clarification of these discrepancies, The Carter Center has attempted to track the allocation of these specific revenue flows.**

Particularly striking is the regular omission of KCC income—royalties and signing bonus installments—from Gécamines' database, a gap of over US\$115 million. Upon further investigation, it found that the royalties have at least in part been used to pay back the loan a Gertler-associated company extended to Gécamines to purchase the flagship Deziwa concession.<sup>542</sup> Initially, the plan had been to sell the KCC stake to a Gertler company to reimburse the debt.<sup>543</sup> However, after collective outrage against the sale and the apparent halt of the transaction, Gécamines and the Fleurette group seemed to have found an alternative mechanism to alleviate the debt:

Gécamines would keep the ownership of the stake, but the royalties and the outstanding signing bonus installments from it would be channeled to Gertler's company, Africa Horizons.<sup>544</sup> Fleurette has confirmed that it has been collecting Gécamines' KCC royalties but did not clarify when it started collecting them nor how much it paid to get the rights. Additionally, it did not clarify whether it is collecting outstanding signing bonus tranches.

In other cases, the money seems to have been allocated for state rather than business purposes. Despite Yuma's claim that Gécamines would be entitled to the second tranche of the Sicomines signing bonus in the China minerals-for-infrastructure deal—and that it would use that tranche for its restructuring plans<sup>545</sup>—it appears that the bulk of it went to the DRC treasury,<sup>546</sup> although information about its actual allocation remains confusing at best.<sup>547</sup>

Some revenues may have been used for political purposes. A former Gécamines director recalls, "The Mutanda sale? They came to see us early on; they needed money for the elections."<sup>548</sup> One senior Gécamines employee noted that the Mutanda–Kansuki files as well as the Comide dossier are being kept at the directors' level and are not shared with other departments, as is the case with other transactions.<sup>549</sup> Gécamines was allegedly also asked to transfer US\$20 million in partnership revenues to Kinshasa for the *concertations nationales*, a large-scale political dialogue set up in 2012 to ease tensions after the flawed 2011 elections.<sup>550</sup> In the summer of 2012, when Gécamines became entitled to hundreds of millions of dollars after its legal victory over FGH, a Kivus-based rebel group called M23 was busy capturing more and more territory. As Gécamines faced its first deadline to buy back the Deziwa asset, the city of Goma was falling to M23. In the following months, the Congolese army made a sustained, costly effort to win the city, and then the Kivu provinces, back from the militia. As for Gécamines, it eventually had to resort to a loan from the Fleurette group to buy back Deziwa.

There is no proof that the Mutanda revenues were used for elections or that the Sicomines signing bonus and Lubumbashi tailings payments were linked to the military situation in the east of the country. However, the continued absence of transparency in Gécamines' spending,<sup>551</sup> coupled with its feeble production levels, raises questions about whether the revenues are used for political ends.

In early 2015, the company still had interests in approximately 20 joint ventures that it could sell without much oversight.<sup>552</sup> When asked why the company sold the highly valuable Mutanda stake instead of another interest, such as its participation in Ruashi Mining or Kipushi Corporation, a former Gécamines director replied, "The plan was to also sell Ruashi and Kipushi. We had to start somewhere."<sup>553</sup> Further asset sales could generate hundreds of millions in unscrutinized income: Gécamines' 20 percent stake in TFM alone could be worth well over US\$500 million as the company approaches the point where it starts paying dividends to its shareholders.<sup>554</sup>

The risk of new asset sales seems to be even greater as the country enters a period in which elections are supposed to take place, given the asset sale trends preceding the 2006 and 2011 elections.<sup>555</sup> In fact, asset sales seemed to be in motion as early as a year and a half before the constitutionally mandated end of President Kabila's second term. In June 2015, Gécamines surrendered its interest in a small concession for US\$10 million.<sup>556</sup> The concession is an island in the middle of the Glencore-controlled Mutanda zone and is potentially rich but difficult to mine since it hosts one of the largest artisanal mining sites in the copper belt.<sup>557</sup> Similarly, several reports have indicated that the management team wants to sell the Lubumbashi tailings rights to a new investor.<sup>558</sup>

In April 2016, Gécamines and SIMCO sold their interests in the Metalkol joint venture for the Kolwezi tailings project<sup>559</sup> for a rumored US\$180 million. The contract for this major asset sale remains unpublished, despite the legal obligation to disclose it, and The Carter Center released a press statement to highlight the need for greater transparency regarding this sale.<sup>560</sup>

**The continued absence of transparency in Gécamines' spending raises questions about whether the revenues are used for political ends. Going forward, Gécamines may continue to privatize its remaining assets, probably in the name of its "revival," without guarantee that the money will actually make it to Gécamines' coffers. This risk seems to be even greater when elections are supposed to take place.**

In addition to its minority stakes, Gécamines still exclusively owns nearly 100 exploitation permits, though their geological reserves vary from the huge to the unknown. The concession of these permits to existing joint ventures happens frequently without any supervision or public knowledge.

Finally, Gécamines could continue to block any international ownership change until the buyer or seller accepts to pay a substantial nonpreemption fee. In 2016, Gécamines blocked the sale of Freeport and Lundin's shares in TFM to two separate Chinese investors, arguing that its rights should be respected. While the government signaled that the deal should go ahead, Gécamines stated that it began arbitration to defend its rights while also negotiating with investors for a significant fee.<sup>561</sup> As reported in Bloomberg, the parties are said to have settled for an alleged US\$100 million payment<sup>562</sup> around the same period the presidential majority signed an agreement with the opposition to postpone elections for up to a year. The terms of this crucial deal still have not been published.

Going forward, Gécamines is likely to keep collecting considerable revenues, probably in the name of its "revival," with no guarantee that the money will actually make it to Gécamines' coffers. Indeed, Gécamines invoked its revival in a response to Global Witness in 2017 after the

British nongovernmental organization accused the state-owned miner of revenue diversion: “Since (...) foreign partners have failed to pay dividends after many years of production, Gécamines has developed an ambitious strategy to rebuild its own production apparatus and become once again a leading mining company.”<sup>563</sup> This strategy, cited since 2011 without yielding significant results, sounds hollow after so many years of promises.

## Masking the Parallel Track

After a spike in attention to the Gertler deals and a big push on the part of Congolese stakeholders to comply with international transparency requirements, it appears that the international community is no longer paying close attention. This is not for lack of transparency rules. In fact, as a result of expansive updates to the EITI standard in 2013 and 2016, Gécamines is required to disclose a wide range of information on what it owns, what it earns, and how it spends it. According to EITI, it should disclose the following:

- Its list of mining interests and the terms on which it has obtained them<sup>564</sup>
- How much it has received in revenues
- Whether it has benefited from third-party loans<sup>565</sup>
- Whether it has sold any assets in any given reporting year and which procedure it has followed to do so
- How much of its income is reinvested in the company<sup>566</sup>
- How much is transferred to the state<sup>567</sup>
- How much goes to parafiscal expenses such as social services and infrastructure projects<sup>568</sup>

The 2012–2014 editions of Congo’s EITI reports published after the adoption of the expanded standard leave much to be desired on nearly all of those points.<sup>569</sup> The reports include a list of joint ventures in which Gécamines and other state-owned companies have a stake<sup>570</sup> but do not mention whether Gécamines had to pay for the acquisition costs, as was

the case when it received extra shares in CMSK, or whether it received an interest-free loan to contribute to the share capital, as has been the case in most of its joint ventures. The reports also do not cover all ownership changes. The 2012 report, for instance, does not describe the changes in ownership of Deziwa, CMSK, or Kalumines. It lists the revenues Gécamines declared, which seem to differ greatly from its own

## **Gécamines is required to disclose a wide range of information on what it owns, what it earns, and how it spends it.**

partnership records. Moreover, EITI reports have not included revenues collected by Gécamines’ subsidiary SIMCO, despite continuing advocacy from The Carter Center and Congolese civil society organizations. This creates a risky loophole through which Gécamines could potentially divert its revenues to this subsidiary to avoid EITI disclosures.

As for the financial relationship between the state and state-owned companies, the reports briefly explain that state-owned mining companies are to pay the same taxes as other companies as well as a set of “revenues of state portfolio,” including dividends, revenues from transferred titles, and “revenues from other entitlements.”<sup>571</sup> However, Gécamines has claimed over the past few years that it should keep the revenues of its title concessions.<sup>572</sup> Moreover, the category of “revenues from other entitlements” is so vague that it could likely include any revenue stream, and there is no explanation of whether current practice conforms with the obligations to share such revenues with the state treasury as described in the EITI reports. The reports also do not contain any information about third-party credit lines, such as the Fleurette loan to buy back the Deziwa permits or the US\$30 million advance on TFM dividends

in 2011 for the Kambove plant. More generally, no information could be found on what Gécamines reinvests in its production apparatus. And while other companies disclose their social expenditures, Gécamines does not, despite a long-standing tradition of paying for education, health, and other services for its employees and their families.<sup>573</sup> In response to the Carter Center's questions, the DRC's EITI Technical Secretariat asked for additional information, *inter alia* to organize a wide debate on the transfer of Gécamines' assets to private investors.<sup>574</sup>

The World Bank could use its grant disbursements to encourage the government to implement transparency measures. In the past, the World Bank and other donors have done so based on the Economic Governance Matrix (EGM), the list of good governance measures the government and its donors negotiated after the cancellation of FQM's Kolwezi tailings contract. The effectiveness of such pressure has become clear in the wake of the Comide scandal, when the IMF and the World Bank applied stricter scrutiny on its contract transparency conditions and, as a result, the government released dozens of contracts on its website. Now that the IMF no longer has a financial assistance program, the onus is on the World Bank to use its leverage.

Unfortunately, while the EGM still exists and is sometimes amended,<sup>575</sup> the joint DRC–World Bank monitoring body that oversees its implementation does not seem willing to challenge the government's claims that it is complying at face value—despite evidence to the contrary. The EGM, for instance, requires publication within 60 days of information relating to asset sales, the establishment of joint ventures, and investment projects initiated by state-owned mining companies.<sup>576</sup> According to the monitoring body as well as recent EITI reports, “all” mining contracts have been published.<sup>577</sup> While it is true that the Ministry of Mines has made progress in publishing contracts, several dozen are still missing; in January 2015, The Carter Center and three networks of Congolese civil society organizations published a list of more than 60 mining contracts, amendments,

and key annexes that still have not been disclosed, including dozens involving Gécamines.<sup>578</sup> According to the EGM, the government also should submit an annual report on the sale of assets and joint ventures carried out by state-owned mining companies. The monitoring body noted that this measure has been “fulfilled” and that “there have been no asset sales or joint ventures in 2013 and 2014.”<sup>579</sup> This is striking, since it is public knowledge that Gécamines sold its stake in the Société d'Exploitation de Kipoi in 2014 for US\$111 million.<sup>580</sup> These examples are illustrative of the World Bank's uncritical acceptance of the government's claims that it is appropriately transparent.

Other measures in the EGM that would greatly increase transparency are behind schedule. Gécamines should, for instance, have published its financial statements at the end of 2014.<sup>581</sup> This measure was labeled as “ongoing” in September 2015 because the publication was allegedly awaiting approval of the Gécamines board.<sup>582</sup> To the Carter Center's knowledge, the statements were still not available in late 2016. The same goes for performance contracts and benchmarks for Gécamines' executives. According to a 2008 law on the management of state-owned enterprises, the chairman, CEO, and other mandate-holders of state-owned companies should sign such a contract with their shareholder, the state, to define the benchmarks they should reach over the course of their mandate. The EGM required that these performance contracts be signed and published by March 2014 and that the government commission annual audits to assess compliance with the performance benchmarks.<sup>583</sup> To the Carter Center's knowledge, neither Yuma nor other mandate-holders have signed such a contract.<sup>584</sup>

The World Bank has the most direct opportunity to raise the bar in the short term. Paradoxically, while the bank is accepting the government's claims at face value, the IMF representative invoked DRC law and the EGM to criticize the government's lack of transparency when it failed to disclose the terms of the Chabara permit sale.<sup>585</sup> In an interview, a

former World Bank representative expressed some frustration over the perception that the IMF is more active at monitoring conditionality measures: “You should not think it’s only the IMF working on this; we at the World Bank also do a lot,” he said, without providing extra detail.<sup>586</sup> The EGM anticipated a multistakeholder body to discuss mining governance topics, including the measures of the matrix, but the institution is not operational. When asked whether civil society could play a role in monitoring the implementation of the EGM, he responded that “the matrix is something between us and the government; it is not a matter for civil society.”

However, the exclusion of civil society from important questions about governance is counterproductive. International and national civil society organizations have already played a key role in

improving state-owned company governance thus far by highlighting key problems and launching much-needed calls for action. Civil society has uncovered state-owned asset sales, examined gaps in contract transparency, lobbied against the sale of Gécamines’ stake in KCC and led the way in ensuring the DRC’s compliance with EITI after the country’s suspension from the program. While increased state oversight and greater attention from donors and multilaterals can and should play a key role in improving Gécamines’ governance as an investment of the DRC state, Congolese civil society has an equally important role as a monitor of the Congolese people’s interest in their state-owned companies.



In 2016, Gécamines refurbished the façade of its headquarters building, where over 100 contracts have been negotiated over the years. Gécamines has not yet publicly identified the funding source for the reconstruction, even though reinvestments in the company and debts undertaken should be disclosed under the Extractive Industries Transparency Initiative.

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## Conclusion and Way Forward

Since the mid-1990s, Gécamines has frequently been accused of losing money when it has transferred its mining permits and shares to foreign investors. This report began from a different vantage point, focusing instead on the money the state-owned company *did* gain, how those proceeds were used, and the degree to which they have allowed Gécamines to achieve its strategic goals or to generate value for its sole shareholder, the Congolese state.

Until the 1990s, Gécamines held a quasi-monopoly on world-class concessions in Congo's copper and cobalt belt in Katanga. The Mining Code, passed in 2002, intended to break this monopoly and set up a new Mining Registry to award permits to investors. Instead, the state-owned company was allowed to preserve its best permits under this new legal regime. Significant investors negotiated with Gécamines for rights to these better-known deposits, as most investors viewed this as a preferable alternative to applying to the registry for a research permit to enable exploration in areas where geological value was uncertain. As a result, Gécamines has remained the primary gatekeeper to Congo's greatest mineral resources.

When Gécamines first started selling permits, the country was in turmoil, and the company lacked experience in negotiating contracts. The initial deals were signed with relatively junior companies and generated only meager revenues for Gécamines. Following the DRC's first multiparty elections in nearly 40 years in 2006, Gécamines gained more experience in negotiating contracts, notably through the state-supported revisitation process. As the country grew more stable, new foreign investors bought out smaller operators and began pouring large amounts of capital into the Katanga region. At the same time, international commodity prices skyrocketed. Gécamines became more assertive, and its revenues—derived primarily from signing bonuses, royalties, and fees—grew accordingly. Based on the Carter Center's analysis of Gécamines' contracts,

EITI data, and other corporate documents, it appears that Gécamines generated an average US\$262 million per year from joint venture partnerships established between 2009 and 2014, totaling more than US\$1.5 billion.

**Gécamines no longer acts like un *Etat dans l'Etat*—a state within the state. Instead, Gécamines seems like a parallel state operating beyond the scope of regular state institutions and oversight, able to grant mining assets, collect significant income, and determine how to channel those funds.**

This revenue could have been used to alleviate Gécamines' substantial debt and transform it into a profitable and accountable enterprise generating dividends for the DRC state. After all, this was the ostensible goal of transforming Congo's public enterprises into commercial companies. Instead, the transformation allowed Gécamines to invoke its private company status to insulate itself from broad government oversight and fend off governance questions about its contracting practices, income, and spending. Shielded from oversight, a handful of Gécamines executives have continued to privatize the company's mining titles and shares in existing joint ventures through opaque procedures with minimal scrutiny.

At the same time, Gécamines exploited its

quasi-public status to obtain privileges not available to purely private corporations. For example, the Mining Registry permitted Gécamines to transform its research permits into exploitation licenses without the financial, technical, and environmental prerequisites required by law. As a result, Gécamines has amassed almost twice as many exploitation permits as the Mining Code allows. Further, to protect its revenues in international court battles, Gécamines has accepted pro bono legal aid normally earmarked for "African governments" from international financial institutions. Meanwhile, President Kabila has ratified multiple laws protecting Gécamines from bankruptcy, thus exempting it from the consequences of debt default that would apply to a private company.<sup>587</sup>

Tracing the partnership revenues to their ultimate destination has been challenging. Based on a review of public documents, it appears that Gécamines has transferred only 5 percent of its partnership revenues to the DRC treasury in the form of taxes and advances on dividends. According to Gécamines, the remainder has been spent on the revival of its own commercial production. However, the disappointing production results leave room for skepticism; while Congo's overall mining production nationally increased fiftyfold between 2004 and 2014, the output from Gécamines stagnated at 2004 levels, following a brief, artificial spike in 2012 and 2013.

Further, roughly two-thirds of the US\$1.1 billion in revenue (US\$750 million) that Gécamines' has generated in the four-year period from 2011 to 2014 does not seem to have been properly registered in the Gécamines' partnership revenues database. The Carter Center has been able to trace about half of these missing funds, including the US\$115 million in revenues from one of Gécamines' top joint ventures, KCC. The funds were diverted to one of the president's closest business connections, Gertler's Fleurette group, to repay an existing loan. However, the bulk of the missing revenues could not be traced.

The continued opacity of Gécamines' spending, coupled with its poor production output, have fueled speculation that its revenues are being siphoned off to benefit a small number of key political actors. In

that sense, Gécamines no longer acts like *un Etat dans l'Etat*—a state within the state—as Gécamines was traditionally called when it provided work, housing, food, and education to over 30,000 workers and their families. Instead, Gécamines seems like a parallel state operating beyond the scope of regular state institutions and oversight, able to grant mining assets, collect significant income, and determine how to channel those funds.

Although much of the extractive sector is now in private hands, Gécamines' bargaining power has actually increased, as it retains several ways to generate off-budget revenues. First, Gécamines maintains significant leverage to control access to copper and cobalt resources. It currently holds almost 100 mining permits, all of which could be transferred to existing or new investors without public knowledge. Second, Gécamines owns minority stakes in approximately 20 joint ventures. When a partner in a joint venture tries to sell its shares to a third party, Gécamines can invoke contractual preemption rights to block the ownership change until it gets a significant payment. This has taken place in at least five cases since 2011, with Gécamines demanding fees of as much as US\$130 million before it will approve a deal. According to the chairman of Gécamines' board, Albert Yuma, it is a practice the company intends to continue. Finally, Gécamines can generate revenue by selling its own minority stakes to investors, a move it has attempted in at least one joint venture each year since 2010.

## Recommendations

Based on this analysis, The Carter Center recommends the following:

### DRC Government

#### *Public information disclosure*

- The Ministry of Mines should disclose the full contractual terms and the destinations of the revenues of at least these three large Gécamines transactions:

- 2016 sale of Gécamines' and SIMCO's stake in Metalkol to Eurasian Resources Group
- 2016 strategic partnership and 2017 agreement with China Nonferrous Metal Mining (Group) Co. (CNMC) for Deziwa
- 2016–2017 deal regarding the shareholder change at Tenke Fungurume Mining (TFM)
- The Ministry of Portfolio should submit annual reports to Parliament on asset sales by state-owned enterprises as required by law and make these reports public. The outstanding 2015 and 2016 reports should be submitted and published immediately.

#### **Enforcement and compliance with laws**

- The prime minister should ensure compliance with the law that requires that asset sales be subject to a public tender process, be approved by the Council of Ministers, and have proceeds allocated to a special fund of the public treasury.
- The Ministry of Mines should apply the full provisions of the Mining Code to state-owned enterprises, particularly the requirements to:
  - Hold a maximum of 50 exploitation permits, returning excess permits to the mines registry
  - Pay surface rents
  - Comply with all operational, social, and environmental requirements

#### **Sound management practices**

- To advance greater accountability of Gécamines' management team, the Ministry of Portfolio should ensure that Gécamines executives are:
  - Recruited competitively through the High Council for Portfolio and the Council of Ministers, based on competence, motivation, and integrity
  - Required to sign performance contracts that include objectives measuring Gécamines' financial health and fair treatment of its employees
  - Sanctioned or removed from office when they do not meet contractual expectations

- The president of the republic should only select Gécamines executives who have been proposed by the Council of Ministers, as required by law.

#### **Congolese Parliament**

##### **Public information disclosure**

- Parliament should commission an independent audit of Gécamines' financial statements for the years 2011–2016, with public disclosure of the statements and the resulting audit report. This audit should cover a disaggregated account of Gécamines' spending and be supported by verifiable documents.

##### **Oversight and accountability**

- Parliament should hold public hearings on the management of state-owned mining companies and set up a special Commission of Inquiry to evaluate Gécamines' financial practices. In these public hearings, Parliament should examine the following documents:
  - Gécamines' 2011–2016 financial statements and audit reports
  - The Ministry of Portfolio's annual reports on Gécamines' asset sales and transactions
  - A report from the Ministry of Mines on the application of the Mining Code's requirements to Gécamines and other state-owned mining companies
  - Gécamines' mining contracts, in particular any yet-to-be-published 2016–2017 transactions
- To avoid any confusion, Parliament should adopt an interpretative statement to clarify that the law on state asset sales applies to the privatization of state-owned companies' assets.

#### **Gécamines**

##### **Public information disclosure**

- To conform to the DRC's commitments under the Extractive Industries Transparency Initiative (EITI) standard and the Economic Governance Matrix with the World Bank, Gécamines should make publicly accessible the following information:

- Audited financial statements and partnership accounts as well as the audit reports
- Detailed information on existing assets and investment projects
- Key information on procedures that have been followed for asset acquisition and disposal
- Detailed accounts of asset and transaction revenues
- Detailed accounts of quasi-fiscal expenditures
- Key information about all mining contracts within 60 days of their signature
- Signed performance contracts for company executives
- A description of the prevailing rules regulating the financial relationship between the government and Gécamines, including the transfer of funds, retained earnings, reinvestment, and third-party financing, with explanations of any gaps between rules and practice

### ***Oversight and accountability***

- Gécamines' executive team should adhere to the following legal requirements and accountability mechanisms:
  - Submit a quarterly report to the Minister of Portfolio and the Council of Ministers that includes technical, human resource, and financial updates
  - Submit major company decisions for approval by the Council of Ministers as required by law, such as the sale and acquisition of key assets and any major debt agreement that might lead to the disposal of assets
  - Sign and comply with performance management contracts that include clear financial targets and accountability mechanisms
  - Return excess exploitation permits to the Mining Registry to comply with the legal limit of 50 permits per titleholder

### ***Long-term strategy***

- Gécamines should revise and clarify its business plan to ensure that its strategic objectives and implementation benefit the DRC as a shareholder. One option would be to shift from a producer to a portfolio manager, with revenues generated from its existing minority stakes and other assets. This would require cutting costs and terminating new capital expenditures, continuing negotiations for (partial) loan cancellations with Gécamines' creditors, and avoiding new loans.
- To restore its long-term financial health and social license to operate, Gécamines should finance a robust retirement plan that provides fair compensation to its retirees. Such a plan should be monitored by Parliament, civil society, and independent auditors.

### ***Industry Actors***

#### ***Due diligence and accountability of payments***

- To avoid corruption risks, mining companies should practice due diligence when making payments to state-owned companies, their representatives, or state officials, ensuring they are based on clear legal provisions and are paid only to official accounts.
- To promote accountability, mining companies should publicly disclose any material payment to state-owned companies or the Congolese government at the time the payment is made.
- In addition, Congolese, foreign, and correspondent banks should ensure sufficient due diligence before engaging in business in the DRC mining sector. They should implement rigorous know-your-client procedures and request verifiable documentation and beneficial ownership information for any transaction above US\$10,000. If anomalies or concerns arise, additional beneficial ownership investigations should be done before completing transactions and suspicious activity reports should be filed with appropriate regulating agencies.

- Similarly, law firms should refrain from banking activities through client accounts of state-owned companies they might advise. Law firms should carry out additional beneficial ownership investigations whenever their work involves large cash transactions. They should refrain from setting up corporate structures that might facilitate criminal activity or hamper official investigations.

### **Multistakeholder Initiatives and Civil Society** ***EITI information disclosure on assets and revenue***

- To meet the EITI standard's requirements for state-owned company information disclosure, the EITI-DRC Executive Committee and Technical Secretariat should ensure the publication of asset disposals and detailed revenue accounting for state-owned companies, including Gécamines. This should include a description of the prevailing rules regulating the financial relationship between the government and Gécamines, with explanations of any gaps between rules and practice, and a detailed account of any quasi-fiscal expenditures.
- To maintain the integrity of EITI-DRC reporting, the EITI-DRC executive committee should:
  - Investigate and report on instances in which EITI-DRC reporting has been contradicted by credible sources
  - Request that EITI administrators in charge of collecting data for future EITI reports require bank excerpts or other proof before making changes to the initial declarations of the companies and state entities
  - Request that Gécamines submit a detailed account of the measures it has taken to address the recommendations of previous EITI reports

### ***Civil society and public awareness***

- Civil society groups should expand work to raise awareness about governance of state-owned companies. To this end, they should continue to monitor

state-owned company revenues and deals, and submit specific accountability requests to the state-owned companies and the Minister of Portfolio to ensure that these companies benefit the public interest in the DRC.

### **DRC Bilateral and Multilateral Donors**

#### ***Revenue transparency and accountability***

- Donors should conduct due diligence reviews of state-owned company governance for all large-scale funding programs to the DRC state before providing financial support.
- When considering direct budget support or funding for governance programs, donors should require the following conditions before disbursing funds or committing to new funding:
  - Immediate disclosure of the most important unpublished natural resource contracts, especially the three main 2016–2017 deals with Metalkol, TFM, and CNMC
  - Publication of Gécamines' 2011–2016 financial statements and audits
  - Strict implementation of the economic governance matrix
  - Publication of the EITI 2015 and 2016 reports before December 2017

#### ***Anticorruption investigations and related measures***

- Bilateral donors should initiate rigorous criminal investigations of companies registered in their jurisdictions if presented with credible allegations of bribery and/or money laundering. Such investigations should be actively supported through international judicial cooperation.
- If there is sufficient evidence that DRC state or state-owned company funds have been misappropriated, donors should consider imposing targeted sanctions on the appropriate DRC officials and complicit business partners.

## Endnotes

- 1 Jeff Desjardins, Copper—The Essential Metal, *Visual Capitalist* (July 17, 2012).
- 2 U.S. Department of the Interior U.S. Geological Survey, *Mineral Commodities Summaries 2016* (2016), 53 (cobalt).
- 3 See e.g., Jeff Desjardins, *The Critical Ingredients Needed to Fuel the Battery Boom*, *Visual Capitalist* (Oct. 26, 2016).
- 4 James C. McKinsley Jr., *Zairian Rebels' New Allies: Men Armed With Briefcases*, *N.Y. Times* (April 17, 1997) [hereinafter "McKinsley, Zairian Rebels' New Allies, 1997"].
- 5 U.N. Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, transmitted by letter dated Oct. 8, 2002, from the chairman of the Security Council panel established pursuant to the statement of the president of the Security Council (S/PRST/2001/39) dated Dec. 19, 2001, and the letter dated July 12, 2002, addressed to the president of the Security Council, 22, U.N. Doc. S/2002/1146 (Oct. 16, 2002).
- 6 Africa Progress Panel, *Equity in Extractives: Stewarding Africa's Natural Resources for All: Africa Progress Report 2013* (2013), 5 [hereinafter "Africa Progress Panel, 2013"].
- 7 See, e.g., The Carter Center, *Review of DRC Mining Contracts—Update and Recommendations* (Nov. 30, 2007); The Carter Center, press release, *Democratic Republic of Congo: The Carter Center Expresses New Concerns in Response to Announced Mining Contract Renegotiations* (July 13, 2008).
- 8 See, e.g., *Africa Progress Panel Report 2013*, 55–58 and 101–104.
- 9 The Carter Center developed these questions to clarify ambiguities in the content of draft versions of the report by addressing questions to the parties involved. The questions varied: Some questions were a clarification of facts related to specific events or transactions; others were a request for comment on statements by other actors; still others sought to confirm or improve the Carter Center's overall understanding and analysis. Questions submitted to each entity were organized by topic, and for each topic additional context from the Center's analysis was provided. Each entity contacted received a letter explaining the overall approach of the analysis and an annexed list of questions specific to the entity's role. The letters also included the response deadline and an offer to discuss any questions or concerns. Almost all of the private companies contacted shared a written response, and for many, the responses were substantive. Extensions of the response deadlines were granted when entities requested them. However, others only indicated their unwillingness to provide comments. Government and state-owned companies were generally less responsive to the Carter Center's outreach. Some parties also offered in-person meetings, which Carter Center staff made best efforts to accommodate.
- 10 See the section titled *Keeping the Parallel Mining Registry Alive* (2007–ongoing) for details.
- 11 DRC government 2012 export statistics, May 2013; USGS Cobalt 2015.
- 12 See, e.g., Moore Stephens/DRC Extractive Industries Transparency Initiative, *Rapport ITIE RDC 2014* (December 2015), 13 [hereinafter "EITI DRC 2014 Report"].
- 13 Léonide Mupepele Monti, *L'industrie minière congolaise—Chiffres et défis* Paris: L'Harmattan (2012), 116 [hereinafter "Mupepele, L'industrie minière congolaise, 2012"].
- 14 Augustin Katumba Mwanke, *Ma Vérité*, Nice: Imprimerie Toscane (2013), 38 [hereinafter "Katumba Mwanke, Ma Vérité, 2013"].
- 15 In the decade following the country's independence in 1960, Belgian interests monopolized the commercialization of Gécamines' production, benefiting from an all-encompassing management agreement. In 1974–1975, a new subsidiary of Gécamines called Sozacom took over that role and liberalized the trade. One of Gécamines' new clients was Marc Rich. See René Brion and Jean-Louis Moreau, *De la Mine à Mars—La Genèse d'Umicore*, Thiel: Lamoo (2006), 367 [hereinafter "Brion & Moreau, De la mine à Mars, 2006"]; U.S. Embassy in Kinshasa, diplomatic cable 1974KINSHA09706\_b, SGM and Sozacom (Nov. 18, 1974); U.S. Embassy in Kinshasa, diplomatic cable 1975KINSHA8400\_b, Sozacom to Assume Responsibility for Marketing Minerals—U.S. Publications Requested (Sept. 17, 1975).
- 16 The two most well-known exceptions are STFM, a U.S. consortium that tried to develop the Tenke Fungurume concession before leaving Zaire when the price of copper fell, and the Japanese investors behind Sodimiza (World Bank, *Democratic Republic of Congo: Growth With Governance in the Mining Sector* (May 2008), 108 [hereinafter "World Bank, Growth With Governance, 2008"]; Mupepele, *L'industrie minière congolaise*, 2012, 117).
- 17 IMC Group Consulting Ltd., *Restructuration de la Gécamines: Draft Phase 2*, for République Démocratique du Congo Bureau Central de Coordination Contrat No. 018/BCECO/SC (November 2003), 41 [hereinafter "IMC Final Report, 2003"]; the Carter Center phone interview with former vice president of the Congolese Business Federation (February 2012); the Carter Center interview with former head of the Mines Administration in Kinshasa (November 2014): "Gécamines' finances were in the hands of Sozacom, the entity in charge of commercializing Gécamines' output," the former head of the Mines Administration told us. "That's where the money was pumped; Gécamines got the crumbs." See also Benjamin Rubbers, *L'effondrement de la Générale des Carrières et des Mines—Chronique d'un processus de privatisation informelle*, *Cahiers d'études africaines* 2006/1 nr 181, ¶16 [hereinafter "Rubbers, Gécamines, 2006"]; Benjamin Rubbers, *Le paternalisme en question—Les anciens ouvriers de la Gécamines face à la libéralisation du secteur minier Katangais*, Paris: L'Harmattan—*Cahiers Africains* 81 (2013), 45–46 [hereinafter "Rubbers, Le paternalisme en question, 2013"].
- 18 The Carter Center interview with former Gécamines engineer in Belgium (April 2015) [hereinafter "Former Gécamines staff interview, April 2015"].
- 19 See, e.g., Groupe Bechtel, *Etude d'Optimisation Gécamines* (1987), 2-13—2-32 (unpublished, on file with The Carter Center) [hereinafter "Bechtel report, 1987"]; Mupepele *L'industrie minière congolaise*, 2012, 117.
- 20 For further details, see *Kamoto Copper Company: In the Red* (case study).
- 21 The Carter Center interview with former Gécamines chief executive officer in Cape Town (February 2015) [hereinafter "Former Gécamines CEO interview, February 2015"].
- 22 Human Rights Watch, *Zaire Incited Hatred—Violence against Kasaiens in Shaba*, vol. 5 no. 10 (June 1993).
- 23 For further details, see *Kamoto Copper Company: In the Red* (case study).

24 On Gécamines' paternalist employment policies, see generally Dibwe dia Mwembu, *Histoire des conditions de vie des travailleurs de l'Union minière du Haut-Katanga/Gécamines (1910–1999)*; Lubumbashi: Presses universitaires de Lubumbashi (2000). See also Rubbers, *Le paternalisme en question*, 2013.

25 The corn meal rations depended on the size of the family and could go up to 135 kilograms a month for a married man with at least five children. (The Carter Center interview with Gécamines trade union leader in Kolwezi, February 2014.)

26 The Carter Center interview with former Gécamines director in Lubumbashi (July 2015) [hereinafter "Former Gécamines director interview, July 2015"].

27 Until then, it appears that the World Bank, the International Monetary Fund, and other Western lenders had been relaxed about how Gécamines had spent their loans. Most notably, Erwin Blumenthal, a senior IMF official posted within the Congolese Central Bank from 1978–1979, released a damning report identifying seven special accounts where funds were diverted for Mobutu's benefit, including US\$400 million between 1976 and 1978. Erwin M. Blumenthal, "Zaire: Rapport Sur la Crédibilité Financière Internationale" in Emmanuel Dunga, *Mobutu et l'Argent du Zaire: Les Révélation d'un Diplomate Ex-Agent des Services Secrets* (annexe 2), 136, 144–5 (1982); Michela Wrong, *In the Footsteps of Mr. Kurtz: Living on the Brink of Disaster in the Congo, 191–193* (2001). See also Marie Mazalto, *Gouvernance du secteur minier et enjeux de développement en République Démocratique du Congo—Thèse présentée comme exigence partielle du doctorat en sociologie, Université du Québec à Montréal* (October 2009), 80.

28 Former Gécamines CEO interview, February 2015. The World Bank discontinued lending in August 1991. See also The World Bank, *Transitional Support Strategy for the Democratic Republic of Congo*, Report No. 22499-ZR (July 9, 2001) [hereinafter "World Bank, Transitional Support Strategy, 2001"].

29 Former Gécamines staff interview, April 2015.

30 See Richard C. Morais, *Friends in High Places*, *Forbes* (Aug. 10, 1998) [hereinafter "Morais, Friends in High Places, 1998"].

31 Robert Block, *Zaire's Rebels Befuddle Foreign Investors—Kabila's People Talk About Free Markets but Offer No Plan*, *Wall Street Journal* (May 13, 1997) [hereinafter "Block, Zaire's Rebels Befuddle Foreign Investors, 1997"].

32 Boule toured with U.S. politicians and diplomats, including then-Rep. Cynthia McKinney and Amb. Robin Sanders shortly before Kinshasa fell in 1997, a year when his "promotion and investor relations costs" doubled to over US\$1.1 million, "due to several investor visits made to the Democratic Republic of Congo during the year to review the company's projects in the country and the company's attendance at a greater number of investor trade shows in 1997." Morais, *Friends in High Places*, 1998; *America Mineral Fields Inc., Annual Report 1997*, 15. See Erik Kennes, *Déconnection et descente aux enfers 2000*, 344; Erik Kennes, Footnote to the Mining Story, *Review of African Political Economy* 29 nr. 93/4 (2002), 604 [hereinafter "Kennes, Footnote to the Mining Story, 2002"]; Gerard Prunier, *Africa's World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe* (2009), 138–142 [hereinafter "Prunier, Africa's World War, 2009"].

33 McKinsley, *Zairian Rebels' New Allies*, 1997; Block, *Zaire's Rebels Befuddle Foreign Investors*, 1997, 1.

34 The framework agreement for Kolwezi was signed in April 1997, a month before Kabila arrived in Kinshasa. However, in 1999 Gécamines said the tender process through which Boule's company America Mineral Fields Inc. (AMFI) had obtained the contract failed to meet "the needs of the nation" and revoked its signature. The following year, a new partnership between AMFI (30 percent), Anglo American (30 percent),

and Gécamines (40 percent) was signed but never received presidential approval. (*America Mineral Fields Inc., Bringing Minerals to Value, Annual Report 2002*, 3, 12, 13, 27) [hereinafter "AMFI Annual Report, 2002"]. The Jean Boule Group declined to comment on questions relating to its DRC investments (Jean Boule Group, response to the Carter Center request for comments, June 1, 2016; on file with The Carter Center) [hereinafter "Boule Response letter, June 2016"]. For further details and sources on the Kolwezi tailings project, see *First Quantum Minerals: Hard to Heal* (case study).

35 See generally Lundin's biography by Robert Eriksson, Adolph H. Lundin: *No Guts No Glory*, *Affars Information Ehrenblad Editions AB* (2003).

36 The Carter Center interview with a former Gécamines lawyer in Goma (March 2014). Another Gécamines senior manager said Lundin had been ranked second rather than last. Former Gécamines staff interview, April 2015. Lundin Mining chief executive officer and president, Paul Conibear, wrote that he did not know which criteria were used to select the winning bid but invoked mining experience in Argentina to substantiate his company's technical and financial expertise (Lundin Mining chief executive officer and president, Paul Conibear, response to the Carter Center request for comments (May 24, 2016), 1 (on file with The Carter Center) [hereinafter "Lundin response letter, May 2016"]. For additional details, see *Tenke Fungurume Mining: Reading the Fine Print* (case study).

37 *Tenke Fungurume Mining Convention, 1996*, Art. 4–6. A Lundin spokesperson did not comment on the destination of the signing bonus but wrote it was paid "in full accordance with the Tenke agreements" (Lundin response letter, May 2016, 3).

38 Block, *Zaire's Rebels Befuddle Foreign Investors*, 1997, 1.

39 Block, *Zaire's Rebels Befuddle Foreign Investors*, 1997, 1.

40 *Tenke Mining Corp., the listed company that owned the Tenke and Fungurume deposits*, explained in its stock exchange reports that it had "advised its partner Gécamines, and the government of the Democratic Republic of Congo (DRC), that the continuing military turmoil and political events in the DRC, which commenced in August 1998, materially affected the company's ability to carry out the Tenke Fungurume Project." *Tenke Mining Corp., Management's Discussion and Analysis of Financial Condition and Operating Results, Annual Report 1999* (April 12, 2000), 6 (available through the System for Electronic Document Analysis and Retrieval or SEDAR).

41 The project only became operational again after the latter acquired a stake from Lundin and substantial renegotiations of the original contractual terms took place—making the whole notion of a tender obsolete. See *Tenke Fungurume Mining: Reading the Fine Print* (case study) for further details.

42 Katumba Mwanke, *Ma Vérité*, 2013, 59–62. For further details about the loan, see *Mutanda Mining: Strictly Private* (case study).

43 *Assemblée Nationale—Commission Spéciale Chargée de l'Examen de la Validité des Conventions à Caractère Economique et Financier Conclues pendant les Guerres de 1996–1997 et de 1998, Rapport des Travaux, 1ere Partie* (2005) [hereinafter "Lutundula Commission Report, 2005"], 6. See also Robert Block, *Zaire's Rebel Army Closes in on Mobutu—Copper Capital Falls as U.S. Urges Dictator to Step Down*, *Wall Street Journal* (April 10, 1997) [hereinafter "Block, Zaire's Rebel Army Closes In, 1997"]. According to political scientist E. Kennes, Kabila's men did not sign any new contracts before the coup but instead renegotiated and confirmed terms that investors had already discussed with Mobutu. Kennes, *Déconnection et descente aux enfers*, 2000, 312. See also McKinsley, *Zairian Rebels' New Allies*, 1997.

44 Former Gécamines director interview, July 2015.

45 See, generally, Prunier, *Africa's World War*, 2009, 214–218; Filip

Reyntjens, *The Great African War: Congo and Regional Geopolitics, 1996–2006*, New York: Cambridge University Press (2009), 155–169; U.N. Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, transmitted by letter dated Oct. 8, 2002, from the chairman of the U.N. Security Council panel established pursuant to the statement of the president of the Security Council (S/PRST/2001/39) dated Dec. 19, 2001, and the letter dated July 12, 2002, addressed to the president of the Security Council, U.N. Doc. S/2002/1146 (Oct. 16, 2002), 31–33 [hereinafter “U.N. Panel of Experts Final Report, 2002”]; Billy Rautenbach “Scores” Ethanol Increase, *Mail & Guardian* (Oct. 4, 2013).

46 See, generally, U.N. Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, transmitted by letter dated April 12, 2001, from the chairman of the Security Council panel established pursuant to the statement of the president of the Security Council (S/PRST/2000/20) dated June 2, 2000, and the letter dated April 2, 2001, addressed to the president of the Security Council, U.N. Doc. S/2001/357 (April 12, 2001) [hereinafter “U.N. Panel of Experts Final Report, 2001”]; U.N. Panel of Experts Final Report, 2002; U.N. Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, transmitted by letter dated Oct. 15, 2003, from the chairman of the panel addressed to the secretary-general, U.N. Doc. S/2003/1027 (Oct. 23, 2003) [hereinafter “U.N. Panel of Experts Final Report, 2003”].

47 U.N. Panel of Experts Final Report, 2002, 22; U.N. Panel of Experts Final Report, 2002, 40–41.

48 See GO, HE and OA, *Zimbabwe: President Robert Mugabe's Money Men*, IRIN (Feb. 4, 2009) [hereinafter “IRIN Mugabe's Money Men, 2009”]; U.S. Department of the Treasury, *Treasury Designates Mugabe Regime Cronies*, Press Release (Nov. 25, 2008) [hereinafter “US Treasury Mugabe Cronies, 2008”]. See also Revisitation Commission Part 2, 2007, Sections “Mukondo Mining,” “Boss Mining,” and “Savannah Mining.”

49 Block, *Zaire's Rebels Befuddle Foreign Investors*, 1997.

50 Lutundula Commission Report, 2005, 86, 92; Former Gécamines CEO interview, February 2015.

51 See, e.g., IMC Final Report, 2003, 49. The Tenke Fungurume Mining Convention, for instance, had at least four pages describing the tax exemptions in its convention. (See Tenke Fungurume Mining Convention 1996, Title VI.) A contract with Zimbabwean businessman John Bredenkamp had a similar provision. Lutundula Commission Report, 2005, 101. Anvil Mining's first contract, for a remote copper-silver project bordering Zambia, had a 20-year tax exemption, with the only contribution to Congo being a 10 percent stake for an obscure entity called “la Fiduciaire des Congolais.” The Lutundula Commission commented that “the Congolese state ultimately doesn't get anything out of this kind of deal.” Lutundula Commission Report, 2005, 86, 151, 153–154.

52 America Mineral Fields and Anglo American had competing claims over the Kolwezi tailings (Kennes, *Déconnection et descente aux enfers*, 2000, 313). Iscor and Kinross-Forrest had competing claims over the Kamoto Underground Mine (Duncan & Allen, *Projet d'Evaluation Juridique des Accords de Partenariat de la Gécamines, Programme de Compétitivité et Développement du Secteur Privé—Contrat N31/COPIREP/SE/02/2005* (April 6, 2006), Annex B6: Fiche analytique de l'accord de partenariat: Kinross-Forrest, 3–4 [hereinafter “Duncan & Allen, final report, 2006”]). Lundin and a company called Trabeka had a land dispute at the Tenke and Fungurume deposits (Tenke Mining Corp., Notes to the Consolidated Financial Statements Dec. 31, 2002, and 2001, Annual Report 2001 (April 19, 2002), 16).

53 Industrial exploitation at Etoile started in 1908–1909. Fernand Lekime, *Katanga, Pays du cuivre* (Verviers: Marabout Scope, 1966), 40.

54 While the Indian company Chemaf held on to the mine and still operates it today, Gécamines granted the concession to two other companies, both of which lost their interest in Etoile to compensate for Gécamines renegeing on its promises. The first company, initially called Société d'Exploitation de l'Etoile, got the Kipoi concession and changed its name accordingly (Société d'Exploitation de Kipoi). The second, Ruashi Mining, which currently operates a mine just next to Etoile, received its “compensation title” in 2012, more than a decade after the title dispute started. See Société d'Exploitation de Kipoi SPRL, *Contrat de Création de Société No. 417/6789/SG/GC/2000 Avenant 2* (Jan. 14, 2009), Preamble C. [hereinafter “SEK Contract Amendment 2, 2009”]; Ruashi Mining and Gécamines, *Contrat de Cession de Titre et de Droits Miniers d'Exploitation relatif à la Cession Partielle du Permis d'Exploitation 4958 No. 1291/17264/SG/GC/2012* (Nov. 7, 2012).

55 Prunier, *Africa's World War*, 2009, 258–259, 262.

56 World Bank, *Transitional Support Strategy*, 2001, 18, box 3.

57 République Démocratique du Congo, *Loi No. 007/2002 du 11 Juillet 2002 portant le Code Minier* (July 11, 2002), Title 1, Ch. 2 [hereinafter “DRC Mining Code, 2002”]. Work on the mining code had, in fact, started before Laurent-Désiré Kabila's assassination. However, the return of the World Bank and its assistance specifically focused on new mining legislation greatly accelerated the adoption of the mining code. The Carter Center interview with former head of the mining administration in Kinshasa (November 2014); World Bank, *Transitional Support Strategy*, 2001, 18, box 3.

58 World Bank, *Transitional Support Strategy*, 2001, 18, box 3.

59 DRC Mining Code, 2002, Art. 32.

60 The key principle behind title ownership became “use it or lose it.” See DRC Mining Code, 2002, Art. 62. If a titleholder did not pay surface rents, its title would revert to the state. Additionally, companies could renew only half of their original exploration titles after their original grant elapsed, giving them a strong incentive to undertake exploration activities quickly and efficiently. (DRC Mining Code, 2002, Art. 220).

61 Companies do not sign conventions with the state but rather are granted research permits via a standardized ministerial decree that indicates that they are to comply with the 2002 Mining Code and its executive regulations throughout the life cycle of the mine. A few examples of such ministerial decrees can be found on the DRC minister of mines website.

62 DRC Mining Code, 2002, Art. 8. See also International Mining Consultants final report, 2003, 31. The major exception to date has been the China–DRC barter agreement, which has extensive tax exemptions to speed up the repayment of infrastructure projects.

63 The exception was surface rents, which should normally have gone to the Mines Registry and other state institutions tasked with law enforcement.

64 DRC Mining Code, 2002, Art. 340.

65 See, generally, Marie Mazalto, *La réforme du secteur minier en République Démocratique du Congo: enjeux de gouvernance et perspectives de reconstruction*, *Afrique contemporaine*, No. 227 (2008), 58–59 [hereinafter “Mazalto Réforme du Secteur Minier, 2008”].

66 Today, only five conventions remain according to Minister of Mines Martin Kabwelulu, including the Tenke Fungurume, Banro Corporation, and Anvil Mining Congo conventions. Kabwelulu has alleged that the tax exemptions provided for in these conventions have resulted in a total loss of US\$70 million to the central treasury to date. (Martin Kabwelulu, DRC Minister of Mines, Remarks at International Monetary Fund conference in Kinshasa (March 23, 2012).

67 According to the government's financial modeling, approximately

57 percent of all tax revenues are supposed to come from profit tax (DRC government, Propositions régimes fiscaux Code Minier, Excel-based simulations used during multipartite restricted discussions on amendments to the mining code tax regime (Feb. 28, 2014) (on file with The Carter Center). In practice, however, EITI reporting shows that it usually takes five years or more from production to the first profit tax payment.

68 See DRC Mining Code, 2002, Exposé des Motifs, 8; Mazalto Réforme du Secteur Minier, 2008, 58–59; Marie Mazalto, La réforme des législations minières en Afrique et le rôle des institutions financières internationales: La République Démocratique du Congo, L'Afrique des Grands Lacs—Annuaire 2004–2005, 14.

69 Public tenders are only to be organized “on an exceptional basis” if (1) the asset at stake is known to be very valuable, (2) if the public interest so requires and (3) if both the minister of mines and the president of the Republic decide so (DRC Mining Code, 2002, Art. 33).

70 Mining Registry, Liste des Droits Miniers et des Carrières (September 2010), 1 and 9.

71 World Bank, Growth With Governance, 2008, 17.

72 In most cases, these were just speculative licenses based on little research or knowledge about the resources in the land they covered. Exploration projects that lead to actual discoveries are rare—although they do exist. More common have been discoveries of significant deposits where preliminary (often colonial) research had already identified geological anomalies.

73 World Bank, Growth With Governance, 2008, 19. “Purely private” is somewhat of a misnomer in cases of exploitation licenses. When an exploration license is transformed into an exploitation license, the DRC state is entitled to a 5 percent free-carry share in the company holding the exploitation license. (DRC Mining Code, 2002, Art. 71d).

74 “A list prepared and published by the minister within 45 days following enactment of the present code shall specify the mining and quarry titles held by the government entities which are subject to the new provisions of the present code. These titles shall retain their term of validity until the original expiry date. Renewal thereof, if applicable, will take place pursuant to the provisions of the present code” (DRC Mining Code, 2002, Art. 327). The explanatory memorandum of the mining code indicates that “government entities” refer to state-owned enterprises (*entreprises publiques*); this was confirmed by the minister of mines in charge at the time of the adoption of the mining code (The Carter Center written correspondence with former minister of mines, April 2015).

75 DRC Mining Code, 2002, Art. 53, 68, 196–201. See also, Gécamines, Concessions et réserves géologiques, Powerpoint presentation discussing the conversion of Gécamines’ old titles in new research and exploitation permits (2002) (on file with The Carter Center) [hereinafter “Gécamines, Concessions et réserves, 2002”].

76 DRC Mining Code, 2002, Title VII. Some of the state-owned companies, such as gold parastatal SOKIMO in Oriental province, initially opted for lease contracts. To the Carter Center’s knowledge, Gécamines had only opted for two lease agreements, with Mining Company Katanga (later taken over by Anvil Mining Concentrate Kinsverve) in 2005 and with Chemicals of Africa (Chemaf) in 2010. Contrat d’amodiation entre la Générale des Carrières et des Mines et Mining Company Katanga Sprl Relatif à l’Amodiation des Droits Miniers Attachés au Permis d’Exploitation Couvrant les Gisements de Kinsevere et de Nambulwa, (Ref. 722/10525/SG/GC/2005), November 2005 [hereinafter “AMCK Amodiation Contract, 2005”]; Contrat d’amodiation entre la Générale des Carrières et des Mines et Chemical of Africa Sprl relatif à l’Amodiation des Droits Attachés aux Permis d’Exploitation 2350 et 529, No. 11070/20712/SG/GC/2010, Sept. 8, 2010 [hereinafter “Chemaf Amodiation Contract, 2010”].

77 Comment by senior official of the DRC Ministry of Mines at the

international colloquium “La quête des ressources en Afrique Centrale” in Tervuren, Belgium (Dec. 1–2, 2010).

78 Examples include the agreement between Gécamines and the Swanepoel family for the Kalukundi deposit (compensation for road construction) and the agreement between Gécamines and Wanbao for the Comide sites. Gécamines set up Swanmines to reimburse a company called H & J Swanepoel for road work, and, in 2006, Swanepoel sold its interest in Swanmines to Africo Resources. Contrat de Création de Société entre Gecamines et l’Entreprise H & J Swanepoel Famille Trust Pour l’Exploitation des Gisements de Kalukundi. No. 460/10269/SG/GC/2001, February 2001, [hereinafter “Swanmines Joint Venture, 2001”]; Contrat de Création N. 460/10269/SG/GC/2001 Avenant No. 4, Jan. 13, 2009 [hereinafter “Swanmines Avenant 4 2009”]; Revisitation Report, Part 2, 2007, 182. In February 2005, the Comide concession was split in four, and the DRC used two of the new permits to establish joint ventures with a subsidiary of Norenko/Norinco. Katumba Mwanke Ma Vérité 2013 194–195. Revenues from at least one of the four Comide permits were used to reimburse a debt the DRC owed to Chinese arms trader Norinco. See note from Ministry of Mines and Ministry of Finance of the Democratic Republic of Congo titled Cession des Parts de la Gécamines dans COMIDE à Straker International: Détails de la Transaction (undated, published on Nov. 21, 2012), 5 [hereinafter “Comide Note from Ministry of Mines and Ministry of Finance, 2012”]; Rights and Accountability in Development (RAID), Chinese Mining Operations in the Democratic Republic of Congo, (September 2009) [hereinafter “RAID, Chinese Mining Operations, 2009”]; The Impact of the Global Financial Crisis, 2009, 18.

79 IMC final report, 2003, 12; the Carter Center phone interview with IMC consultant (February 2015).

80 IMF final report, 2003, section 9; the Carter Center phone interviews with IMC consultant 1 (February 2012 and February 2015); Carter Center interview with a second IMC consultant in Brussels (January 2013).

81 World Bank manager interview, March 2015.

82 Duncan & Allen carried out a legal study (see Duncan & Allen, final report, 2006) while Ernst & Young carried out a financial analysis of a selection of partnerships as provided for in the COPIREP contract, No. 24/COPIREP/SE/11/2004.

83 Gécamines director 1 interview, August 2015; the Carter Center interview with the former minister of mines and current vice president of the Federation of Congolese Enterprises, Simon Tuma-Waku, in Lubumbashi (October 2014) [hereinafter “Tuma-Waku interview, October 2014”].

84 Gécamines director 1 interview, August 2015.

85 Lutundula Commission Report, 2005, 270.

86 Former government official interview, February 2015; the Carter Center interview with former presidential adviser in Kinshasa (May 2010); the Carter Center interview with former Copirep employee in Kinshasa (September 2011).

87 U.S. Embassy in Kinshasa, Diplomatic Cable 05KINSHASA731\_A, Congolese Mining Primer (April 29, 2005), 7.

88 DRC presidency, Décret n° 05/114 du 13 Octobre 2005 approuvant la Convention de Joint-Venture conclue le 09 septembre 2004 entre la Générale des Carrières et des Mines et Global Enterprises Corporate Ltd., Journal Officiel No. 21/46 (Nov. 1, 2005); DRC presidency, Décret n° 05/070 du 04 août 2005 approuvant la Convention de Joint-Venture conclue le 07 février 2004 entre la Générale des Carrières et des Mines et Kinross-Forrest Limited, Journal Officiel No. 21/46 (Nov. 1, 2005).

89 Simon Tuma-Waku, the mines minister who had criticized the Kamoto agreement, became chairman of the joint venture for KOV, while Laurent-Désiré Kabila’s economic adviser, Emile Mota, became its human

resource manager (See Bloomberg, Company Profile for Nikanor). Central Bank governor Jean Claude Masangu and the future minister of portfolio in charge of state-owned enterprises, Jeanine Mabunda Lioko Mudiayi, became independent directors of Kamoto Copper Company, the joint venture company to exploit the Kamoto Underground Mine (Katanga Mining Ltd., Short Form Prospectus, Nov. 10, 2006, 8). Much later, senior presidential adviser André Kapanga became TFM's vice president in charge of external relations (Africa Mining Intelligence, Congo-K: les mines au coeur des réseaux ethniques, *Insiders Mining—Les cercles d'affaires des décideurs*, July 26, 2013, 19/31).

90 See, generally, M. Kavanagh, F. Wild and J. Ferziger, "Gertler Earns Billions as Mine Deals Leave Congo Poorest," *Bloomberg Markets* (Dec. 5, 2012) [hereinafter "Bloomberg, Gertler Earns Billions, 2012"].

91 Bloomberg, *Gertler Earns Billions, 2012*; Powerscourt, on behalf of the Fleurette Group, Amended response to the Carter Center's request for comments to the Fleurette Group (Aug. 22, 2016), 6 (on file with The Carter Center) [hereinafter "Fleurette response letter, August 2016"].

92 DRC presidency, Décret no. 05/114 du 13 octobre 2005 approuvant la Convention de Joint-Venture conclue le 09 septembre 2004 entre la Générale des Carrières et des Mines et Global Enterprises Corporate Ltd, *DRC Journal Officiel* (Nov. 1, 2005).

93 This perception of the TFM agreement being mainly negotiated with Bemba was confirmed in a wide range of discussions with actors both in and outside the industry. See, for example, Custers and Nordbrand, 4; the Carter Center interview with former COPIREP employee in Kinshasa (September 2011).

94 U.S. Embassy in Kinshasa, Diplomatic Cable 04KINSHASA1866, Minister of Plan and Phelps Dodge Project, (Oct. 6, 2004). In a later cable, a U.S. diplomat wrote: "Thambwe's willingness to push [the TFM] project forward is a good thing for both the American firm [Phelps Dodge] and the economy of Katanga. (...) Gécamines is the largest employer in Katanga and was at one time an important foreign currency earner. As the [government of DRC] pushes Gécamines to compromise, they must be careful not to appear to disregard the rights of the company, or they may face popular opposition to the project when it finally gets started."

95 The Carter Center interview with Mark Mollison, vice president, Freeport-McMoRan Copper & Gold Inc., in Kinshasa, DRC (June 2012) [hereinafter "Mollison interview, 2012"].

96 Lundin response letter, May 2016, 3. For further detail, see Tenke Fungurume Mining: Reading the Fine Print (case study).

97 Jdn, Des investisseurs américains et canadiens du groupe Tenke Fungurume reçus par le Vice-Président Jean-Pierre Bemba, *Bulletin de l'ACP* (Aug. 24, 2005), available at <http://www.digitalcongo.net/article/28875> (last accessed May 2, 2015); U.S. Embassy in Kinshasa, Diplomatic Cable 05KINSHASA1717, VP Bemba Upbeat About Post-Transition Economy, (Oct. 14, 2005). ("Ambassador thanked Bemba for the help and support of his office for the recently signed agreement between Phelps Dodge and the [government of the DRC] for the exploration and exploitation of the Tenke-Fungurume copper/cobalt concession.")

98 IPIS, *The State vs. The People*, 2006, 52–53. From the start, two entities seemed to be in the process of contracting with Gécamines for the underground mine: Iscor and Kinross Forrest. Iscor had signed a preliminary agreement with Gécamines in February 1997, but a joint venture agreement between Gécamines and Kinross Gold was drafted (but not signed) in June of that same year. See Pierre Ratcliff, "History of Negotiations for the Kamoto Mine," compiled by Rights and Accountability in Development (Jan. 25, 2007) [hereinafter "Ratcliff Kamoto negotiations, 2007"]. Iscor had not made much progress on site: "What we've got is a stake in the ground, and we're happy with that," a spokesman is quoted saying in an article just after Laurent-Désiré Kabila was shot dead. David McKay, *The World's Miners Unlikely to Return to*

*Copper-Rich DRC*, Mineweb (Jan. 17, 2001).

99 George Arthur Forrest, "Historique" page on George Forrest International website; George Forrest interview, July 2015.

100 Jules Kongolo, Exposé écrit d'un ancien administrateur de la Gécamines à l'intention de la Commission sénatoriale belge "Grands Lacs" (undated).

101 For a detailed description, see Fatal Transactions, Netherlands Institute for Southern Africa, and International Peace Information Service, *The State vs. the People: Governance, Mining and the Transitional Regime in the Democratic Republic of Congo* (2006), 43–58 [hereinafter "Fatal Transactions *The State vs. the People*, 2006"]. World Bank consultants who heard of the KCC draft agreement wrote: "We formally advise against this Kinross Forrest project for the Kolwezi Group. It blocks gigantic reserves without matching production targets" (IMC final report, 2003, 69). The Lutundula Commission also mentioned the Kolwezi sites among those to protect: "Compte tenu de l'importance du patrimoine de la Gécamines qui est concerné par le partenariat, la cession en cause diminue considérablement le potentiel de la Gécamines et entame son avoir social." (Lutundula Commission Report, 2005) Then Minister of Mines Simon Tuma-Waku also disapproved of a draft agreement in 2003 (Fatal Transactions *The State vs. the People*, 2006, 43).

102 Letter from Dieudonné Mwenze and Richard Muyeje Mangeze Mans (provincial PPRD council) to Vital Kamerhe, PPRD campaign manager, about "Dynamics of PPRD/Katanga," Ref/036/BPCP/CP-Kat/2005, (Sept. 20, 2005), published as "Appendix II: letter PPRD/Katanga" in Fatal Transactions *The State vs. the People*, 2006, 52–53, 72–73 (translation by The Carter Center).

103 George Forrest interview, July 7, 2015. He added that DRC law allows for financial support to political parties.

104 The Carter Center interview with former Gécamines board member in Lubumbashi (July 2013) [hereinafter "Former Gécamines board member interview, July 2013"]; the Carter Center interview with former government official in Cape Town (February 2015) [hereinafter "Government official interview, February 2015"]; the Carter Center interview with mining sector investor in Belgium (April 2015) [hereinafter "Mining investor interview, April 2015"].

105 Former government official interview, February 2015; the Carter Center interview with former presidential adviser in Kinshasa (May 2010); the Carter Center interview with former COPIREP employee in Kinshasa (September 2011).

106 The memo noted that the bank faced "an exposure in terms of reputational risk because [it is] identified by the national and international media as influential with regard to government decisions in the mining sector. To allow the [KCC, DCP, and TFM] contracts to proceed without comment would put [the bank] in a difficult position of perceived complicity and/or tacit approval." World Bank principal mining specialist Craig Andrews, *Contracts Between Gécamines and Private Companies*, Memorandum to Pedro Alba, World Bank country director for Democratic Republic of Congo (Sept. 8, 2005), 1 (on file with The Carter Center) [hereinafter "World Bank Internal Memo, 2005"].

107 Duncan & Allen, final report, 2006, 13.

108 See e.g., Dino Mahtani, *Transparency Fears Lead to Review of Congo's Contracts*, *Financial Times* (Jan. 3, 2007).

109 This conclusion was drawn by comparing CAMI's lists of exploitation permits from 2006, 2012, and 2015.

110 Cadastre Minier [DRC Mines Registry], *Rapport Annual 2009* (January 2010), 39 [hereinafter "CAMI Annual Report, 2009"]; Cadastre Minier [DRC Mines Registry], *Opérateurs Titulaires des Droits Miniers et de Carrières Décembre 2014* (Dec. 31, 2014) [hereinafter "CAMI Mining

Permits, December 2014”]; Cadastre Minier [DRC Mines Registry], Mining titles as of November 2015 (shapefile on file with The Carter Center).

111 DRC Mining Code, 2002, Art. 69.

112 In a first exchange, the official called the feasibility studies “fictive.” A few years later, he preferred using the term “fantaisiste.” This implies that feasibility studies do exist but that at least a portion of them has been made up. The Carter Center interview with Mines Registry official in Kinshasa (December 2012); the Carter Center interview with Mines Registry official in Kinshasa (June 2015).

113 DRC Mining Code, 2002, Arts. 52b and 62.

114 DRC Mining Code, 2002, Art. 67.

115 The Carter Center interview with Minister of Mines Martin Kabwelulu in Kinshasa (November 2014).

116 The Carter Center interview with Minister of Mines Martin Kabwelulu in Kinshasa (November 2014).

117 In Orientale province, the 100 percent state-owned gold mining company SOKIMO has been allowed to maintain its vast exploitation titles even though it can no longer afford to pay surface rents, which is a prerequisite for any permit holder to retain its mining titles. When the Ashanti Goldfields Kilo joint venture with SOKIMO was established, the private partner agreed to pay US\$4.5 million in surface rent payments for the companies that were in arrears. Contrat d’Association pour la Développement du Projet AGK entre Office des Mines d’Or de Kilo-Moto, AngloGold Ashanti, et Ashanti Goldfields Kilo Sarl, No. PAR#-2660480-v1 (April 1, 2010), Art. 8.2 [hereinafter “AGK Contract, 2010”]. In central Katanga, there are a few sought-after tin concessions. The concessions’ potential is well-known, and the titles would be perfect for a public tender managed by the central mining administration. Yet the government opted to transfer the titles to a newly created state-owned company called Manomin, allegedly to “continue exploration” (The Carter Center interview with Mines Registry official in Kinshasa (August 2013)).

118 DRC Mining Code, 2002, Art. 199.

119 Using indexed prices, surface rents for one “mining square” (carré minier) equal US\$511,096. As Gécamines held 8,101 mining squares, the total amount of surface rents due for 2015 was US\$4,140,389.

120 Cadastre Minier [DRC Mines Registry], Mining permits as of June 2015 (website printout and shapefile on file with The Carter Center).

121 DRC Mining Code, 2002, Arts. 286–290.

122 Cadastre Minier [DRC Mines Registry], Mining permits as of November 2015 (shapefile on file with The Carter Center).

123 DRC Mining Code, 2002, Art. 68. In total, state-owned companies still control one-third of all exploitation permits in the country. CAMI mining permits, December 2014.

124 DRC Mining Code, 2002, Art. 33.

125 Sun City Resolution No. DIC/CEF/04, calling for scrutiny to determine the validity of economic and financial agreements signed during the war: Final Act of Inter-Congolese Political Negotiations (April 2, 2003).

126 See, generally, below, Transforming Gécamines Into a Commercial Company—Cementing the Parallel Governance Track.

127 See e.g., video of the meeting between Gécamines Chairman Albert Yuma and members of the Katanga Parliament in February 2015, previously posted on the Digital Congo YouTube page (deactivated due to copyright infringement reports; detailed transcript on file with The Carter Center); see also Radio France International, Radio interview with Mr.

Albert Yuma (Eco d’Ici Eco d’Ailleurs, Nov. 9, 2013), at 15:50–16:50; Gécamines, Gécamines déplore le rapport biaisé de Global Witness et répond aux allégations, press release (July 27, 2017), 1.

128 In a rare public statement, former Gécamines Director Robert Crem warned that the contracts were “threatening the future of the Republic.” Robert Crem, La Société Générale de Belgique et le Pouvoir s’étaient partagés la bête (Gécamines), Speech at the Fatal Transactions conference in Brussels (Nov. 23, 2005). Crem said that “[The Congolese Executive] has granted [Gécamines] mining polygons with disregard of technical skills, financial leverage, to the benefit of unqualified operators and adventurers with questionable methods. (...) The Congolese Power must assume its responsibility in the short term and decide on a coherent and healthy mining policy.” See also press release, Robert Crem, Dépeçage et bradage miniers : l’ancien Pdg de la Gcm, Robert Crem, lance un avertissement sur les conséquences d’un éclatement anarchique de cette société (Oct. 31, 2005). Gaston Mutamba Lukusa, Robert Crem dénonce la longue agonie de la Gécamines, Congo Indépendant (Dec. 13, 2005).

129 The Lutundula report called out politicians and directors of state-owned companies for signing “shortsighted” mining deals to fund military efforts. See, generally, Lutundula Commission Report, 2005. See, e.g., Jordane Bertrand, RD Congo : la bombe Lutundula, Jeune Afrique (Feb. 28, 2006); MFC, Contrats léonins: la «bombe» Lutundula explose, La Libre Belgique (Feb. 22, 2006).

130 See, e.g., World Bank, Growth With Governance, 2008, Annex III, 133.

131 See, e.g., Lutundula Commission Report, 2005, 91.

132 Tenke Fungurume was an unexploited concession with known reserves, for which Lundin was willing to pay US\$50 million (in total, even US\$250 million) in the midst of a rebellion. In 2011, Kazakh multinational ENRC bought a company called Dezita Investments Limited, which owned a permit for a hardly known, unexploited zone west of Tenke Fungurume. Price tag: US\$195 million. Eurasian Natural Resources Corporation PLC, Unlocking Value, 2012 Annual Report and Accounts (April 30, 2013), 132 [hereinafter “ENRC Annual Report, 2012”]. In 2010, the Chinese company Zijin Mining Group Co. Ltd. offered US\$284 million for a 68 percent stake in Somidec, which held a greenfield concession called Deziwa. Zijin Mining Group Co. Ltd., Announcement: Proposed Acquisition of Platmin Congo (BVI), press release (May 7, 2010), 4.

133 While much of the infrastructure was old and dilapidated, the World Bank-sponsored IMC audit showed that in 2002, Gécamines’ industrial infrastructure still had the capacity to produce between 100,000 and 150,000 tons of copper without major additional investments (IMC final report, 2003, 35). The most valuable parts of that infrastructure complex went to the Kamoto Copper Company (KCC) with Forrest and Kinross (see Convention de Joint-Venture entre la Générale des Carrières et des Mines et Kinross—Forrest Ltd relative à l’Exploitation de la Filière Kamoto (Mine)-DIMA-KGMoto Concentrateur-Usines Hydrometallurgiques Luilu, No. 632/6711/SG/GC/2004 (February 2004), Art. 7.5 [hereinafter “KCC JV Agreement, 2004”]). The chief executive officer of KCC’s parent company, Katanga Mining Ltd., told the Wall Street Reporter that the savings from existing infrastructure were about US\$485 million: “The program I highlighted will take CDNU\$427 million [US\$365 million] to accomplish. If you looked at the cost of a greenfield program, it would be in excess of CDNU\$1 billion [US\$850 million].” Arthur Ditto, president and chief executive officer of KML, interview, Wall Street Reporter (Feb. 23, 2007), as cited in Rights and Accountability in Development, Key Mining Contracts in Katanga—The Economic Argument for Renegotiation (April 2007), 10–11 [hereinafter “RAID, The Economic Argument for Renegotiation, 2007”]. Another example is the factories Gécamines rented out to one of the Zimbabwian investors for a symbolic US\$1 a month. Stunned, the Lutundula Commission pushed for the investor to pay rent of US\$100,000 per month, generating US\$1.2 million for Gécamines in 2004 (Lutundula

Commission Report, 2005, 97, 100).

134 The Carter Center phone interview with professor Graham Davis, Economics and Business Department, Colorado School of Mines (Aug. 27, 2012) [hereinafter "Colorado School of Mines interview, August 2012"]; See also Fasken Martineau DuMoulin (Pty) Ltd., Analysis of the Joint Venture Agreement dated February 2004 between La Générale des Carrières et des Mines and Kinross Forrester Limited with respect to the Kamoto Mine, the Dima-Kamoto concentrator, and the Luilu hydrometallurgical plant (Feb. 19, 2006), 8 [Hereinafter "Fasken Martineau, KCC analysis, 2006"]; Fasken Martineau DuMoulin (Pty) Ltd. to Rights & Accountability in Development, Draft Comments regarding the agreement between Gécamines and Global Enterprises Ltd. (Feb. 19, 2006), 8 [hereinafter "Fasken Martineau, DCP analysis, 2006"]. The letters were retracted shortly before publication, in anticipation of a response from George Forrest blaming the law firm for a conflict of interest, as it had First Quantum Minerals among its clients.

135 Law firm Duncan & Allen linked the lack of operational progress to the absence of tender processes (Duncan & Allen, final report, 2006, 5).

136 See e.g., Fasken Martineau, KCC analysis, 2006, 9; World Bank, Growth With Governance, 2008, Annex 3, 133; Duncan & Allen, final report, 2006, 6, 25; RAID, The economic argument for renegotiation, 2007, 10; World Bank, internal memo, 2005, 2.

137 State-owned companies did not always get the cash they expected, however. According to the IMC Consulting Group, "Gécamines has accepted bad contracts to get a lot of cash. And it got bad contracts and little cash." (IMC, final report, 2003, 49).

138 "Investors preferred dealing with the state rather than with Gécamines. In some of their simulations, Gécamines share was reduced to zero percent," a former Gécamines director recalled (The Carter Center interview with former Gécamines director in Lubumbashi (August 2015) [hereinafter "Gécamines director 1 interview, August 2015"]). See also IMC, final report, 2003, 47.

139 DR Congo Mining Code by September, Creamer Media's Engineering News (Feb. 18, 2002).

140 In the following joint ventures, Gécamines' stake was reduced from a range of 40–59 percent before the code to a range of 17.5–25 percent after the code: Minière de Kalumbwe Myunga, Société d'Exploitation des Gisements de Kalukundi, Société Minière de Kolwezi, Congolaise des Mines et de Développement, Kingamyambo Musonoi Tailings, Ruashi Mining, and Tenke Fungurume Mining. It should be noted that not all investors renegotiated the shareholding structure in their deals. Kalumines, Société d'Exploitation de Kipoi, and Compagnie Minière du Sud-Katanga for instance all kept a 40 percent stake for Gécamines. That said, all three projects experienced challenges as a result of that shareholding structure a few years later.

141 The Fair Share campaign involved three Congolese nongovernmental organizations (ASADHO/Katanga, CEPAS, and RODHECIC) and six international nongovernmental organizations (11.11.11, Broederlijk Delen, Nederlands Instituut voor Zuidelijk Afrika, Rights & Accountability in Development, Bank Information Center, and Fatal Transactions). See e.g., A Fair Share For Congo!, Public Private Partnerships in the DRC's Mining Sector: Development, Good Governance, and The Struggle Against Corruption? (March 2007).

142 Between 1980 and 2004, the copper price hovered around US\$2,000 per ton, rarely reaching US\$3,000. By the first round of the 2006 presidential elections, the price had increased to over US\$7,000 per ton. See Monga Bay, Average Monthly Price of Copper (LME grade A cathodes, cif Europe in US dollars per metric ton), graph and raw data, Monga Bay.

143 According to the government's financial modeling, approximately 57 percent of all tax revenues are supposed to come from profit tax (DRC

government, Propositions régimes fiscaux Code Minier, Excel-based simulations used during multipartite restricted discussions on amendments to the mining code tax regime (Feb. 28, 2014) (on file with The Carter Center). In practice however, EITI reporting shows that it usually takes five years or more from production to the first profit tax payment.

144 DRC minister of mines, Arrêté ministériel No. 2745/CAB.MIN/MINES/01/2007 du 20 avril 2007 portant mise sur pied de la Commission ministérielle chargée de la revisitation des Contrats miniers [Ministerial Decree on the Establishment of the Ministerial Committee on the Review of Mining Contracts] (April 20, 2007). See also International Peace Information Service, Democratic Republic of Congo, mining contracts—state of affairs: The Congo wants to raise the profits from its mining sector (March 25, 2008), 1.

145 "We could have used our leverage and shortened the protracted review by at least a year," a senior World Bank adviser said. "At the same time, the bank did not want to be complicit with any political maneuvers that might occur during the review" (World Bank manager interview, March 2015).

146 The technical committee COPIREP, set up to assist state-owned enterprises in all technical matters and mainly funded by the World Bank, was excluded from the process. Likewise, in one high-level dinner meeting, the U.K. Department for International Development's (DFID) leading officer for Africa allegedly offered assistance from top London-based law firms, an offer which a government official declined in the name of sovereignty (Interviews with extractive industries expert at U.K. Department for International Development, in Kinshasa, DRC (throughout 2011)).

147 In 2008, The Carter Center and Columbia Law School offered assistance from Ropes & Gray, an adviser on the International Senior Lawyers Project (ISLP), which was willing to work directly for the government. Lawyers from ISLP had provided The Carter Center and Columbia with their expertise throughout the revisitation phase. The Carter Center actively encouraged cutting ties and allowing them to take on new "clients" (the government) given their expertise in international contract negotiations. The Ministry of Mines never accepted the offer (The Carter Center interview with ISLP lawyer in Washington, D.C., January 2012).

148 The report was finalized in November 2007 but only published in March 2008. See Ministry of Mines of the Democratic Republic of Congo—Contract Revisitation Commission, Rapport des Travaux I & II, Cepas (November 2007) [hereinafter "Revisitation Report, 2007"].

149 Ministry of Mines of the Democratic Republic of Congo, Termes de Référence pour la Renégotiation et/ou la Resiliation des Contrats Miniers [Terms of Reference for Renegotiation], (August 2008), Art. II.

150 The Carter Center interview with lawyer from Cabinet Emery Mukendi in Lubumbashi (July 2012) [hereinafter "Cabinet Emery lawyer interview, July 2012"].

151 See Minister of Mines of the Democratic Republic of Congo, Rapport de la Renégotiation des Contrats Miniers (2009). The primary exception was the Boss Mining merged joint venture, where Gécamines' share went up from 20 to 30 percent. Boss Mining, Convention de Joint-Venture No. 997/19169/SG/GC/2009 entre Gécamines et CAMEC 'Partenariat Boss Mining' (March 3, 2009), Art. 5 [hereinafter "Boss Mining, JV Agreement, 2009"]. It is also one of the rare companies that did not increase the signing bonus proportional to its reserves.

152 In that sense, the term "signing bonus" is misleading, as the signature of the contract is often only one of the benchmarks triggering the payment of a fraction of the total bonus. Other triggers include the completion of the feasibility study, the start of commercial production, and the anniversaries thereof. Each contract has a different payment scheme. For instance, in the case of KCC, US\$105 million of the US\$140 million of the signing bonus was spread out in annual, year-end payments

from 2009 through 2016. Convention de Joint-Venture Amendée, Consolidée et Réformulée entre la Générale des Carrières et des Mines et KFL Limited et Global Enterprises Limited relative à l'exploitation, en particulier, des mines de Kamoto, de Mashamba Est, de KOV, de Tilwezembe, de Kananga, de T17 et à la location des installations et des équipements dont le concentrateur de Kamoto (KTC) et les usines hydrométallurgiques et d'électro-raffinage de Luilu, Gécamines contract nr. 1014/19238/SG/GC/2009, Art. 6.2.10 [hereinafter "KCC Amended JV Agreement, 2009"].

153 See e.g., Avenant 3 au Contrat de Création de Mutanda ya Mukonkota Mining Sprl entre la Générale des Carrières et des Mines et Southern African Metal Refiners Congo Sprl pour l'exploitation du gisement de Mutanda Ya Mukonkota (Jan. 6, 2009), Art. 1, 10(e) (modifying Contract Art. 12.7) [hereinafter "Mutanda Contract Amendment 3, 2009"]; Avenant 2 au Contrat de Création de Société "La Minière de Kasombo" No. 707/10533/SG/GC/2005 (Dec. 8, 2005), May 3, 2010, Art. 3.1 [hereinafter "MIKAS Contract Amendment 2, 2010"]. This formula was derived from the signing bonus for the Sicominex agreement, a large minerals-for-infrastructure agreement signed with a Chinese consortium in 2008–2009 (Interview with Gaby Matshafu, former deputy chief of staff of the minister of mines, Kinshasa (December 2009)). See Convention de Collaboration entre la République Démocratique du Congo et la Société Sinohydro Corporation Relative au Développement d'un Projet Minier et d'un Projet d'Infrastructures en République Démocratique du Congo (April 22, 2008), Art. 5.1 [hereinafter "Sicomines Collaboration Agreement, 2008"].

154 The few joint venture agreements that did include a definition vary from one contract to the next. See, e.g., Avenant 4 to the Contrat de Création de la Compagnie Minière de Musonoie Global entre la Générale des Carrières et des Mines et China National Overseas Engineering Corporation relatif à l'Exploitation du Gisement de Musonoie Global, No. 708/10534/SG/GC/2005 (April 24, 2010), Art. 1 [hereinafter "COMMUS Contract Amendment 4, 2010"] ("certain geological reserves"). Alternatively, for SMKK, the US\$35/tCu seemed to apply to all resources combined, regardless of the degree of certainty. Avenant 1 au Contrat de Création de la Société Minière de Kabolela et de Kipese Sprl du 05 Novembre 1999, No. RDV/349/9517/SG/GAC/99 (Jan. 13, 2009), Art. 6.4 [hereinafter "SMKK Contract Amendment 1, 2009"]. In yet another contract, it is defined as "all resources that can be processed by the treatment facility as defined by the Feasibility Study." Avenant 2 au Contrat de Création de Kasonta Lupoto Mines Sprl entre la Générale des Carrières et des Mines et Teal Mining (DRC) Sprl No. 567/15580/SG/GC/2002 du 06 Mai 2003 (Sept. 24, 2009), Art. 2 [hereinafter "Kaluminex contract amendment 2, 2009"].

155 A true valuation of reserves would first require certification (which might downsize the number of reserves Gécamines relied on in the formula) and would then require factoring in metal prices, capital, operational expenditure, cut-off grades, and other technical variables (Colorado School of Mines interview, August 2012).

156 See Gécamines, Gécamines concessions et réserves géologiques, 2002 [hereinafter "Gécamines Concessions Presentation, 2002"], slide 17. This means that part of the committed resources were merely "indicated" resources whose existence was uncertain. Consequently, it is unlikely that Gécamines will receive additional signing bonuses in the near future.

157 To determine the number of tons of copper, Gécamines usually used historical figures of so-called *réserves géologiques*. A 2002 Gécamines presentation indicated that "reserves," as used in Gécamines' bookkeeping, actually refers to *réserves géologiques* or resources (Gécamines concessions presentation, 2002, slides 10–14). In present-day certification schemes, mineral resources are a geological concept that indicates what is physically present in the ground. In the same schemes, "reserves" reflect the portion of mineral resources deemed economically exploitable on the basis of a variety of factors. While the estimates were based on resources, the contracts refer to *réserves (géologiques)*—a risky strategy since not all resources can be converted into economically viable reserves.

158 One of the rare exceptions is Boss Mining, which should have paid a US\$75 million signing bonus (2 million tCu x US\$35/t) but instead committed to paying only US\$2 million (Boss Mining JV agreement, 2009, Art. 35.1(a)). That said, it is also the only major project that accepted a significant increase in Gécamines stake (from 20 to 30 percent), where other partners never added more than 5 percent additional equity, if any. (Boss Mining JV agreement, 2009, Art. 5). See Ministry of Mines of the Democratic Republic of Congo, Rapport de la Renégotiation des Contrats Miniers (2009) [hereinafter "Renegotiation Report, 2009"].

159 According to the minister of mines, the review generated US\$290 million in new signing bonuses for Gécamines (Kabwelulu conclusions revisitación, November 2009, 5). This was before the conclusion of the TFM contract and a few others. From the Carter Center's reading of all published Gécamines amendments coming out of the review, the sum of all committed signing bonuses was US\$322 million [hereinafter "The Carter Center, Gécamines revenue analysis, 2015"].

160 The three DRC tax collecting agencies declared they collected a total of US\$359 million from mining companies in 2010. KPMG/DRC Extractive Industries Transparency Initiative, Rapport ITIE–RDC 2010 (December 2012), 57 [hereinafter "EITI DRC 2010 Report"].

161 One of the lawyers from the Emery Mukendi Wafwana & Associates law firm explained: The joint venture gradually reimburses the investor for its input (finance) as it reimburses its loan, often with interest. But Gécamines doesn't get such gradual reimbursement for its own input, even though the value of the permit decreases as production goes on. Royalties compensate for the decreasing value of the *title* (Cabinet Emery lawyer interview, July 2012).

162 James Otto et al, Mining Royalties: A Global Study of the Impact on Investors, Government, and Civil Society, The World Bank–Directions in Development/Energy and Mining (2006), 43.

163 DRC, Constitution de la République Démocratique du Congo telle que modifiée par la Loi n° 11/002 du 20 janvier 2011 portant révision de certains articles de la Constitution du 18 février 2006 (Feb. 18, 2006, amended on Jan. 20, 2011).

164 See DRC Mining Code, 2002, Art. 240–242.

165 To distinguish between revenue flows, mining code royalties are referred to by the French term *redevances*. Gécamines' royalties are referred to by the English term *royalties*.

166 Interview with Paul Franssen, former vice president, Federation des Entreprises Congolaises (Congoese Business Federation), in Lubumbashi, DRC (August 2010) [hereinafter "FEC vice president interview, August 2010"].

167 Royalties had already been incorporated in some of the less prominent joint venture contracts signed in the early 2000s, which, in some cases, amounted to as much as 4.5 percent of gross sales. One Gécamines respondent called this "2+2.5 percent," meaning that part of the royalty went to the state and part stayed with Gécamines. The Carter Center interview with Gécamines director in Lubumbashi (December 2012). See e.g., Contrat de Création de Mutanda ya Mukonkota Mining Sprl entre la Générale des Carrières et des Mines et Southern African Metal Refiners Congo Sprl pour l'exploitation du gisement de Mutanda Ya Mukonkota No. 474/10300/SG/GC/2001 (May 2001), Art. 12.5–12.6 (hereinafter "Mutanda Contract, 2001"). Nearly all investors accepted to pay royalties going forward. The most noteworthy exception is Tenke Fungurume Mining.

168 The Carter Center, Gécamines revenue analysis, 2015.

169 For instance, subcontracting with affiliated parties was explicitly encouraged in many contracts without any safeguard whatsoever against cost inflation. (World Bank, internal memo, 2005, 3). See also IMC final report, 2003, 52 and U.N. Panel of Experts final report, 2002, 44–45 for

examples of such practices.

170 Duncan & Allen, final report, 2006, 4. See also Lutundula Commission Report, 2005, 93.

171 At Kamoto Copper Company, for instance, Forrest and partner(s) established a subsidiary called Kamoto Operating Limited that carried out all of the company's operations without proper control from Gécamines. KOL–KCC, Operating Agreement between Kamoto Operating Ltd. and Kamoto Copper Company (Oct. 18, 2005) (unsigned) [hereinafter “KOL operating agreement, 2005”]. According to Forrest, keeping Gécamines out of daily management decisions was necessary to attract investors (George Forrest interview, July 2015). In a subsequent written response, Forrest added that Gécamines had sufficient control mechanisms and that KOL's role was to “provide operational flexibility and efficiency; in other words, to avoid bureaucratic burdens *ex ante* and transfer them into an *ex poste* control (audit rights).” (George A. Forrest, response to the Carter Center's request for comments (June 15, 2016), 5 (on file with The Carter Center) [hereinafter “Forrest response letter, June 2016”]). This subsidiary was dismantled as a result of the contract review. Katanga Mining Ltd. bought out the subsidiary's directors, George Forrest and Arthur Ditto, for an aggregate amount of US\$1.6 million and 12 million common shares in KML (worth US\$10.6 million on Sept. 30, 2009, the day the subsidiary was dissolved). See Katanga Mining Ltd., Annual Information Form for the year ended Dec. 31, 2009 (March 31, 2010), 13 [hereinafter “KML Annual Information Form, 2009”].

172 In the case of the Lubumbashi tailings project (GTL–STL), Gécamines lacked the right to inspect the company accounts, making its oversight impossible. See Ernst & Young, Note de synthèse–Société pour le Traitement du Terril de Lubumbashi, (May 26, 2006), 22–26. More generally, see Lutundula Commission Report, 2005, 92–93.

173 See, e.g., MIKAS Contract Amendment 2, 2010, Art. 5 (modifying Art. 4.2(d) of the contract).

174 Some of the World Bank consultants explicitly warned against management fees as a matter of principle. “The general rule of good governance is that (...) partners receive no other compensation than dividends, excluding any other form, be it management or commercialization fees, general partner fees, service or council or work fees” (IMC final report, 2003, 49). While management fees are not entirely unusual, the key is that they are proportionate and justifiable—which has not always seemed to be the case in Gécamines partnerships.

175 Dismantling Kamoto Operating Ltd. (the KCC subsidiary) also ended the substantial fees KOL had been receiving until then. For a counter example (in which consultancy fees were explicitly confirmed in the revised agreement), see Tenke Fungurume Mining: Reading the Fine Print (case study).

176 Moreover, many of these companies were based in tax havens with lax corporate governance requirements, with few guarantees as to the capitalization of the partner, and easily interchangeable, hardly traceable parent companies. Most signatories to the major contracts were subsidiaries registered in tax havens such as the British Virgin Islands (e.g., GEC (DCP), Kinross Forrest (KCC), CMD (KMT), Shaford (Boss Mining)); Bermuda (Lundin Holding (TFM)); Panama (Samref Overseas (Mutanda Mining)); Luxembourg (George Forrest SA (STL–GTL)); and Switzerland (Tremalt (KMC)). (Duncan & Allen, final report, 2006, 6).

177 The actual money came in the form of interest-bearing loans, or what they called “shareholder advances” (or “cash advances”), usually relying almost exclusively on third-party financing. The KMT and TFM contracts explicitly state that financing will come in the form of advances and loans rather than equity. KMT Contract, 2004, Art. 5.1a; Amended and Restated Shareholders Agreement by and between la Générale des Carrières et des Mines and Lundin Holdings Ltd., Tembo Ltd., Faru Ltd., Mboko Ltd., Chui Ltd., Mofia Ltd., Sept. 28, 2005, Art. 5a. [hereinafter “TFM Shareholders Agreement, 2005”].

178 See McIntosh RSV LLC, Amended Technical Report for Kamoto Copper Company, Kolwezi, Katanga Province, Democratic Republic of Congo, Prepared for Katanga Mining Ltd. (June 23, 2006), 184. In the first scenario (KCC 100 percent equity), the technical expert made the assumption that KCC is funded on a 100 percent equity basis, using a 15 percent discount rate. In the second scenario (100 percent debt), the assumption is that KCC is funded entirely through debt (using an 8.5 percent interest rate), “with principal repaid before dividends are declared to the partners,” and using a 6 percent discount rate (McIntosh, technical report, p. 162). The differences in net present value between the two scenarios are greatly impacted by the different discount rates (a 6 percent discount reduces future revenue much less than a 15 percent discount). While the reason for using such vastly different rates is not explained in the technical report, financing KCC through equity is necessarily more risky for the investor since the capital is locked up in the DRC joint venture, making it more difficult to get that money back than in the case of loans.

179 Lutundula Commission Report, 2005, 92.

180 IMC final report, 2003, 49.

181 For example, if a joint venture had an estimated 1.2 million tons of copper reserves, its capital should be US\$12 million (Gécamines director interview, December 2012).

182 In a study carried out before the revisitation process started, Ernst & Young warned against such reimbursement schemes, as they might be detrimental to Gécamines' prospects of receiving cash out of its partnerships. In the Lubumbashi tailings project (GTL–STL) for instance, each party had to contribute to the capital investment in proportion to its own share. Gécamines, with its 20 percent in GTL, had to contribute approximately US\$23.6 million, which it borrowed from its partners at an annual interest rate of 9 percent. Reimbursement was secured through the proceeds of copper and cobalt tailings that Gécamines sold to its partners. The reimbursements were so slow that Ernst & Young concluded that “the acquisition of a stake in GTL has been more costly than beneficial to Gécamines since 1997... It is better that Gécamines resign from the shareholder structure of GTL by selling its stake. That way, the proceeds of the tailings sales will no longer be [allocated to loan repayments and go directly to Gécamines].” In the end, cobalt prices skyrocketed shortly thereafter, and Gécamines was able to pay off its loan and make windfall profits off the tailings sales. Luckily, the loans to participate in the capital for most of Gécamines' joint ventures have been interest-free, so that the accrual of interests that happened in the case of GTL–STL will not be an issue for other joint ventures. See Ernst & Young, Note de Synthèse–Groupement du Terril de Lubumbashi (May 26, 2006), 33; Convention entre la République Démocratique du Congo et la Société Groupement pour le Traitement du Terril de Lubumbashi, G.T.L.-Ltd-S.T.L Sprl (Sept. 18, 2001), Art. 4(a) [hereinafter “GTL–STL agreement, 2001”]; The Carter Center, Gécamines revenue analysis, 2016.

183 The Carter Center interview with Gécamines director, December 2012, in Lubumbashi [hereinafter “Gécamines director interview, December 2012”]. However, as Gécamines' part of the share capital will be reimbursed through future dividend payouts, it is unclear in practice whether increasing the share capital has direct positive benefits for the state-owned company.

184 Generally, 30 percent of the loan amount should be interest-free. With the remaining 70 percent, interest rates were capped to avoid excessive financing costs. Most partners accepted that interest rates be limited to anywhere between LIBOR (1 year)+3.5 percent and LIBOR (1 year)+4.5 percent. (Renegotiation report, 2009, 2–3). One of the prime exceptions is Tenke Fungurume Mining, where all capital investment still comes in the form of shareholder advances and where the private party managed to increase its interest rate cap to LIBOR+6 percent.

185 KCC Amended JV Agreement, 2009, Art. 6.14.1. A report from the Ministry of Mines to the Council of Ministers summarizing the

renegotiated terms of the contract review in late 2008 indicates that the KCC-DCP joint venture got access to 16,612,088 tons of copper reserves. (Ministry of Mines, Rapport de la renégotiation des contrats miniers, November, 2008).

186 In 2002, Gécamines estimated it had about 40 million tons of copper reserves (certain, probable, and possible) left which it had not yet transferred to joint venture partnerships. See Gécamines, *Concessions et Réserves Géologiques*, Presentation (2002), slides 17 and 49.

187 The amount would have been 16,612,088 tCu x US\$35/tCu = US\$581,423.080423.080. Glencore did not respond to the Carter Center's request for comments about the difference in valuation standards between the KCC signing bonus (US\$8.4/tCu) and other signing bonuses (US\$35/tCu), and between Gécamines' transfer of rights to KCC (US\$8.4/tCu) and KCC's transfer of rights to Gécamines (US\$71/tCu). Katanga Mining Ltd. CEO J. Blizzard, response to the Carter Center request for comments (June 22, 2016), 2 (on file with The Carter Center) [hereinafter "Katanga Mining response letter, June 2016"]; Glencore PLC, response to the Carter Center request for comments (June 17, 2016), 10 (on file with The Carter Center) [hereinafter "Glencore response letter, June 2016"].

188 KCC Amended JV Agreement, 2009, Art. 6.2.10.

189 KCC Amended JV Agreement, 2009, Art. 7.6.

190 For further details, see Kamoto Copper Company: In the Red (case study).

191 Katanga Mining Ltd. CEO J. Blizzard, response to the Carter Center request for comments (June 22, 2016), 2 (on file with The Carter Center) [hereinafter "Katanga Mining response letter, June 2016"]; Glencore PLC, response to the Carter Center request for comments (June 17, 2016), 10 (on file with The Carter Center) [hereinafter "Glencore response letter, June 2016"].

192 See e.g., Kasenga Kasokota, Rapport du Commissaire aux Comptes aux Actionnaires de Kamoto Copper Company SARL 2012 (undated) (on file with The Carter Center).

193 For further details, see Kamoto Copper Company: In the Red (case study).

194 Gécamines is entitled to *redevances supplémentaires* (additional royalties), although these are actually more akin to the *pas de porte supplémentaires* (additional signing bonuses) other partners pay for the discovery of new reserves than a production-based royalty payment (Addendum No. 1 to the Amended and Restated Mining Convention of Sept. 28, 2005, among the Democratic Republic of Congo and la Générale des Carrières et des Mines and Lundin Holdings Ltd. (now TF Holdings Limited) and Tenke Fungurume Mining S.A.R.L. (Dec. 11, 2010), Art. 4 [hereinafter "TFM Amended Mining Convention Addendum 1, 2010"].

195 This estimate is based on a royalty of 2 percent of net sales, using EITI data and data from the provincial mines administration.

196 Tenke Fungurume Mining Convention, 1996, Definitions; Addendum No. 1 to the Amended and Restated Shareholders Agreement by and between la Générale des Carrières et des Mines and Lundin Holdings Ltd., Tembo Ltd., Faru Ltd., Mboko Ltd., Chui Ltd., Mofia Ltd. (Dec. 11, 2010), Art. 13.1 [hereinafter "TFM Shareholders Agreement Addendum 1, 2010"].

197 Negotiated in 1996 by Lundin, it provides Freeport–McMoRan with a wide range of fees, amounting to more than US\$400 million between 2008 and 2015. (Contrat de Consultant, Tenke Fungurume Mining S.A.R.L.–Lundin Holdings Ltd, Nov. 30, 1996 (unpublished, on file with The Carter Center), Art. 6). This continues to affect TFM's net income and, therefore, the amount of its profit tax. Neither Lundin nor Freeport commented on the Carter Center's estimate of the amount of advisory fees paid between 2007 and 2014, nor the Carter Center's assessment that

these fees negatively impact TFM's profits, profit taxes, and dividends. For further details, see Tenke Fungurume Mining: Reading the Fine Print (case study).

198 TFM Amended Mining Convention Addendum 1, 2010, Art. 11.

199 Freeport-McMoRan, Response to the Carter Center's request for comments, June 7, 2016 (on file with The Carter Center) [hereinafter "Freeport response letter, June 2016"], 2-3. For further details, see Tenke Fungurume Mining: Reading the Fine Print (case study).

200 Tenke Fungurume Mining, Payments to Public Treasury and DRC Government Agencies (Q1 2016) (on file with The Carter Center).

201 Mutanda Contract Amendment 3, 2009, Preamble F and Art. 10 (modifying Arts. 12.5–12.6). For further details on Mutanda and its production records, see Mutanda Mining: Strictly Private (case study).

202 Glencore response letter, June 2016, 6.

203 Another example is the inconsistent treatment accorded to Anvil during the review of its three projects. The Revisitation Commission strongly criticized the 1997 Anvil Mining Congo convention for its long tax holiday and argued that the contract should be canceled because "the state gains absolutely nothing from this convention." (Lutundula Commission Report, 2005, 86) Yet the convention was barely amended. Meanwhile, Gécamines requested amendments to Anvil's two other contracts on three occasions over five years, even though their terms were more typical than the first contract's and more lucrative for the Congolese party from the outset.

204 No company reported dividend payments to the state-owned companies in 2011 (EITI DRC 2011 Report, 36), 2013 (EITI DRC 2013 Report, 101), or 2014 (EITI DRC 2014 Report, 80); companies declared only US\$80,000 in total dividends to state-owned enterprises in 2012 (EITI DRC 2012 Report, 97).

205 Calculation based on EITI–DRC data 2009–2014 and Carter Center estimations as reflected in Table 3.

206 See Kamoto Copper Company: In the Red (case study) and Mutanda Mining: Strictly Private (case study).

207 See First Quantum Minerals: Hard to Heal (case study).

208 For further detail and comprehensive sources, see First Quantum Minerals: Hard to Heal (case study).

209 Mike Parker interview, Lubumbashi, July 2010.

210 The only project to involve a state-owned company was the Kolwezi tailings project. "At Gécamines we were against the [Kolwezi tailing] draft, but the government wanted us to sign it because it was the showcase for the promotion of the new Mining Code," a Gécamines director recalled (Interview with former Gécamines CEO, August 2015). In the case of Frontier, the DRC state held a 5 percent stake as mandated in the Mining Code, which stipulated that a company had to concede a stake to the DRC when it transformed its research permit into an exploitation permit (Mining Code, Art. 71(d)).

211 Compare Art. 6.4 Contrat d'Association portant sur un Projet d'Industrie Minière, Rejets de Kingamyambo, Vallée de la Musonoi et Kasobantu entre La Générale des Carrières et des Mines et Congo Mineral Developments Limited (1998), unsigned (on file with The Carter Center) [hereinafter "KMT Contract 1998"] with Arts. 2 and 7 Contrat d'Association portant sur un Projet d'Industrie Minière, Rejets de Kingamyambo, Vallée de la Musonoi et Kasobantu entre la République Démocratique du Congo et la Générale des Carrières et des Mines et Congo Mineral Developments Limited (March 23, 2004), Preamble [hereinafter "KMT Contract, 2004"].

212 Metallkol Joint Venture Contract, 2010.

213 Eric Joyce, Billions in Underpriced DRC State Asset Sales (Nov. 18, 2011) [hereinafter "Joyce, Asset Sales, 2011"]. See also Africa Progress Panel, Equity in Extractives: Stewarding Africa's Natural Resources for All: Africa Progress Report 2013 (2013), 5 [hereinafter "Africa Progress Panel Report, 2013"]; Global Witness, Secret Sales, Global Witness website.

214 Metalkol Joint Venture Contract, 2010, Arts. 5.4, 5.5, and 7.1.

215 Gécamines, Procès-Verbal Synthétique de la Réunion Extraordinaire du CA GCM, board minutes (Jan. 8, 2010) (on file with The Carter Center). "First Quantum would never have accepted those terms," a Gécamines director stated (Gécamines director interview, December 2011). See also John P. Williams, Comparative Analysis of Prior Agreement A and New Agreement A (June 30, 2011), study funded by The World Bank–DRC Promines Project, 2 (on file with The Carter Center) [hereinafter "Williams Comparative Analysis, 2011"].

216 FQM has estimated that while KMT sits idle, the DRC government has foregone direct annual revenues of as much as US\$150–300 million after depreciation of the capital investment. Press release, First Quantum Minerals Ltd., Update on Sodimico Proceedings Conference Call on Monday, May 24, 2010 (May 23, 2010). For further references to FQM's tax record, see First Quantum Minerals: Hard to Heal (case study).

217 Michael J. Kavanagh, Gécamines of Congo Will Seek Profit From Takeovers, Audits, Bloomberg News (Oct. 6, 2011) [hereinafter "Kavanagh, Gécamines Will Seek Profit From Takeovers, Audits, 2011"]. This was also stipulated in Gécamines' business strategy: "Gécamines will henceforth ensure that it strictly executes its pre-emption rights and its right to participate in profits, even for transactions on the stock exchange by parent companies of the DRC companies that hold stakes in the joint ventures" (Gécamines, Business Strategy press release, 2).

218 This option is mentioned in Gécamines' business plan as one of the ways to access finance. See Gécamines Strategic Development Plan, 2011, 8.

219 William MacNamara and Samantha Pearson, Vale Drops US\$1.1b Bid to Purchase Metorex, Financial Times (July 11, 2011); Ed Stoddard, China's Jinchuan Trumps Vale's Metorex Bid, Reuters (July 5, 2011).

220 Kavanagh, Gécamines Will Seek Profit From Takeovers, Audits, 2011.

221 When international financial institutions asked Gécamines for further details of the Anvil and Metorex transactions, Kalej explained that there had been "no contractual amendments to speak of," failing to mention the US\$55 million premium for Anvil or the fee Gécamines received from the Metorex acquisition. (Letter from Gécamines CEO Ahmed Kalej Nkand to Minister of Mines Martin Kabwelulu, Droit de préemption dans les contrats RM sprl, AMCK Mining sprl, SMK sprl, Letter No. 1125/AD/12 (Oct. 25, 2012)).

222 According to EITI–DRC data, Ruashi paid redevances (2 percent of net revenue) to the state totaling US\$5.68 million in 2012. This implies that contractual royalties for Gécamines at 2.5 percent of gross revenue would amount to a maximum of roughly US\$8.35 million. Yet the EITI DRC 2012 report shows a royalty payment of more than US\$14 million (Moore Stephens/Executive Committee of the DRC Extractive Industries Transparency Initiative, Rapport de Conciliation ITIE RDC 2012 (December 2014), Ruashi Mining Annex) [hereinafter "EITI DRC 2012 report"].

223 According to Ruashi's published contracts, the last two signing bonus tranches of US\$1 million each were expected in 2010 and 2011, and EITI reports have confirmed these payments (EITI DRC 2010 report, 89; EITI DRC 2011 report, 62). Yet, these same reports also show an additional signing bonus of US\$10.5 million was paid to Gécamines in 2012, for which there appears to be no published contractual documentation (EITI DRC 2012 report; Ruashi Mining Annex).

224 Clara Ferreira-Marques and Sonali Paul, Minmetals Extends Anvil Offer to Resolve Congo Dispute, Reuters (Nov. 23, 2011); Elisabeth Behrman, Anvil Says Gecamines Review Puts Minmetals Deal at Risk, Bloomberg News (Nov. 1, 2011).

225 Anvil Mining had two projects at the time of the sale: Kinsevere (AMCK) and Mutoshi (SMK). Anvil Mining leased Gécamines permits at Kinsevere. Since the permit still belonged to Gécamines, there was no asset transfer to pre-empt. The SMK contract, however, set up a "normal" joint venture, and Gécamines used this as the basis to invoke its right to pre-empt Anvil's (indirect) stake in SMK from being taken over by MMG. See, generally, SMK Contract Amendment 3, 2009. On the agreement, see Liezel Hill, Anvil Reaches Deal With Congo's Gecamines on US\$1.3 billion Minmetals Offer, Bloomberg News (Feb. 11, 2012); MMG, Minmetals Resources Offer for Anvil Mining Proceeds Following Agreements and Approval, press release (Feb. 10, 2012) [hereinafter "MMG Anvil Offer Approval, 2012"]. The EITI DRC 2012 report confirms the payment: AMCK reported rental payments of more than US\$45 million, compared to approximately US\$5 million in other years, as well as a US\$15 million payment as a pre-emption fee (EITI DRC 2012 Report, 118). On top of this, MMG also granted Gécamines an option right to purchase the outstanding 70 percent stake in SMK for Mutoshi. The parties extended the option several times. The option agreed to by the parties in September 2013 allowed Gécamines to get back full ownership of the Mutoshi project in exchange for granting additional permits to the Kinsevere leasing agreement. See MMG divests Mutoshi, 2013.

226 Freeport-McMoRan, Freeport-McMoRan Announces Agreements to Sell its Interests in TF Holdings Limited for US\$2.65 Billion in Cash and Up to US\$120 Million in Contingent Consideration and to Enter Exclusive Negotiations for the Sale of its Interests in Freeport Cobalt and Kisanfu Exploration Project for US\$150 Million, press release (May 9, 2016); Tom Wilson, Gécamines Questions Freeport's Sale of Congo Copper Mine, Bloomberg News (May 10, 2016); Gaurika Juneja and Gopakumar Warriar, Lundin Mining to Sell Stake in Tenke Mine Owner for US\$1.14 billion, Reuters (Nov. 15, 2016).

227 Aaron Ross, UPDATE 2-Congo PM Urges Swift Sale of Freeport's Tenke Mine Stake, Reuters (Nov. 1, 2016). See also, for the Lundin sale, Tom Wilson and Danielle Bovoche, Gécamines Opposes Lundin's Congo Mine Sale to Chinese Firm, Bloomberg News (Nov. 16, 2016); Edward McAllister, Gécamines "Strongly Opposed" to Lundin's Tenke Mine Stake Sale, Reuters (Nov. 16, 2016).

228 Tom Wilson, Congo Received at Least US\$33 Million to Approve China Mine Deal, Bloomberg News (Jan. 26, 2017); Tom Wilson, Congo Miner Said to Get US\$100 Million to Clear China Moly Buy, Bloomberg News (Feb. 22, 2017).

229 Jan Stevens, Geduldig wachten op de Congolese prooi, Knack (Jan. 4, 2012), 97 [hereinafter "Stevens, Congolese Prooi, 2012"]. In the article, FG Hemisphere Director Peter Grossman declined to comment on the amount of the purchase, invoking a confidentiality agreement with the seller. (See p. 101).

230 OM Group Inc., 2010 Annual Report—A Different Look (March 2011), 99.

231 Stevens, Congolese Prooi, 2012, 101; Letter from PJ Grossman, FG Hemisphere Associates, LLC, to Robert York, IMF chief of mission to the Democratic Republic of Congo (Nov. 12, 2012), 2 (on file with The Carter Center) [hereinafter "FGH Letter to IMF, 2012"].

232 Stevens, Congolese Prooi, 2012, 98.

233 FG Hemisphere vs Gécamines and DRC (2010), Royal Court of Jersey (Samedi Division), Judgment (Oct. 27, 2010) [hereinafter "FG Hemisphere Jersey Judgment, October 2010"].

234 FG Hemisphere estimated the slag sales payments at approximately

US\$35-40 million per year. *FG Hemisphere Jersey Judgment*, October 2010, I.6. According to stock filings of OM Group, a GTL-STL shareholder, the tailing payments blocked in the Jersey court's account amounted to US\$115.6 million between March 2009 and December 2012. OM Group, Inc., Form 10-K for the fiscal year ended Dec. 31, 2012, 66 [hereinafter "OMG 10-K, 2012"]. See also *La Générale des Carrières et des Mines (Appellant) vs. F.G. Hemisphere Associates LLC (Respondent)* [2012], U.K. Privy Council, Appeal Judgment of 0061 of 2011 (July 17, 2012), 53 [hereinafter "Gécamines v FG Hemisphere, 2012"].

235 One such purpose was the use of Gécamines' Kakanda sites to compensate Zimbabwe for its military support; another was the use of the DIMA permits by the Congolese government to secure the Sicominex deal, the infrastructure component of which was intended to develop the country as a whole rather than serve Gécamines' interests.

236 Michael J. Kavanagh, *Congo's Gécamines, OM Venture Lose Appeal of US\$100 Million Debt Claim by FG*, Bloomberg News (July 23, 2011).

237 *Gécamines vs. FG Hemisphere*, 2012, 29.

238 Here too, lower Hong Kong courts initially granted relief to FGH. The higher court overruled, stating that Chinese state policy gives full immunity to other states under its jurisdiction. See *New York Convention Guide, FG Hemisphere Associates LLC v. Democratic Republic of Congo: Decision Summary, FACV Nos. 5, 6, and 7 of 2010*, New York Convention Guide (June 8, 2011).

239 Kavanagh, *Gécamines to Get US\$269m*, 2012. According to OMG's stock exchange publications, the money accumulated in Jersey amounted to US\$115.6 million in total: US\$92.8 million blocked as a result of the FGH injunction as well as US\$22.8 million relating to a second injunction from a company called Marange. See *OMG 10-K, 2012*, 66. The actual receipt of this money by Gécamines has not been confirmed.

240 See e.g., DRC government, *Budget pour l'exercice 2011–Synthèse des dépenses par fonctions*, Oct. 6, 2010, 2.

241 Bloomberg, *Gertler Earns Billions*, 2012, 68.

242 This includes the KCC-DCP complex (see *Kamoto Copper Company: In the Red* [case study]), the Boss-Mukondo-Savannah Mining project, SMKK, Swanmines, and Comide and its subsidiaries.

243 The joint ventures were SMKK, Mutanda Mining, Kansuki SPRL, and Comide. See, generally, Bloomberg, *Gertler Earns Billions*, 2012; Africa Progress Panel report, 2013, 55–58 and Annexes 1–2. For further details, see *Mutanda Mining: Strictly Private* (case study).

244 All materials from Global Witness on what it has called the "secret sales" can be found on its website. *Global Witness, Secret Sales Publications* [hereinafter "Global Witness, Secret Sales Publications"].

245 Key articles of Bloomberg's coverage of Gécamines' contractual transactions include Michael J. Kavanagh & Franz Wild, *Gécamines Sale of Congo Copper Assets May Undermine Share Offer*, Bloomberg News (July 7, 2011), announcing the Mutanda Mining and Kansuki asset sales [hereinafter "Bloomberg, Mutanda, and Kansuki Asset Sale, July 2011"]; Michael J. Kavanagh and Franz Wild, *Congo State Miner Sells a Stake in Former First Quantum Mines*, Bloomberg News (Aug. 17, 2011), announcing Sodifor asset sale [hereinafter "Bloomberg, Sodifor Asset Sale, August 2011"]; Michael J. Kavanagh & Franz Wild, *Congo May Have Violated IMF Deal With Mining Asset Sale*, Bloomberg News (May 28, 2012), announcing the Comide SPRL asset transfer [hereinafter "Bloomberg, Comide Asset Transfer, May 2012"]; Michael J. Kavanagh, *IMF Halts Congo Loan Over Failure to Publish Mine Contract*, Bloomberg News (Dec. 3, 2012), announcing the IMF's decision to let its loan to DRC expire for failure to publish the Comide asset transfer contract [hereinafter "Bloomberg, IMF Loan Decision, December 2012"]; Franz Wild & Michael Kavanagh, *Glencore Unit Buys Congo Copper License in Unannounced Deal*, Bloomberg News (June 24, 2015) [hereinafter "Bloomberg, Chabara License Sale, June 2015"]; Tom

Wilson, *Gécamines Secretly Sold Stake in Key Congolese Copper Mine*, Bloomberg News (Oct. 10, 2016). In addition, Bloomberg Markets has published a feature piece on Gertler (Bloomberg, *Gertler Earns Billions*, 2012).

246 Africa Progress Panel report, 2013, 55–58 and Annexes 1–2.

247 Weeks before the 2011 elections, an anonymous source released a full set of materials and explanatory memoranda on Gertler's transactions in the mining and oil industry (*Congo Leaks, DRC Report–Initial Report*, October 2011). The author aimed to show how the failure of the government to publish information on these transactions violated the IMF's conditionality relating to contract transparency. One year later, FGH adopted a similar approach in a detailed letter to IMF and World Bank representatives, urging the international financial institutions to apply stricter scrutiny to its conditionality benchmarks. See FGH letter to IMF, 2012.

248 *Contrat de Cession des Parts entre la Générale des Carrières et des Mines et Emerald Star Enterprises Limited*, No. 1053/2019/SG/GC/2010, Feb. 8, 2010, Art. 4.1 [hereinafter "SMKK Asset Sale Agreement, 2010"]; Eurasian Natural Resources Corporation PLC, *Announcement of 2010 Preliminary Results*, March 23, 2010, 10; Bloomberg, *Gertler Earns Billions*, 2012.

249 The joint venture stake conceded by Gécamines was in the joint venture *La Congolaise des Mines et du Développement (Comide)*, and the compensation promised to Gécamines in exchange for its Comide stake was a stake in a different company called Goma Mining. By 2014, Gécamines still had not received its stake in Goma Mining (Bloomberg, *Comide Asset Transfer*, May 2012); Affidavit by Martin Kabwelulu, minister of mines of the Democratic Republic of Congo, and Albert Yuma Mulimbi, president of the board of Gécamines Sarl, in Kinshasa (May 7, 2013). See also Michael J. Kavanagh, *Congo Affidavit on Gécamines Deal May Allow IMF Loans to Proceed*, Bloomberg News, May 9, 2013 [hereinafter "Bloomberg, Comide Affidavit, 2013"]; Note from Ministry of Mines and Ministry of Finance of the Democratic Republic of Congo titled *Cession des Parts de la Gécamines dans COMIDE à Straker International: Détails de la Transaction* (undated, published on Nov. 21, 2012) [hereinafter "Note from Ministry of Mines and Ministry of Finance, 2012"].

250 Africa Progress Panel Report, 2013, 57. This seems a more rigorous estimate than the one of U.K. member of Parliament Eric Joyce, who claimed Congo lost US\$5.5 billion for the same deals (Joyce, 2011, 1). More than 80 percent of the US\$5.5 billion revenue loss Joyce reported related to canceled FQM projects (the Kolwezi tailings and the Sakanika titles) that were sold to Gertler, over US\$4.5 billion. However the Africa Progress Panel put the loss at US\$665 million. One reason for the large discrepancy in the two estimates is that the Africa Progress Panel looked only at how much Congo lost in flipping the FQM permits to Gertler, while Joyce added in other elements such as the value of the industrial plant that was ceded (despite the DRC not really owning it) to assess how much money was lost. Estimating exactly how much money was really lost is all but impossible, since the value of the FQM assets as a package is worth much more than the sum of the parts. For further details on FQM's canceled projects, see *First Quantum Minerals: Hard to Heal* (case study).

251 Bloomberg, *Gertler Earns Billions*, 2012. According to Forbes, Gertler's fortune shrank to US\$1.31 billion in September 2015. The *World's Billionnaires 2015*, "Dan Gertler Real Time Net Worth," Forbes (Sept. 1, 2015).

252 Bloomberg, *Gertler Earns Billions*, 2012.

253 See, e.g., Bloomberg, *Gertler Earns Billions*, 2012; see also Geopolis, *Interview Exclusive: Pieter Deboutte*, *Revue Congolaise des Industries Extractives: Mines, Hydrocarbures & Bois* nr 40 (July-August 2013), 32–33 [hereinafter "Geopolis, Pieter Deboutte interview, 2013"]; Fleurette, response to the 2013 Africa Progress Panel Report, undated (received Aug. 22, 2016, on file with The Carter Center) [hereinafter

"Fleurette, 2013 APP response"].

254 Eric Joyce published a list of the shell companies on his website just four days before the 2011 presidential elections: See Eric Joyce, List of Offshore Companies Dealing in DRC Assets (Nov. 24, 2011).

255 Global Witness, Secrecy Surrounding Glencore's Business Deals in the Democratic Republic of Congo Risks Exposing Shareholders to Corrupt Practices (May 9, 2012), 2. See also FGH Letter to IMF, 2012.

256 See Philippe Perdrix, RDC: Augustin Katumba Mwanke, l'homme qui murmurait à l'oreille de Kabila, Jeune Afrique (Feb. 27, 2012) [hereinafter "Jeune Afrique, Katumba Mwanke, 2012"].

257 See e.g., beneficial ownership section of the EITI–DRC 2012 report, 147–157.

258 Fleurette response letter, August 2016, 4.

259 U.S. Securities and Exchange Commission, Administrative Proceedings File No. 3-17595 in the matter of Och-Ziff Capital Management Group LLC, OZ Management LP, Daniel S. Och and Joel M. Frank (Sept. 29, 2016); United States of America vs. Och-Ziff Capital Management Group LLC, Deferred Prosecution Agreement Cr. No. 16-516 (Sept. 29, 2016) [hereinafter "Och-Ziff DPA, 2016"].

260 The Deferred Prosecution Agreement (DPA) describes the DRC partner as "an Israeli businessman [who] had significant interests in the diamond and mineral mining industries in the Democratic Republic of Congo" (Och-Ziff DPA, 2016, A-4). The cases in which the DRC partner was involved (SMKK, Swanmines/Akam, CAMEC, the Kolwezi tailings, Katanga Mining, etc.) further confirm that the DRC partner is likely Gertler. Fleurette's public relations firm, Powerscourt, has not attempted to deny that the DRC partner referred to Gertler. Powerscourt, on behalf of Fleurette Group, emailed response to the Carter Center request for comments to the Fleurette Group (Oct. 10, 2016) (on file with The Carter Center) [hereinafter "Fleurette response email, October 2016"].

261 Och-Ziff DPA, 2016, A-13–15 and A-19–20. The DPA describes DRC Official 2 as "a senior official in the DRC [who] was an ambassador-at-large for the DRC government and also a national parliamentarian" (A-5) and as a "former Katanga governor" (A-9) who died in February 2012 (A-19).

262 Och-Ziff DPA, 2016, A-19. The DPA describes DRC Official 2 as being "a close adviser to DRC Official 1" and DRC Official 1's "closest aide" (A-5 and A-9).

263 Fleurette response email, October 2016.

264 Tom Wilson, Franz Wild and Jesse Riseborough, Congo Backs Billionaire Gertler After U.S. Och-Ziff Allegations, Bloomberg News (Oct. 4, 2016).

265 ENRC, Our History, Company website; See CAMEC, Central African Mining & Exploration Company Plc Acquires Extensive Copper & Cobalt Assets in the DRC, Acquisition Announcement (Oct. 23, 2008) [50 percent of SMKK for US\$85 million]; Julie Crust and Eric Onstad, ENRC Settles Deal to Buy CAMEC for US\$955 Mln, Reuters (Sept. 18, 2009); ENRC Plc, Eurasian Natural Resources Corporation PLC Acquisition of 50.5 Percent of the Shares of Camrose Resources Limited, News Release RNS Nr. 4192R (Aug. 20, 2010) [50.5 Percent of Camrose for US\$175 million]; Eurasian Natural Resources Corporation, Unlocking Value, Annual Report and Accounts 2011 (April 16, 2012), 11 [US\$195 million for Dezita]; Helen Thomas, ENRC Secures Congo Mine License for US\$102M, Financial Times (July 31, 2012) [US\$102 million for Frontier license]; ENRC Plc, Eurasian Natural Resources Corporation PLC Acquisition of the Remaining 49.5 Percent of the Shares in Camrose Resources Limited and the Outstanding Minority Shareholdings in Certain Camrose Subsidiaries, News Announcement (Dec. 7, 2012) [49.5 Percent of Camrose and related subsidiaries for US\$550 million]; Firat Kayakiran and Michael J. Kavanagh, ENRC Buys

Frontier License, Plans Copper Output in 12 Months, Bloomberg News (July 31, 2012) [US\$101.5 Million for Frontier License]; First Quantum Minerals, First Quantum Reaches Agreement with ENRC to Dispose of First Quantum's Residual DRC Assets and to Settle All Claims in Relation to First Quantum's DRC Operations, press release (Jan. 5, 2012) [US\$1.25 Billion for First Quantum's Residual Assets].

266 See e.g., Clara Ferreira-Marques, Miner ENRC Buys Out Gertler in US\$550 Million Congo Deal, Reuters (Dec. 8, 2012). The only mining asset that remains split between different owners is the Lonshi site and surrounding research permits in the southern tip of Katanga. As far as is publicly known, the permits still belong to Gertler's Sodifor, while the Lonshi infrastructure belongs to ENRC. For further details, see First Quantum Minerals: Hard to Heal (case study).

267 See Bloomberg, London Stock Chart: Eurasian Natural Resources Corp PLC.

268 Firat Kayakiran, ENRC Founders Plan Nov. 25 Delisting as 96.7 Percent Accept Bid, Bloomberg News (Oct. 25, 2013).

269 For further detail, see First Quantum Minerals: Hard to Heal (case study).

270 See e.g., Silvia Antonioli, Melanie Burton & Anjuli Davies, ENRC Could Sell Precious DRC Mines to Repay Costly Debt, Reuters (Feb. 3, 2014).

271 The Carter Center interview with former ENRC copper and cobalt Director Alex Van Hoeken in Cape Town (February 2015).

272 Brion & Moreau, De la mine à Mars, 367. Glencore is the corporate successor to Rich's earlier company Marc Rich & Co.

273 Javier Blas, Glencore Says Listing Will Boost Firepower, Financial Times (April 10, 2011). The most important of the planned acquisitions was Xstrata, making the merged entity the fourth biggest mining company in the world (Javier Blas, Glencore Finishes Takeover of Xstrata, Financial Times, May 2, 2013).

274 This estimate was calculated using royalty payments (mining code *redevances* based on net sales) as a proxy for export values in Katanga, given that almost all Katangan mineral exports are nonferrous metals (including copper and cobalt) subject to the DRC state royalty rate of 2 percent (Mining Code, Art. 240-241). Mutanda and KCC owed royalties amounting to US\$48.5 million in 2014, out of a total of US\$145.3 million for all Katanga companies combined. See Statistiques Des Notes de Débit Relatives à la redevance minière, 2014 [hereinafter "Division des Mines Statistics, 2014"].

275 See case studies: Kamato Copper Company: In the Red and Mutanda Mining: Strictly Private.

276 Carter Center staff directly witnessed such activities during several visits to the Fleurette office in Kinshasa between early 2014 and mid-2015.

277 Charles Watenphul on behalf of Glencore Plc, Emailed response to the Carter Center request for comments to Glencore Plc (Oct. 13, 2016) (on file with The Carter Center).

278 The consideration was US\$922 million for the Mutanda stake and US\$38 million for the Katanga stake. Including compensation for Glencore to buy US\$130 million of debt Mutanda owed to Fleurette and a deduction of US\$556 million that Fleurette owed to Glencore, the total aggregate cash consideration was US\$534 million. See Glencore PLC, Glencore purchases stakes in Mutanda and Katanga, press release (Feb. 13, 2017).

279 Charles Watenphul on behalf of Glencore Plc, Emailed response to the Carter Center request for comments to Glencore Plc (Feb. 15, 2017) (on file with The Carter Center); Peter Ogden on behalf of Fleurette, Emailed response to the Carter Center request for comments to Fleurette

(Feb. 15, 2017) (on file with The Carter Center).

280 Figures extrapolated from Mutanda's state royalty statistics from the DRC mining administration. State royalties amount to 2 percent of net revenue; Fleurette's royalties amount to 2.5 percent of net revenue. Division des Mines, statistics, 2013, 2; Province du Katanga, Division des Mines, Statistiques Des Notes de Débit Relatives à la redevance minière 2014 [hereinafter "Division des Mines, statistics, 2014"]; Division des Mines, statistics, 2013, 2; Province du Katanga, Division des Mines, Statistiques Des Notes de Débit Relatives à la redevance minière 2015 [hereinafter "Division des Mines, statistics, 2015"]; Division des Mines, statistics, 2013, 2; Province du Katanga, Division des Mines, Statistiques Des Notes de Débit Relatives à la redevance minière 2016 [hereinafter "Division des Mines, statistics, 2016"].

281 Multiple emailed exchanges between The Carter Center and Charles Watenphul on behalf of Glencore Plc between March 24, 2017, and June 9, 2017 (on file with The Carter Center). For further background and details, see Kamoto Copper Company: In the Red (case study).

282 Contrat de Cession des Parts Sociales entre la Générale des Carrières et des Mines Sarl et Assets Limited, No. 1229/19218/SG/GC/2011, March 28, 2011 [hereinafter "MUMI Asset Sale Agreement, 2011"]. For further details, see Mutanda Mining: Strictly Private (case study).

283 According to statistics from the Mines Division in Katanga, Mutanda was the fifth largest copper and cobalt exporter in the three months preceding the sale—after TFM, KCC, Ruashi Mining, and Boss Mining. See Province du Katanga, Division des Mines, Statistiques Des Notes de Débit Relatives à la redevance minière, Janvier–Décembre 2011 (January 2012) [hereinafter "Division des Mines, statistics, 2011"]; Mutanda's production figures nearly doubled two months after the sale and have continued climbing steeply ever since (Division des Mines, statistics, 2011; Province du Katanga, Division des Mines, Statistiques Des Notes de Débit Relatives à la redevance minière, Janvier–Décembre 2012 (Jan. 5, 2013) [hereinafter "Division des Mines, statistics, 2012"]. Its exports continued to climb steeply in the following years. See Division des Mines Statistics 2012; Province du Katanga, Division des Mines, Statistiques Des Notes de Débit Relatives à la redevance minière 2013 [hereinafter "Division des Mines, statistics, 2013"]; Province du Katanga, Division des Mines [hereinafter "Division des Mines, statistics, 2014"]. It exports copper and cobalt worth over US\$1 billion each year, constituting over one-sixth of all copper–cobalt exports in the DRC in 2012 (DRC government, 2012 export statistics, May 2013).

284 According to the U.S. Geological Survey, China was the second largest cobalt exporter with 7,200 tons. (USGS Cobalt 2015, 47). Local export statistics indicate that Mutanda exported a little over 52,000 tons of cobalt hydroxide with a cobalt grade of 29 percent (equaling approximately 15,000 tons of contained cobalt), while Glencore's 2014 report shows that Mutanda produced 14,400 tons of cobalt. See Division des Mines, statistics, 2014, 2; Glencore, Annual Report 2014 (March 17, 2015), 197.

285 Glencore International PLC, Prospectus: Global Offer of up to 1,250,000,000 Ordinary Shares at a price expected to be between 480 pence and 580 pence per Ordinary Share Admission to the Premium Listing segment of the Official List and to trading on the London Stock Exchange and Secondary Listing on the Hong Kong Stock Exchange (May 4, 2011, 77) (note 2) [hereinafter "Glencore Prospectus, 2011"].

286 When Gécamines released copies of the agreements in early 2012, the price mentioned in the contract was US\$137 million for the two stakes. More than a year later, however, Gertler's company Fleurette announced that it had bought the stakes at the time for a net price of about US\$189 million. Later still, EITI reporting showed that the total sale price for both assets was US\$209 million. Contrat de cession des parts entre la Générale des Carrières et des Mines et Rowny Assets Limited No. 1229/19218/SG/GC/2011 (March 28, 2011), Art. 4 [hereinafter "Mutanda Asset Sale Agreement, 2011"]; Contrat de cession des parts entre la

Générale des Carrières et des Mines et Biko Invest Corp. No. 1228/19217/SG/GC/2011 (March 28, 2011), Art. 4 [hereinafter "Kansuki Asset Sale Agreement, 2011"]; Fleurette Group, Fleurette and Glencore Complete Merger of Mutanda and Kansuki Mining Operations, PRNewswire (July 25, 2013) [hereinafter "Mutanda Kansuki Merger Announcement, 2013"]; EITI DRC 2011 Report, 7–8 (US\$189 million for Mutanda and Kansuki); EITI DRC 2012 report, Annex Mutanda Mining (US\$20 Million for Asset Transfer to State-Owned Company).

287 Africa Progress Panel report 2013, 101; Joyce, Asset Sales, 2011, 5.

288 Fleurette response letter, August 2016, 1–2.

289 For further detail, see Mutanda Mining: Strictly Private (case study).

290 In 2011, companies declared a total of US\$942,617,547 in taxes and other payments to state entities (including Gécamines), EITI DRC report 2011. Payments by Gertler to Gécamines for its stake in a joint venture were listed under that joint venture's declarations, even though the latter did not technically make the payment (e.g., Gertler's payments for a stake in Mutanda were listed as a Mutanda payment even though the payment was made by his company Rowny Assets Ltd.). In 2011, Gertler-associated shell companies bought stakes from Gécamines in Mutanda Mining and Kansuki SPRL (US\$189 million) as well as from the state-owned company, Sodimico in Sodifor (US\$30 million). They also made a signing bonus payment to Société d'Exploitation Kisenge Manganèse (US\$3.8 million). This amounts to US\$222.8 million or 23.6 percent of all payments.

291 In 2006, Congo produced less than one-tenth of what it would produce in 2014 (BCC statistics, July 2015, 1).

292 See, generally, Sicomines Collaboration Agreement, 2008. The infrastructure loan was reduced to a maximum of US\$3 billion after pressure from the IMF. See e.g., Stefaan Marysse, Le Bras de fer entre la Chine, la RDC et le FMI: la révision des contrats chinois en RDC, L'Afrique des Grands Lacs—Annuaire 2009–2010 (June 2010), 131–150.

293 Sicomines Collaboration Agreement, 2008, Art. 14.2.

294 DRC Parliament, Loi no. 14/005 du 11 février 2014 portant régime fiscal, douanier, parafiscal, des recettes non fiscales et de change applicables aux conventions de collaboration et aux projets de coopération, Journal Officiel (Feb. 18, 2014).

295 EITI DRC report 2010, 110 (US\$468 million in 2008 and 2010); EITI DRC report 2011, US\$8.9 million in 2011); EITI DRC report 2012, 130 (no new loans in 2012); EITI DRC report 2013, 141 (US\$536 million in 2013); EITI DRC report 2014, 99 (US\$123 million in 2014).

296 Some of the EITI reports actually list the signing bonus as being *part* of the loans and that the money was used for infrastructure projects. According to Moise Ekanga, head of the BCPSC, this is a mistake. The Carter Center interview with Moise Ekanga in Kinshasa (October 2016) [hereinafter "Ekanga interview, October 2016"].

297 Sicomines Collaboration Agreement, 2008, Art. 5.1.

298 Tenke Fungurume Mining, Payments to Public Treasury and DRC Government Agencies (Q1 2016) (on file with The Carter Center) [hereinafter "TFM payments to DRC, 2009–2016"].

299 BCPSC response letter, August 2017.

300 DRC Prime Minister, Décret no. 08/018 (Aug. 26, 2008) portant création, organisation et fonctionnement du « Bureau de Coordination et de Suivi du Programme Sino-Congolais » en sigle « B.C.P.S.C », Journal Officiel (Sept. 1, 2008), Art. 8. Moise Ekanga, head of the BCPSC, confirmed in an interview with The Carter Center that planned quarterly meetings with the interministerial committee do not happen but rather that coordination happens on a more ad hoc basis and meetings with members of government do take place (Ekanga interview, October 2016).

- 301 According to the BCPSC, Parliament preapproves disbursements and integrates them in its annual budgetary planning (BCPSC response letter, 2017). However, The Carter Center has not received any further evidence of parliamentary involvement in receiving and spending the Sicominex loans.
- 302 KCC Amended JV Agreement, 2009, Art. 6.14.2.
- 303 Sicominex Collaboration Agreement, 2008, Art. 4. Here again, the confusion between reserves and resources persists: The contract indicates that the permits cover deposits with “mineral reserves estimated at 10,616,070 tons of copper, including approximately 6,813,000 tons of certain copper *resources*” (emphasis added).
- 304 Katanga Mining Ltd., Katanga Announces Agreement on Transfer of Mashamba West and Dikuluwe Deposits, News release No. 04/2008 (Feb. 8, 2008).
- 305 KCC Amended JV Agreement, 2009, Art. 6.14.1. Why did KCC accept replacement reserves of just 4 million tons of copper for sites that Gécamines had told its Chinese partners contained over 10 million tons? One possible reason is that KCC had not paid much for DIMA: The only payment it committed to in the 2005 agreement (other than distant future dividends) was a rental fee of 1.5 percent of production revenues, of which there were none for the dormant, flooded DIMA mines (KCC JV Agreement, 2004, Art. 6.10). Another potential reason was that KCC had estimated DIMA’s reserves at fewer than 1 million tons of copper. KCC estimated Dikuluwe reserves at 740,000 tons and Mashamba West at 190,000 tons of contained copper. Katanga Mining Ltd., Annual Information Form for the year ended Dec. 31, 2007 (March 20, 2008), 39–40 [hereinafter “KML Annual Information Form, 2007”].
- 306 KCC Amended JV Agreement, 2009, Art. 6.2.10 and Art. 6.14.2.
- 307 Two separate Carter Center interviews with KCC board members in Cape Town (February 2015). Gécamines did not respond to the Carter Center’s written questions and request for comments, including questions related to the reacquisition of the DIMA reserves and the replacement reserves and/or debt associated with the transaction.
- 308 For further detail, see Kamoto Copper Company: In the Red (case study).
- 309 Digital Congo TV, Rencontre Directeurs Gécamines et Parlementaires du Katanga, YouTube (Jan. 29, 2015).
- 310 OMG 10-K 2012, 66. GTL’s majority shareholder OM Group confirmed in its third quarterly report of 2012 that as of “Dec. 31, 2011, US\$92.8 million was deposited with the court related to the FG Hemisphere injunction (...). The injunction obtained by FG Hemisphere was released during the third quarter of 2012. As of Sept. 30, 2012, US\$22.8 million related to the Marange injunction remains on deposit with the court” (OM Group, Inc., Form 10-Q for the quarterly period ended Sept. 30, 2012, 15, available through the U.S. Securities and Exchange Commission’s EDGAR database).
- 311 Acte de cession des parts entre la Générale des Carrières et des Mines Sarl et Tiger Resources Limited (Aug. 1, 2014).
- 312 The World Bank estimated that tax revenues from mining could double between 2013 and 2016, with a substantial share coming from the Kolwezi mines (Kamoto and KOV) and from Tenke Fungurume, following the repayment of its capital expenditure. (See World Bank, Growth With Governance, 2008, Tables 1–2, 12–12). Some growth in profit tax has already occurred, but more is on the horizon. Increased production and subsequent profits are expected not only to boost revenues for the central treasury but also for Gécamines in the form of royalties and eventually dividends. Dividend payments are expected to increase steeply as the joint venture companies complete their repayments of shareholder advances for mining investments. In the case of KCC however, the World Bank’s estimates might have been overly optimistic. See Kamoto Copper Company: In the Red (case study) for further details on KCC’s debt.
- 313 BCPSC, Informations concernant SSCA et Sicominex, Excel file (2014), unpublished (on file with The Carter Center) [hereinafter “BCPSC Sicominex Data, 2014”]; BCPSC, Informations concernant SSCA et Sicominex, Excel file (October 2016), unpublished (on file with The Carter Center) [hereinafter “BCPSC Sicominex Data, 2016”].
- 314 Director General Sun Ruiwen on behalf of Sicominex, Letter to The Carter Center in response to request for comments relating to China-DRC investments through the Sicominex company (July 15, 2017).
- 315 The Carter Center had 10 meetings with the head of the BCPSC to obtain data on infrastructure loans and spending (October 2013, February 2014, December 2014, March 2015, April 2015, July 2015, September 2016, October 2016, April 2017, July 2017). The Carter Center also submitted an official letter in August 2016 requesting clarity on the data. Responses were received on Aug. 7 and Aug. 14, 2017.
- 316 Deputy Executive Secretary Jean Marie Mbakala on behalf of the BCPSC, Letter to The Carter Center in Response to the Carter Center’s July 15, 2017, letter sent to Sicominex (Aug. 8, 2017) [hereinafter “BCPSC Letter, August 2017”].
- 317 BCPSC Sicominex data, 2016; The Carter Center interview with two BCPSC officials (October 2016) [hereinafter “BCPSC officials interview, October 2016”]; BCPSC Letter, August 2017.
- 318 BCPSC Letter, August 2017, Annexes 1A and 1B; Henri Kabeya on behalf of BCPSC, Response to Carter Center by email (Aug. 14, 2017).
- 319 The prime minister informed the investors in KMT of the “impossibility to continue this partnership and the requirement of the subsequent retrocession, without condition, to Gécamines of the title” on Aug. 21, 2009. Paul Fortin resigned on Sept. 30, 2009. See First Quantum Minerals, First Quantum Minerals Announces Commencement of International Arbitration Regarding the Cancellation of the Kolwezi Project, news release (Feb. 1, 2010); Lubumbashi: l’ADG de la Gécamines démissionne, Radio Okapi (Sept. 30, 2009).
- 320 U.K. House of Commons, International Development Committee, Working Effectively in Fragile and Conflict-Affected States: DRC and Rwanda, Twelfth Report of Session 2010–12, Vol. 1: Report, together with formal minutes, oral and written evidence (January 2012), 74.
- 321 DR Congo to Get Billions in Debt Relief From IMF, BBC News, July 2, 2010.
- 322 Ministry of Finance of the Democratic Republic of Congo, Comité Technique de Suivi des Réformes (“CTSR”), Programme de Gouvernance Economique–Matrice d’actions (March 30, 2011), 2 [hereinafter “DRC Governance Matrix, March 2011”]. World Bank and IMF economic governance matrix, May 2013, Item A(2); World Bank and International Monetary Fund, Democratic Republic of Congo updated economic governance matrix (version May 3, 2013) [hereinafter “World Bank/IMF, Governance Matrix, May 2013”].
- 323 For a critical analysis of the World Bank’s scrutiny of compliance with the benchmarks in the economic governance matrix, see Elisabeth Caesens, Congo’s Mining Contracts Still Shrouded in Secrecy, Congo Siasa Blog (April 15, 2011) [hereinafter “Caesens, Congo’s Contracts Secrecy, 2011”].
- 324 Multiple email, phone, and in-person answers from representatives of DRC government, the World Bank, and the International Monetary Fund to requests from Carter Center staff between June and October 2012; regular tracking of new documents published on the Ministry of Mines website.
- 325 DRC governance matrix, March 2011; Caesens, Congo’s Contracts Secrecy, 2011; FGH letter to IMF, 2012.
- 326 Gécamines of Congo Refuses DRC Directive to Publish Contracts, Metal Bulletin (Nov. 3, 2011) [hereinafter “Gécamines Refuses to Publish

Contracts, 2011”].

327 Gécamines’ responses to IMF regarding sale of MUMI shares, 2011, 1: “Protected by safeguard confidentiality clauses, these contracts cannot be made public without prior and explicit agreement from the partners of Gécamines Sarl.”

328 No partner has ever sued the DRC or its state-owned enterprise for disclosing contracts, not even at the outset of the contract review process when the government published a series of deals that reflected poorly on investors. Moreover, confidentiality clauses commonly do not apply if “disclosure (...) is required by the law, the regulations, or norms of any other regulatory or stock exchange authority.” See also, generally, Peter Rosenblum and Susan Maples, *Contracts Confidential: Ending Secret Deals in the Extractive Industries*, Revenue Watch (2009).

329 Decret No. 011/26 du 20 Mai 2011 (Premier Ministre) portant Obligation de Publier Tout Contrat ayant pour Objet les Ressources Naturelles [Decree Concerning Obligation to Publish All Natural Resource Contracts] Relat, May 20, 2011 (DRC).

330 Bloomberg, *Comide Asset Transfer*, May 2012; *La Congolaise des Mines et du Développement*, Procès-Verbal de l’Assemblée Générale Extraordinaire des Associés tenue le 29 juin 2011 (June 29, 2011), Resolution No. AGE/29.06.2011/02 [hereinafter “Comide Shareholders Meeting Minutes, 2011”].

331 Bloomberg, *Comide Asset Transfer*, May 2012 (Kabwelulu denial); phone and direct conversations between Carter Center staff and IMF staff in Kinshasa in May 2012.

332 In a public interview in February 2013, the Gécamines CEO declared that the public could consult all Gécamines contracts online (Focus avec Ahmed Kalej Nkand, Administrateur Directeur Général de la Gécamines, Voxafrica, March 28, 2013).

333 Emailed letter from the chief of staff of the Ministry of Mines of Democratic Republic of Congo to the World Bank representative in DRC (Oct. 26, 2012) (on file with The Carter Center). The email states that there was no contract signed after the board of Comide’s Extraordinary General Assembly meeting. This may be true since the asset transfer contract might have been signed *before* the meeting took place. The board minutes refer to the transaction in the past tense: “The president informs the Special General Assembly that Gécamines *has conceded* all of its 200 shares it held in Comide to Straker International” (Comide Shareholders Meeting Minutes, 2011, Resolution 2). The email also said that the minutes are legally equivalent to a contract amendment, which seems less plausible since a contract can only be amended through another contract and not through General Assembly minutes.

334 There had been written sales agreements for all the other asset sales during the same period—SMKK, Mutanda, Kansuki, and Sodifor—all of which were public.

335 According to the IMF resident representative in DRC as well as other IMF staff involved in the Comide talks, the note would have had to describe the transaction, the sale price, the parties involved, the legality of the deal, and an explicit confirmation that there was no written contract other than the board minutes. The Carter Center phone interview with the IMF resident representative for DRC (November 2012).

336 The note did not confirm whether there was a contract or not, nor did it address the question of legality of the asset transfer (Note from Ministry of Mines and Ministry of Finance, 2012).

337 Technically, the program merely expired in December 2012. The DRC Central Bank governor, however, had requested a six-month extension to complete the program, but the IMF refused to grant it, allegedly because six months would be insufficient to generate significant improvements in the governance of state-owned enterprises. Instead, the IMF decided to re-engage in conditional discussions with the DRC government for a new, multiyear program (Bloomberg, IMF Loan

Decision, 2012).

338 Michael J. Kavanagh, *African Development Bank Halts Congo Budget Support Over IMF Cut*, Bloomberg News, Dec. 12, 2012.

339 See, generally, *Cadre de Concertation sur les Ressources Naturelles de l’Ituri, Maison des Mines du Kivu, Plateforme des Organisations de la Société Civile intervenant dans le Secteur Minier, Qui Cherche, Ne Trouve Pas—Transparence des Projets Miniers en République Démocratique du Congo* (January 2015), 18–21 [hereinafter “CdC/RN, MMK& POM, Qui Cherche Ne Trouve Pas, 2015”].

340 World Bank Project Appraisal Document on a Proposed Grant in the Amount of SDR 33.1 million (US\$50 Million Equivalent) to the Democratic Republic of Congo for a Growth With Governance Technical Assistance Project, Report No. 53116-ZR (May 19, 2010), 5–6 [hereinafter “Promines, Project Appraisal Document, 2010”].

341 Gécamines, Procès-Verbal synthétique de la reunion ordinaire du CA du 09 avril 2010 (April 9, 2010), 10 (on file with The Carter Center).

342 Letter RDC//GC/PM/169/2009 of Jan. 24, 2009, from Prime Minister Adolphe Muzito to the general director of Gécamines, “Notification conclusions Revisitation des contrats” (on file with The Carter Center).

343 See République Démocratique du Congo, Loi No. 08/007 du 07 Juillet 2008 portant Dispositions Générales Relatives à la Transformation des Entreprises Publiques [DRC Law Concerning General Provisions Related to the Transformation of Public Enterprises] (July 7, 2008) [hereinafter “Law on the Transformation of State-Owned Enterprises 08/007, July 2008”]; République Démocratique du Congo, Loi 08/008 du 07 Juillet 2008 portant Dispositions Générales Relatives au Désengagement de l’Etat des Entreprises du Portefeuille de l’Etat [DRC Law Concerning General Provisions Related to the Divestment of the State From Enterprises in the State Portfolio] (July 7, 2008) [hereinafter “Law on State Divestment 08/008, July 2008”]; République Démocratique du Congo, Loi 08/009 du 07 Juillet 2008 portant Dispositions Générales Applicables Aux Etablissements Publics [Law Concerning General Provisions Applicable to the Public Institutions] (July 7, 2008); République Démocratique du Congo, Loi 08/010 du 07 Juillet 2008 fixant les Règles Relatives à l’Organisation et à la Gestion du Portefeuille de l’Etat [DRC Law Establishing Regulations Related to the Organization and Management of the State Portfolio] (July 7, 2008) [hereinafter “Law on State Portfolio 08/010, July 2008”]; DRC Prime Minister, Décret No. 09/11 du 24 Avril 2009 portant Mesures Transitoires Relatives a la Transformations des Entreprises Publiques [DRC Prime Minister Decree Concerning Transitory Measures Related to the Transformation of Public Enterprises] (April 24, 2009) (DRC).

344 The law on state-owned enterprises stipulates that the president of the republic appoints and dismisses public office bearers (including the president of the board, the CEO, and board members) “upon the proposal of the government as decided in the Council of Ministers” (Law on State Portfolio 08/010, July 2008).

345 Traditionally the Conseil Supérieur du Portefeuille (CSP), a body that provides technical assistance in state asset management, uses a database of profiles to make a list of candidates based on experience and educational background and submits the list to the government, which then transmits a shortened list to the president (The Carter Center interview with senior CSP employee in Kinshasa, November 2014).

346 See, M.K. *The Kingmaker Is Dead*, *The Economist* (Feb. 20, 2012); Philippe Perdrix, *Augustin Katumba Mwanke, l’homme qui murmurait à l’oreille de Joseph Kabila*, *Jeune Afrique* (Feb. 27, 2012); see also Jason Stearns, “Katumba Mwanke, Key Presidential Adviser, Dies,” *Congo Siasa* (Feb. 12, 2012); *Après la disparition accidentelle de Katumba Mwanke, récomposition du “pré-carré de Kabila,” Le Potentiel* (Feb. 15, 2012).

347 Katumba Mwanke, *Ma Vérité*, 2013, 39.

348 Katumba Mwanke, *Ma Vérité*, 2013, 62. For further details and

sources about HSBC's loan, see Mutanda Mining: Strictly Private (case study).

349 Katumba Mwanke, *Ma Vérité*, 2013, 63–67.

350 HSBC declined to comment on the potential conflict of interest of this secondment. HSBC wrote that “HSBC does not and cannot discuss individual customers, nor do we confirm whether an individual or a business is or has been a customer, for reasons of client confidentiality. Similarly, we are unable to discuss employees, past or present” (HSBC, Response to the Carter Center request for comments (June 15, 2016) (on file with The Carter Center) [hereinafter “HSBC Response Letter, June 2016”]), 1.

351 U.N. Panel of Experts final report, 2002, 7 and Annex II, 4; Katumba Mwanke, *Ma Vérité*, 2013, 192.

352 U.N. Panel of Experts final report, 2002, 22 and 40–41. While his name is not directly tied to those deals in the report, Katumba described these deals in his autobiography as being decisive to his removal from his ministerial post. (See Katumba Mwanke, *Ma Vérité*, 2013, 190–193.).

353 Katumba Mwanke, *Ma Vérité*, 2013, 74.

354 Katumba Mwanke, *Ma Vérité*, 2013, 208.

355 Katumba Mwanke, *Ma Vérité*, 2013, 38.

356 The Carter Center visit to Kiubo Falls and lodge (March 3, 2012).

357 See e.g., Simon Dawson, *Luxury Tourist Villas Launched by Billionaire Dan Gertler*, Bloomberg via Getty Images (Aug. 2, 2012). Gertler did not respond to questions from The Carter Center about his relationship with Katumba or about the ownership of the lodge.

358 Katumba Mwanke, *Jeune Afrique*, 2012.

359 Until June 2011, Moïse Ekanga, Katumba's minerals-for-infrastructure coordinator, was also president of the management committee of the Comide joint venture, a Fleurette subsidiary from 2006 onward. See Revisitation Commission Report Part 2, 2007, 104–107. See also Katumba Mwanke, *Ma Vérité*, 2013, 198; Jacob Kushner, *Congo-Kinshasa: Corruption in the Congo—How China Learnt from the West*, Think Africa Press (Oct. 3, 2013).

360 During an official visit to the DRC by members of the EITI, Tuma Waku was mentioned on the agenda as “CEO Groupe Dan Gertel” (sic), which was not only incorrect but also a diplomatic error. (See ITIE Secretariat Technique RDC, *Programme de la visite des membres du Conseil d'Administration de l'ITIE en République Démocratique du Congo* (October 2013), 2 (on file with The Carter Center).

361 Fleurette response email, October 2016.

362 Gécamines director interview, December 2011; Gécamines director interview, July 2015; Gécamines director interview, August 2015; the Carter Center phone interview with former Gécamines CEO (March 2015).

363 Gécamines director interview, August 2015 (commenting generally on the policy to transfer assets to Gertler's companies).

364 Gécamines director interview, December 2011 (commenting on the Mutanda Mining asset sale).

365 Gécamines director interview, July 2015 (commenting on the instruction to cancel First Quantum's KMT agreement).

366 Metalkol Agreement, 2010, 54.

367 Gécamines board member interview, July 2013. See also Somidec board member 1 interview, August 2015; Somidec board member 2 interview, August 2015; the Carter Center's interview with investment lawyer in Kinshasa (November 2014) [hereinafter “Investment Lawyer

interview, November 2014”].

368 See DRC President, Ordonnance no. 10/074 du 19 novembre 2010 portant nomination des membres du Conseil d'administration d'une entreprise du Portefeuille de l'Etat dénommée Générale des Carrières et des Mines, en sigle “GECAMINES.”

369 The Carter Center interview with senior CSP employee in Kinshasa (November 2014).

370 The Carter Center interview with COPIREP officials in Kinshasa (December 2014) [hereinafter “COPIREP interview, 2014”]; Gécamines director interview, August 2015.

371 Gécamines director 1 interview, August 2015.

372 Africa Mining Intelligence, *Congo-K: les mines au coeur des réseaux ethniques*, *Insiders Mining—Les cercles d'affaires des décideurs* (July 26, 2013), 14 [hereinafter “Les mines au coeur des réseaux ethniques, 2013”].

373 *Les mines au coeur des réseaux ethniques*, 2013, 15; see also Katumba Mwanke, *Ma Vérité*, 2013, 110–113.

374 Examples of the management team's stance are numerous. At a multistakeholder meeting for EITI in August 2013 in Lubumbashi, Gécamines' legal department repeatedly insisted that EITI reports not use the term *entreprise étatique* and instead refer to Gécamines as a “commercial company of which the state is a shareholder,” citing the FG Hemisphere case as the rationale (Gécamines director of the legal department, Gécamines, remarks at Extractive Industry Transparency Initiative multistakeholder meeting, in Lubumbashi, DRC, August 2013). This strongly echoes the claim Gécamines made in lawsuits brought against it by the distressed debt fund FG Hemisphere, in which Gécamines successfully argued it was not an organ of the state. See e.g., *La Générale des Carrières et des Mines (Appellante) vs. F.G. Hemisphere Associates LLC (Respondent)*, Ct. Of Appeal of Jersey, [2012] UKPC 27 Privy Council Appeal No 0061, Judgment, Paragraphs 67–78. Ironically, Gécamines received legal assistance from the African Development Bank's African Legal Support Facility in the proceedings, a fund designed to help African governments. See African Development Bank, *ALSF Takes Measures to Fight Vulture Funds in Africa* (Nov. 9, 2010).

375 See, e.g., Bloomberg, *Mutanda and Kansuki Asset Sale* (quoting Modeste Bahati Lukwebo).

376 The Carter Center interview with Minister of Mines Martin Kabwelulu in Kinshasa (December 2014) [hereinafter “Minister Kabwelulu interview, December 2014”].

377 Ministry of Finance and Ministry of Portfolio of Democratic Republic of Congo, *Circulaire Interministérielle No. 006/CAB.MIN/FINANCES/2001 et No. 001/MINPF/KD/JML/2011 du 6 Mai 2011 Relative au Respect des Modalités et Procédures de Désengagement de l'Etat par les Entreprises du Portefeuille*, May 6, 2011 [hereinafter “Circular on State Divestment by State Portfolio Companies, 2011”]. Initially the minister of mines was to sign the letter but eventually did not (Interview with chief of staff of the minister of portfolio in Kinshasa, DRC, November 2011). See *Loi 08/008 on Divestment from State-Controlled Companies*, Art. 7, “The transfer of assets or shares or the transfer of the management of a state-owned enterprise is done through one of the following methods: (1) a general or restricted tender, (2) a mutual agreement under exceptional circumstances, or (3) a transfer to the employees or the general public.”

378 According to Gécamines, the law only applies when the state wants to privatize a state-owned company, not when a state-owned company wants to privatize its own assets. (The Carter Center interview with Gécamines CEO Ahmed Kalej in Lubumbashi (December 2013) [hereinafter “Gécamines CEO interview, December 2013”]). See also Gécamines responses to IMF regarding sale of MUMI shares, 2011, 1.

379 See Bloomberg, *Comide Asset Transfer*.

380 This happened during a conference titled Transparency and Good Governance in the DRC Mining Sector, held in Lubumbashi in January 2013, less than two months after the IMF's decision. It was generally perceived as an attempt by the government to improve its battered reputation for governance. The president himself opened the conference, and invitations were extended to the entire government, all major mining companies, and many diplomats.

381 Augustin Matata Ponyo Mapon, prime minister of Democratic Republic of Congo, closing address at the Conference on Transparency and Good Governance in the Mining Sector in Lubumbashi, DRC (Jan. 31, 2013); Ministry of Mines of Democratic Republic of Congo, Rapport Final des Travaux de la Conférence sur la Bonne Gouvernance et la Transparence dans le Secteur Minier de la République Démocratique du Congo, tenue à Lubumbashi, les 30 et 31 Janvier 2013 (February 2013).

382 Kavanagh, *Gécamines Studies KCC Sale 2013*; see also *Gécamines Plan de Redéploiement 2013*, 28.

383 According to some estimates, the KCC stake was worth up to US\$1 billion (Alexis Flynn, *Congo's Gécamines Shelves Sale of Stake in Glencore Copper Mine*, Wall Street Journal (June 2, 2014) [hereinafter "Flynn, *Gécamines Shelves Sale of Stake, June 2014*"]. However, given KCC's indebtedness, dividends cannot be expected anytime soon, and their value may be overblown. That said, Gécamines is also entitled to royalties and outstanding signing bonus tranches, which Gécamines' consultants valued at over US\$200 million. For further details, see *Kamoto Copper Company: In the Red* (case study).

384 Letter CAB/MIN.MINES/01/1132/2013 from Minister of Mines Martin Kabwelulu to Gécamines chairman and Gécamines CEO, Signature des protocoles d'accord et/ou contrats à la Gécamines (Aug. 30, 2013) (on file with The Carter Center) [hereinafter "Kabwelulu Letter to Gécamines, August 2013"]; Michael Kavanagh, *Gecamines Didn't Tell DRC Government of KCC Gertler Deal*, Bloomberg News (Oct. 18, 2013) [hereinafter "Kavanagh, *Gécamines didn't tell about KCC Deal, October 2013*"]; see also *Gécamines Sarl*, comments on recent media coverage regarding its minority shares in KCC (Oct. 18, 2013) [hereinafter "Gécamines comments on KCC media coverage, October 2013"].

385 Flynn, *Gécamines Shelves Sale of Stake, June 2014*. During follow-up exchanges with several officials at the Ministry of Mines throughout 2014, The Carter Center was repeatedly told the KCC sale was off the table. However, according to several sources, the revenues Gécamines expected from its KCC stake have been going to a Gertler company for several years. See *Kamoto Copper Company: In the Red* (case study) for further details.

386 Kabwelulu letter to Gécamines, August 2013.

387 Publiez Ce Que Vous Payez (PCQVP) and Plateforme des Organisations de la Société Civile intervenant dans le Secteur Minier (POM), La prise de position des ONG sur la cession des parts sociales de la Gécamines dans KCC et la Création d'une filiale de la Gécamines à l'Île Maurice (Oct. 24, 2013) [hereinafter "PCQVP-POM, Statement on KCC and Mauritius, October 2013"].

388 Letter from President Jimmy Carter to President Joseph Kabila Kabange (Nov. 12, 2013) [hereinafter "Carter letter to Kabila, November 2013"] and letter from President Jimmy Carter to Prime Minister Matata Ponyo Mapon (Nov. 12, 2013) (on file with The Carter Center) [hereinafter "Carter letter to Matata, November 2013"]. See also Kavanagh, *Gécamines didn't tell about KCC Deal, October 2013*; Kabwelulu Letter to Gécamines, August 2013.

389 Letter from Prime Minister Matata Ponyo to all members of the government, *Mesures conservatoires* (Oct. 24, 2013) (on file with The Carter Center). The letter also instructs the minister of portfolio to pass along the instructions to the state-owned companies.

390 See above; see also Danny Fortson, *Glencore Row Over Lost Congo Copper*, The Sunday Times (Oct. 23, 2013).

391 Flynn, *Gécamines Shelves Sale of Stake, June 2014*.

392 La Générale des Carrières et des Mines and Tiger Resources Limited, Acte de cession des parts sociales (Société d'Exploitation de Kipoi S.P.R.L) (2014; precise date erased on published contract, notarized on Sept. 8, 2014) [hereinafter "SEK Asset Sale Agreement, 2014"]. Tiger sought full ownership of SEK for years. "We think the corporate appeal of Tiger has also improved, as Gécamines would have been considered to be a 'poison pill' for many potential acquirers," an analyst commented on the deal (Sonali Paul, *Tiger Resources Buys Congo's Stake in Kipoi Copper Mine*, Reuters (Aug. 28, 2014) [hereinafter "Paul, *Tiger buys Kipoi stake, August 2014*"].

393 Tom Wilson, *Gécamines Secretly Sold Stake in Key Congolese Copper Mine*, Bloomberg News (Oct. 25, 2016) [hereinafter "Wilson, *Gécamines Sold Copper Mine, October 2016*"].

394 Gécamines CEO interview, December 2013.

395 Law on State Portfolio 08/010 2008, Arts. 14, 17, and 19.

396 When EITI consultants asked which partnerships Gécamines had a stake in and which revenues it had collected from those partnerships, Munga allegedly said only Gécamines itself could provide accurate answers (several meetings in Kinshasa as well as phone conversations in July and August 2013 between The Carter Center and the international consultancy firm appointed in 2013 to collect preliminary data on all 2011 revenue flows and propose a 2011 EITI reporting scope). An EITI international board member confirmed that Gécamines' reluctance to share its partnership and revenue data had led to tensions between the DRC and international EITI institutions (EITI board member interview, March 2015).

397 Letter from Minister of Portfolio Louise Munga to Brad Marwood and Stephen Hills (Tiger Resources/Société d'Exploitation de Kipoi) re "Cession des parts sociales dans la Société d'Exploitation de Kipoi" (undated; notarized on Sept. 8, 2014; see SEK Asset Sale Agreement 2014 Annex F) [hereinafter "Minister of portfolio letter to Tiger Resources, September 2014"].

398 DRC President Joseph Kabila, Ordonnance no. 10/074 (Nov. 29, 2010) portant nomination des membres du Conseil d'administration d'une entreprise du Portefeuille de l'Etat dénommée Générale des Carrières et des Mines, en sigle « GECAMINES », Journal Officiel (Jan. 1, 2011), 24–25.

399 Gécamines director 2 interview, August 2015. This is based on Law on State Portfolio 08/010 2008, Art. 7. This position might also be a result of the line of thinking Gécamines demonstrated as it fended off FG Hemisphere's lawsuits in jurisdictions around the world. Gécamines' main line of defense against FG Hemisphere was that it is not a state entity and, therefore, the company's money did not belong to the state. Gécamines now uses this argument for its other revenues too.

400 Letter from Prime Minister Adolphe Muzito to the Gécamines CEO, Notification Revisitation des Contrats Miniers, Letter Nr. RDC/CG/PM/169/2009 (Jan. 24, 2009) (on file with The Carter Center). The claim that Gécamines is entitled to keeping all its partnership revenues, including those from asset sales, was confirmed in an interview with former Gécamines CEO Ahmed Kalej (Gécamines CEO interview, December 2013).

401 "The 50 percent of signing bonuses and royalties that benefit state-owned enterprises in the mining sector as a result of their contracts and concentrations are accounted as nonfiscal revenues." See Art. 22, Loi des Finances No.14/002 (Jan. 31, 2014) pour l'exercice 2014, Journal Officiel numéro spécial 55ème année (Feb. 3, 2014).

402 Hart Group, an international auditing firm hired to prepare the

2010 EITI report, included the following comment on the destination of signing bonuses and royalties: "During a meeting with [tax collecting agency] DGRAD in Kinshasa, it was said that signing bonuses are paid to the treasury, which had to transfer 50 percent to the public company; for instance, Gécamines. But during a meeting with Gécamines in Lubumbashi, we have been informed that signing bonuses are no longer owed to the state and that Gécamines claims a tax credit for payments made in the past. We have also been informed that the decision to retrocede 50 percent of the royalties to Gécamines has not been implemented in practice. The matter of the destination of signing bonuses has been addressed in several meetings. It seems that these sums are paid into a DGRAD account at the Central Bank but that it is not the usual Central Bank account, and DGRAD agents have not given us any detail about the accounts. We conclude that commercial entities of which shares are held by the state and of which budgets are to be approved by its shareholders, and therefore by the state, are part of the property [patrimoine] of the state" (Hart Group, Des Périmètres des Rapports ITIE RDC 2010–2011 (Aug. 29, 2012), unpublished). Gécamines' allocation and use of its revenue have not been described in sufficient detail in subsequent EITI reports (see below). However, the reports list the types of revenues Gécamines collects (signing bonuses, royalties, rental fees, asset sale revenue), none of which feature among the payments Gécamines subsequently transferred to the state. See, e.g., EITI DRC 2012 Report, 72; EITI DRC 2014 Report, 63. This reading was explicitly confirmed in EITI DRC Technical Secretariat, Letter n. 193/COORD/ITIE-RDC/ST/MD/2017 to Global Witness (July 25, 2017).

403 Gécamines Responses to IMF Regarding Sale of MUMI Shares, 2011, 1. This contrasts with the view expressed in the interministerial memorandum about state-owned company asset sales of Ministers Matata and Mabunda in 2011. See Circular on State Divestment by State Portfolio Companies, 2011.

404 There were no dividend payments in 2013 and 2014. Instead, Gécamines made an "effort to contribute to the state budget," the amounts of which are reflected in this table. Contrary to other revenue flows, the EITI reports do not provide a definition or legal base for these payments.

405 This was an advance on dividends (EITI DRC 2012 Report, 166).

406 Yuma, Digital Congo interview, 2015.

407 Banque Centrale du Congo, Condensé hebdomadaire d'informations statistiques Nr. 45/2011 (Nov. 11, 2011), 1 [hereinafter "BCC Statistics, November 2011"].

408 BCC Statistics, November 2011, 1; Banque Centrale du Congo, Condensé hebdomadaire d'informations statistiques Nr. 32/2013 (Aug. 9, 2013), 1.

409 BCC statistics, November 2011, 1.

410 Gécamines director 2 interview, August 2015.

411 Michael Kavanagh, Gécamines of Congo to Get US\$269 Million After Court Decisions, Bloomberg News (July 24, 2012) [hereinafter "Kavanagh, Gécamines to get US\$269m, July 2012"].

412 Gécamines, Plan Stratégique de Développement 2012–2016–Annexes (January 2012), 17 (on file with The Carter Center) [hereinafter "Gécamines Strategic Development Plan, 2012–2016"].

413 BCC Statistics, July 2015, 1.

414 Gécamines Strategic Development Plan, 2012–2016, 17.

415 Gécamines Business Strategy press release, 2011, 2.

416 Gécamines director 2 interview, August 2015. According to Gécamines' revised business plan, exploration helped identify 800,000 tons of certain reserves. (Gécamines, Plan de Redéploiement, Powerpoint Presentation (May 2013), 4 (on file with The Carter Center) [hereinafter

"Gécamines Business Plan Presentation, 2013"]).

417 Gécamines Business Strategy press release, 2011, 2.

418 Gécamines Business Strategy press release, 2011, 2. See also Michael J. Kavanagh, Gécamines of Congo Will Seek Profit From Takeovers, Audits, Bloomberg News (Oct. 6, 2011) [hereinafter "Kavanagh, Gécamines Will Seek Profit From Takeovers, October 2011"].

419 Gécamines director 2 interview, August 2015.

420 There are several theories purporting to explain Forrest's fall from mining sector grace. One rumor is that Forrest refused to share the Luilu factory in Kolwezi (which Gécamines rented to KCC) with DCP, a company in which Gertler had a significant stake. Another allegation was that Forrest supported both Kabila's party and his rival Bemba's, along with other parties. Forrest confirmed that both issues led to tensions (George Forrest interview, July 2015).

421 For over a decade, Forrest's company, Entreprise Générale Malta Forrest (EGMF), controlled the Luiswishi mine on the outskirts of Lubumbashi through a joint venture with Gécamines, the Compagnie Minière du Sud-Katanga (CMSK) (Contrat de création de société entre la Générale des Carrières et des Mines et l'Entreprise Générale Malta Forrest dans le cadre de développement de certains gisements, nr. 642/6734/SG/GC/2004 (May 2004), Preamble B). In the summer of 2011, EGMF tried to sell a controlling stake in CMSK to Forrest in his personal name for US\$15 million. The price tag seems to have been a substantial undervaluation, as Gécamines ended up paying almost four times that price for the stake. Various interviewees have suggested that Forrest wanted to transfer the stake to a shell company in a tax haven and then sell that company to a South Korean investor for a much higher price, avoiding a substantial Congolese tax bill in the process (the Carter Center interview with mining lawyer in Lubumbashi, March 2012; the Carter Center interview with Gécamines administrator in Lubumbashi, December 2011). In an interview, a Groupe Forrest spokesperson declined to comment on the reasons why Forrest wanted to transfer a stake his family's company already controlled to himself (Jonny Hogg, EGMF Threatens to Cut US\$250 Mln Project in DRC Row, Reuters (Sept. 6, 2011) [hereinafter "Hogg, EGMF Threatens to Cut US\$250 Mln, September 2011"]).

422 Hogg, EGMF Threatens to Cut US\$250 Mln, September 2011; George Forrest interview, July 2015; Gécamines director 2 interview, August 2015.

423 Convention de Cession de Parts et de Créances: Compagnie Minière du Sud-Katanga entre Entreprise Générale Malta Forrest et la Générale des Carrières et des Mines (Sept. 24, 2012), Art. 2.1 [hereinafter "CMSK Cession Agreement, 2012"]. "It's a good price for us and a good price for Gécamines," commented an EGMF spokesperson (Michael J. Kavanagh, Forrest Group Sells CMSK Mining Stakes to Congo's Gécamines, Bloomberg News (Sept. 25, 2012) [hereinafter "Kavanagh, Forrest Sells CMSK to Gécamines, September 2012"]).

424 Kavanagh, Forrest Sells CMSK to Gécamines, September 2012.

425 "We tried to develop businesses with other investors, including the Koreans... Then Gécamines tried to nationalize CMSK. And the Koreans left..." (François-Xavier Lefèvre, George Forrest, son tournant au Congo, L'Echo (Feb. 23, 2013) [hereinafter "Lefèvre, Forrest au Congo, February 2013"]).

426 Contrat entre la Générale des Carrières et des Mines et Platmin Congo Limited, Dec. 8, 2005, Preamble (2) [hereinafter "Somidec Contract, 2005"]; Convention de Joint-Venture entre la Générale des Carrières et des Mines et Platmin Congo Ltd pour l'exploitation des polygones de Deziwa et de l'Ecaille C couverts respectivement par les permis d'exploitation n°660 et 8840, Nr. 947/22797/SG/GC/2008 (Aug. 19, 2008).

427 Zijin Mining Group Co. Ltd., Announcement–Proposed Acquisition

of Platmin Congo BVI (May 7, 2010), 4 [hereinafter "Zijin Mining press release, 2010"].

428 Zijin Mining press release, 2010, 3.

429 A Mines Ministry official complained that the ministry had "learned about the transaction from a story on the internet." A former Gécamines director said its partner Platmin had only informed the company of plans to "raise funds," not to sell its stake to a third party (Michael J. Kavanagh and Li Xiaowei, Congo Won't Approve Zijin, CAD Fund's Bid for Platmin, Bloomberg News (May 10, 2010)); the Carter Center interview with former Gécamines director in Lubumbashi (September 2014) [hereinafter "Gécamines director interview, September 2014"]. See also Convention Transactionnelle No.1272/1 7220/SG/GC/2012 between la Générale des Carrières et des Mines, Platmin Congo SPRL, Platmin Congo Limited, Copperbelt Minerals Limited, and la Société Minière de Deziwa et Ecaïlle C (Aug. 23, 2012), preamble 10 [hereinafter "Convention Transactionnelle Deziwa, August 2012"].

430 Gécamines SARL, Procès-Verbal synthétique de la réunion extraordinaire du Conseil d'Administration de la Gécamines du 19 mai 2010, 4-5 (on file with The Carter Center) [hereinafter "Gécamines board minutes, May 19, 2010"].

431 World Mining News, Zijin Mining decides against acquisition of Platmin Congo, news release 110170 (Sept. 7, 2010). Zijin did not abandon its Congolese ambitions altogether. In May 2015, the company announced a deal to buy a stake in Ivanhoe's Kamao project. However, it was again instantly accused of not having informed the minister of mines once again. See Ivanhoe Mines, Ivanhoe Mines and China's Zijin Mining Group Sign Landmark Agreement to Co-develop the World-Scale Kamao Copper Discovery in the Democratic Republic of Congo, news release (May 26, 2015); Michael Kavanagh, Ivanhoe Sale to Zijin Needs Congo's Approval, Minister Says, Bloomberg News (May 27, 2015).

432 Allan Marter, the Cobalt Flower (May 9, 2012) [hereinafter, The Cobalt Flower, May 2012].

433 Gécamines board minutes, May 19, 2010. In an interview, a Somidec board member for Platmin claimed that Gécamines, not Platmin, defined the estimate in the contract based on exploration reports from Platmin. This is not confirmed by other documents (the Carter Center interview with former Somidec board member 1 in Lubumbashi (August 2015) [hereinafter "Somidec board member 1 interview, August 2015"]).

434 Zijin Mining press release, 2010.

435 Somidec board member 1 interview, August 2015.

436 GCM Completes Deziwa and Ecaïlle C Buy, Africa Mining Intelligence (Jan. 29, 2013); Convention Transactionnelle Deziwa, August 2012, Art. V.2.3.

437 Marter, The Cobalt Flower, May 2012.

438 Anvil Mining/MMG agreed to return its shares in the Mutoshi project in Kolwezi to Gécamines in exchange for extra Gécamines titles for its other project at Kinsevere (MMG, MMG Divests Mutoshi Project and Acquires DRC Exploration Tenements, media release (Sept. 6, 2013) [hereinafter "MMG Divests Mutoshi, September 2013"]).

439 According to corporate documents, Gécamines paid US\$21 million to buy back all the shares in the Kalumines joint venture after the two investors, Vale and African Rainbow Minerals, failed to finance the project (Africa Rainbow Minerals, Integrated Annual Report 2013, 94). Commodity trader Trafigura allegedly financed Gécamines' buyback and wanted to recuperate its investment by processing the Lupoto tailings. Barely a week after the investors withdrew, tens of thousands of artisanal miners invaded Kalumines' Lupoto site close to Lubumbashi, to the frustration of some of the Gécamines directors who had wanted to team up with Trafigura's subsidiary, Luna Mining, to exploit the site. Eventually Trafigura did begin exploitation in early 2014.

440 See, generally, La Générale des Carrières et des Mines SARL, Plan de Redéploiement (May 2013) (on file with The Carter Center) [hereinafter "Gécamines Plan de Redéploiement, 2013"]; Gécamines Business Plan Presentation, 2013.

441 Kavanagh, Gecamines to Get US\$269M, July 2012.

442 George Forrest interview, July 2015; Gécamines director 2 interview, August 2015.

443 Michael Kavanagh and Franz Wild, Billionnaire Gertler Loaned Gécamines US\$196 Mln for Mine, Bloomberg News (April 28, 2014) [hereinafter "Kavanagh, Gertler Loaned Gécamines US\$196Mln, April 2014"]. The Deziwa purchase agreement foresaw a climbing pay scale based on the time Gécamines would be able to deliver: US\$185 million if it paid before Nov. 13, 2012, US\$189 million before Dec. 13, 2012, US\$193 million before Jan. 13, 2013, and US\$196 million (the final option) before February 2013 (Convention Transactionnelle Deziwa, August 2012, V.2.3).

444 La Générale des Carrières et des Mines and African Dawn Finance Ltd., Pledge Over Shares Agreement (Dec. 14, 2012) (on file with The Carter Center).

445 Gécamines Plan de Redéploiement, 2013, 6.

446 La Générale des Carrières et des Mines, A Brighter Future Is Here, Presentation at Mining Indaba 2014 (Feb. 4, 2014), 22 [hereinafter "Gécamines Indaba Presentation, February 2014"]. According to the revised business plan, the total investment needed was US\$2.57 billion, including US\$200 million for the acquisition of Deziwa and US\$700 million for its development.

447 Gécamines director 2 interview, August 2015; Jean-Pierre Boris (RFI) and Frédéric Maury (Jeune Afrique), Interview with Gécamines Chairman Albert Yuma Mulimbi, RFI Eco d'Ici Eco d'ailleurs (Sept. 10, 2016) [hereinafter "RFI, Yuma Interview, September 2016"]; Albert Yuma, Maintenir une croissance durable en période d'austérité, Presentation held at the DRC Mining Week in Lubumbashi (June 8, 2016), 8 [hereinafter "Presentation Gécamines Chairman, June 2016"].

448 Gécamines Business Strategy press release, 2011, 5; Gécamines Plan de Redéploiement, 2013, 5.

449 Clara Ferreira and Jonny Hogg, Insight: Congo's Neglected State Miner Hankers for Past Glory, Reuters, Feb. 22, 2013.

450 Gécamines Business Strategy press release, 2011, 8.

451 Jean-Michel Meyer, Albert Yuma Mulimbi, La Gécamines redeviendra un opérateur minier indépendant, Jeune Afrique (Dec. 16, 2011).

452 Kavanagh, Gecamines to Get US\$269M, July 2012.

453 Letter nr. 839/AD/2013 from Gécamines CEO Ahmed Kalej to STL Sprl (Sept. 3, 2013) (on file with The Carter Center) [hereinafter "Gécamines Mauritius Letter, 2013"].

454 Gécamines Mauritius letter, 2013.

455 Tax Justice Network, Financial Secrecy Index 2015 Results-Report on Mauritius (Nov. 2, 2015).

456 Carter letter to Kabila, November 2013; Carter letter to Matata, November 2013.

457 PCQVP-POM, Statement on KCC and Mauritius, September 2013.

458 EITI DRC 2014 report, 137.

459 This includes a 5 percent stake in KCC, a 12 percent stake in Sicomin, a 5 percent stake in Metalkol, and a 1 percent stake in SMK (EITI DRC 2012 report, 128, 130, 134, and 136).

- 460 The issue of the SIMCO reporting loophole has been raised in at least 11 memos from civil society to the EITI-DRC multistakeholder group and in countless public meetings spanning four EITI-DRC reporting cycles since 2014. See, e.g., The Carter Center, The Carter Center Liste des Améliorations Prioritaires du Cadrage/Rapport du Lancement [EITI-DRC 2012] (Oct. 5, 2014), 10; The Carter Center, The Carter Center Notes et Commentaires sur le Projet du Rapport ITIE-RDC 2012 (Dec. 12, 2014), 19; Plateforme des Organisations de la société civile intervenant dans le secteur Minier (POM), Rapport de l'Atelier de l'Examen du Projet du Rapport ITIE-RDC 2012 (Dec. 17, 2014), 11; Plateforme des Organisations de la société intervenant dans le secteur Minier (POM), Proposition d'amendement du projet de cadrage du Rapport ITIE-RDC 2013 (March 10, 2015), 2–3; The Carter Center, The Carter Center Notes et Commentaires sur le Projet de Lancement du Rapport ITIE 2013 (Oct. 5, 2014), 1; Plateforme des Organisations de la société civile intervenant dans le secteur Minier (POM), Commentaires et Observations sur le Draft du Rapport ITIE-RDC 2013 (June 2015), 4–5; The Carter Center, The Carter Center Notes et Commentaires sur le Projet de lancement du Rapport ITIE 2014 (September 2015), 2; The Carter Center, Centre Carter : Recommandations pour l'amélioration du projet du Rapport ITIE-RDC 2014 (Dec. 12, 2016), 2; The Carter Center, The Carter Center Notes et Commentaires sur le Projet du Rapport de Cadrage pour le Rapport ITIE-RDC 2015 (May 2016), 1–2; The Carter Center, Notes et Commentaires du Centre Carter au Projet de Rapport Initial EITI-DRC 2015 (Oct. 24, 2016), 3–4; Mémo des Organisations de la Société Civile de Kolwezi portant Analyse du Projet de Rapport Initial ITIE-RDC 2015 (Nov. 2, 2016), 6.
- 461 Ahmed Kalej, Le Réveil d'un Géant Minier, presentation at the 2013 Indaba.
- 462 GBR interview with Ahmed Kalej Nkand, CEO, Gécamines, Gécamines Makes Progress on Their 2012–2016 Strategic Development Plan (Oct. 24, 2013).
- 463 Gécamines Indaba Presentation, 2014, slides 2–3.
- 464 Bianca Markram, Mining Indaba 2014: Gecamines on Track to Reach 100,000 tpy Output Next Year, Metal Bulletin (Feb. 5, 2014).
- 465 Marek Bocanek, Congo's Copper Output to be Lifted 46 Percent by Gécamines, WBP Online (April 23, 2014).
- 466 Michael Kavanagh and Malcolm Beith, Congo's State Copper Miner Set for Lowest Output Since 2004. See also BCC statistics, July 2015.
- 467 BCC statistics, July 2015, 1.
- 468 Claire Fages, L'essor du cuivre en RDC se fait sans la Gécamines, RFI (June 25, 2014).
- 469 BCC statistics, July 2015, 1.
- 470 Banque Centrale du Congo, Condensé hebdomadaire d'informations statistiques Nr. 51/2012 (Dec. 21, 2012), 1 (reporting that Gécamines' production from January through November 2012 amounted to 18,478 tons of copper).
- 471 See Gécamines SARL DRP/PGP/GDP, Production 2012–Synthèse Usines, Flash-CID nr. 04/2012 (4th trimestre 2012) [hereinafter “Gécamines Synthèse Production, 2012”].
- 472 Gécamines Synthèse Production, 2012.
- 473 See Raphael Ngoy Mushila, Les défis de la Gécamines—Sanctuaire du népotisme ou géant minier performant? (July 2014; actual distribution early 2015), 85–124, in particular, 92 (on file with The Carter Center) [hereinafter “Ngoy, Defis Gécamines, 2015”].
- 474 Gécamines' statistics show that none of the four TAF contractors returned any cobalt to Gécamines (Gécamines Synthèse Production, 2012).
- 475 Gécamines former senior executive interview, August 2015.
- 476 Gécamines Strategic Development Plan, 2012–2016, 44.
- 477 The Carter Center interview with an executive of a company that carried out toll treatment for Gécamines between 2012 and 2014, in Lubumbashi (September 2015) [hereinafter “TAF contractor interview, September 2015”].
- 478 TAF contractor interview, September 2015.
- 479 The Carter Center interview with Gécamines senior staff member in Lubumbashi (July 2013).
- 480 The Carter Center interview with Gécamines senior staff member in Lubumbashi (July 2013); the Carter Center interview with Gécamines technical employee in Lubumbashi (September 2014); the Carter Center interview with Gécamines communications officer Makal in Lubumbashi (December 2014).
- 481 The TAF company executive The Carter Center interviewed said his company was carrying out normal toll treatment. Provincial mining statistics suggest, however, that CDM's production might have been a substitute for Gécamines'. Until October 2012, CDM produced on average approximately 2,000 tons of cuivre noir, a copper metal type few other companies export from Katanga. In November and December 2012, CDM's cuivre noir production dropped to almost zero, and Gécamines' went up from zero to slightly over 2,000 (Division of Mines Statistics, 2012).
- 482 Ngoy, Défis Gécamines, 2015, 103.
- 483 Ngoy, Défis Gécamines, 2015, 103.
- 484 La Générale des Carrières et des Mines, Communiqué de Presse (Aug. 12, 2014) [hereinafter “Gécamines press release, August 2014”].
- 485 BCC statistics, November 2011, 1; BCC statistics, July 2015, 1.
- 486 Les mines au coeur des réseaux ethniques, 2013, 15.
- 487 RDC: Un haut responsable de la Gécamines révoqué par le Président Kabila, DH.be (July 27, 2014); Pourquoi Ahmed Kalej a été renvoyé de ces fonctions, Jeune Afrique (Aug. 4, 2014).
- 488 Gécamines press release, August 2014.
- 489 Gécamines press release, August 2014.
- 490 Roger Kas, Kalej s'en va la queue entre les pattes, Katanga News (Aug. 1, 2014).
- 491 Gécamines director interview, September 2014; Tenke Fungurume Mining, Payments to Public Treasury and DRC Government Agencies 2009–2014, Presentation Strength in Resources, 2015 (undated, on file with The Carter Center) [hereinafter “TFM Payments 2009–2014”].
- 492 Gécamines SARL DRP/PGP/GDP, Flash-CID nr. 01/2014 pour le 2e trimestre 2014 (Sept. 8, 2014), 21 (on file with The Carter Center) [hereinafter “Gécamines Flash Report 01/2014”]; Gécamines press release, August 2014. According to a COPIREP interviewee, “The HMS plant overheated and broke down because employees used the wrong oil. Someone had to call Kalej to inform him the plant stopped producing.” (COPIREP interview, 2014). A Gécamines employee told The Carter Center, however, that similar to the trucks, the plant was “obsolete” from the start and broke down because of its poor quality (The Carter Center interview with Gécamines senior employee in Lubumbashi (July 2015) [hereinafter “Gécamines employee interview, July 2015”].
- 493 DRC prosecutor general, letter Nr. 5843/RMP7006/PG/KAS/2016 to the head of the Kinshasa/Matete Bar, undated (October 2016) (on file with The Carter Center); Pygma Group on behalf of Mr. Kalej, Le parquet général blanchit Ahmed Kalej Nkand, press release (Oct. 14, 2016) (on file with The Carter Center).

- 494 There is a general sense among those interviewed for this report that Yuma is controlling Gécamines. This was clear in the Carter Center's attempts to interview both Yuma and the newly appointed ad interim CEO in November and December 2014. When Yuma proved too busy to receive Carter Center staff, the Center suggested interviewing Kamenga instead. Yuma said this required his authorization. See also Gécamines, Communication du PCA: Programme de Production de 51,000 tonnes de cuivre, press release (Sept. 4, 2014) [hereinafter "Gécamines chairman statement, 2014"].
- 495 Gécamines chairman statement, 2014.
- 496 Chenge Mulubwe, Lettre ouverte à tous les notables Katangais: Situation catastrophique à la Gécamines [letter from the president of the Patriotes Katangais Aile Radicale (PAKAR) to the notables of Katanga province] (March 26, 2015) [hereinafter "Mulubwe, lettre ouverte aux notables, 2015"].
- 497 www.gecamines.cd.
- 498 Gécamines Strategic Development Plan, 2012–2016, 17.
- 499 Katanga: La Gécamines double sa production, Radio Okapi (Oct. 10, 2014).
- 500 RDC/Mines: 30 percent d'augmentation de la production du mois de mars Gécamines, ACP/Datac (April 15, 2014). The ACP article referred to a monthly production of 1,553 tons, implying annual production of 18,369 tons. In 2010, Gécamines produced slightly over 20,000 tons of copper (BCC statistics, July 2015, 1).
- 501 PMMM OPBK, Quand un géant se réveille : La relance de la Gécamines est effective, Le Groupe L'avenir (May 12, 2015).
- 502 Banque Centrale du Congo, Condensé hebdomadaire d'informations statistiques Nr. 10/2016 (March 16, 2016), 1 [hereinafter "BCC statistics, March 2016"].
- 503 BCC statistics, March 2016.
- 504 Yuma Presentation at DRC Mining Week, 2016, 10. By November 2016, Yuma was once again citing the famed 100,000-ton target, this time delaying the timetable until 2018 (H. Sanderson and N. Hume, Gecamines Woos Chinese Investors for Congo Mining Projects, Financial Times (Nov. 24, 2016) [hereinafter "Sanderson and Hume, Gecamines Woos Chinese, November 2016"].
- 505 Sanderson and Hume, Gecamines Woos Chinese, November 2016; see also, Aaron Ross, UPDATE 2-Congo State Miner Plans to Cut Workforce, Will Invest US\$717 Mln, Reuters (June 8, 2016).
- 506 RFI, Yuma interview, September 2016, at 27:21.
- 507 Art. 4, Contract n. 1546/12629/SG/GC/2015 between Gécamines and Congo Dongfang International Mining SARL relatif à la cession totale du Permis d'Exploitation (PE) 527 (June 2015).
- 508 Government official interview, July 2015; Gécamines employee interview, July 2015; Katanga : dix mille creuseurs artisanaux de Kolwezi contre leur délocalisation dans le site de Mutoshi, MediaCongo (July 10, 2015).
- 509 According to two independent sources, the first of three basins of tailings at Panda was sold for at least US\$42 million. The latter two basins were sold for at least US\$23 million (the Carter Center interview with government official in Lubumbashi, September 2015 [hereinafter "Government official interview, September 2015"]; the Carter Center interview with corporate source with direct knowledge of the deal in Lubumbashi (September 2015)).
- 510 The Carter Center phone interview with government official (September 2015). This sale—and the problematic identity of the buyer—was confirmed by another government official (government official interview, September 2015).
- 511 Aaron Ross, Congo State Miner Signs MOU With Chinese Firm to Raise Copper Output, Reuters Africa (Jan. 25, 2016) [hereinafter "Ross, Gécamines MOU With CNMC, January 2016"].
- 512 The Carter Center interview with ministerial adviser in Kinshasa (February 2014).
- 513 CNMC, CNMC Vice President Tao Xinghu Called on the First Lady of the Democratic Republic of Congo, press release (July 3, 2014).
- 514 CNMC, CNMC President Zhang Keli Meets With DRC President Kabila, press release (June 25, 2015).
- 515 Gécamines, Gécamines SA: Signature d'un Accord-cadre avec China Nonferrous Metal Mining, press release (undated, June/July 2015).
- 516 CNMC, CNMC President Meets President of DRC Joseph Kabila, press release (Sept. 4, 2015); Tom Wilson, Congo's Gécamines Says It Closed China Deal on Flagship Project, Bloomberg News (Jun. 23, 2017).
- 517 For criticism of these 2015 deals, see, generally, Mulubwe Lettre ouverte aux notables, 2015.
- 518 Katanga: les enseignants d'écoles de la Gécamines réclament 4 mois de salaire, Radio Okapi (May 30, 2015); Kolwezi: les agents de la Gécamines réclament 3 mois de salaire, Radio Okapi (June 16, 2014).
- 519 The Carter Center interview with Gécamines staff in Lubumbashi (August 2015).
- 520 Gécamines Strategic Development Plan, 2012–2016, 38. In more recent statements, Yuma has suggested that the debt was as high as US\$1.7 billion in November 2010. The sources of this new number remain unconfirmed (Yuma Presentation at DRC Mining Week, 2016, 7).
- 521 Gécamines Plan de Redéploiement, 2013, 11 (debt of US\$962 million on Dec. 31 2012, mainly as a result of the state's takeover of Gécamines' noninsurable debt); Gécamines Indaba presentation, 2014, slide 17.
- 522 COPIREP interview, 2014.
- 523 COPIREP interview, 2014.
- 524 COPIREP interview, 2014 ; Gécamines Plan de Redéploiement, 2013, 11; Gécamines Indaba Presentation, 2014, slide 17.
- 525 See RFI, Yuma interview, September 2016.
- 526 Paris allège la dette de la Gécamines de US\$103 million USD, Radio Okapi (March 9, 2012, modified on Aug. 8, 2015). Details on the two loans are provided in Gécamines, États Financiers en Francs Congolais 2010–Notes Relatives au États Financiers, 43–44 (unpublished).
- 527 Gécamines chairman presentation, 2016. Yuma celebrated this as a success in reducing Gécamines' debts from its 2001 levels. Mines & Industries magazine also cited a figure of US\$1.6 billion in July 2016 (La Rédaction, Gros coup de balai à la Gecamines, Mines & Industries magazine (July 18, 2016)).
- 528 Gécamines, Partnership Results (May 2015) (on file with The Carter Center) [hereinafter "Gécamines Partnership Results, May 2015"].
- 529 Unless indicated otherwise, all royalty calculations are based on the contractual clauses of the joint venture at stake, using the EITI declaration for *redevances minières* and assuming deductible costs (Mining Code, Art. 241) of 10 percent.
- 530 EITI DRC 2010 report; EITI DRC 2011 report; EITI DRC 2012 report; EITI DRC 2013 report; and EITI DRC 2014 report.
- 531 This is the sum of (1) estimated lease payments for 2012 (based on the contractual formula for lease payments, AMCK/MMG's declaration of

*redevances minières* and assuming deductible costs of 10 percent) and (2) the declaration of MMG that it agreed to pay Gécamines US\$55 million to get its approval for the Anvil Mining acquisition (MMG Anvil Offer Approval, 2012).

532 This estimate is likely high, as the company advanced some lease payments in 2012.

533 OMG 10-K 2012, 66. GTL's majority shareholder OM Group confirmed in its third quarterly report of 2012 that as of "Dec. 31, 2011, US\$92.8 million was deposited with the court related to the FG Hemisphere injunction (...). The injunction obtained by FG Hemisphere was released during the third quarter of 2012. As of Sept. 30, 2012, US\$22.8 million related to the Marange injunction remains on deposit with the court" (OM Group, Inc., Form 10-Q for the quarterly period ended Sept. 30, 2012, 15, available through the U.S. Securities and Exchange Commission's EDGAR database).

534 This was the amount held up in the Jersey court because of the debt claim of a company called Marange. OM Group confirmed in its first quarterly report of 2013 that as of "Dec. 31, 2012, US\$22.8 million remained on deposit with the court (...). In January 2013, the case related to the second [Marange] injunction was dropped, and remaining funds on deposit with the court were released by GTL to Gécamines in March 2013." This amount does not include tailings payments for 2013 itself, which may amount to well over US\$10 million extra, but have not been included here. The contractual formula to calculate tailings payments is available in the 1997 Slag Tailings agreement. To estimate the payments, one needs to know the fluctuation of the cobalt price and the quantity, quality, and timing of exported cobalt shipments. These data are available in approximated form at the provincial mines division, but not for GTL-STL. This makes it challenging to estimate the amounts due in 2013 or 2014.

535 See explanation at the end of the previous footnote.

536 MUMI Asset Sale Agreement, 2011; Kansuki Asset Sale Agreement, 2011.

537 Mutanda Kansuki Merger Announcement, 2013.

538 Kavanagh, Gecamines to Get US\$269M, July 2012.

539 Tenke Fungurume Mining, Payments to Public Treasury and DRC Government Agencies Pre-production-2014 (on file with The Carter Center [hereinafter "TFM Payments until 2014"]).

540 George Forrest interview, July 2015; Gécamines director 2 interview, August 2015.

541 Gécamines director interview, September 2014; TFM payments 2009–2014; COPIREP interview, 2014.

542 The Carter Center interview with senior Gécamines employee in Lubumbashi (August 2015) [hereinafter "Gécamines employee interview, August 2015"]; Gécamines Business Plan presentation, 2013, slides 11–14.

543 Gécamines Business Plan presentation, 2013, slides 11–14.

544 Kamoto Copper Company SA, Rapport du Statuaire sur les Etats Financiers au 31 décembre 2014 (March 31, 2015), 9 (on file with The Carter Center); Fleurette group, Fleurette group statement re: KCC royalties, press statement (Nov. 15, 2016) (on file with The Carter Center); La Générale des Carrières et des Mines, Africa Horizons Investments Limited and Kamoto Copper Company, Accord Tripartite sur les Royalties (Jan. 22, 2015) (on file with The Carter Center).

545 Kavanagh, Gecamines to Get US\$269M, July 2012.

546 Ekanga interview, October 2016.

547 To start, the Sicomines contracts are ambiguous as to the beneficiary of the signing bonus. The 2008 Convention Agreement reads as follows:

"The Chinese party commits to paying a signing bonus of... 350,000,000 USD to the Congolese party [to the contract]." (Sicomines Collaboration Agreement, 2008, Art. 5.1) The Convention was signed directly by the DRC state, so the Congolese party here is the DRC state. The separate 2008 Joint Venture Agreement between the Congolese companies and Gécamines includes a similar clause—again promising US\$350 million for the "Congolese party," which in this case is Gécamines (Convention de Joint Venture entre le Groupe Gécamines et le Consortium (April 22, 2008), Art. 4.3 [hereinafter "Sicomines Joint Venture Agreement 2008"]). As for the actual payments (US\$175 million in 2009 and US\$175 million in 2012), EITI reports are ambiguous as well. The 2010 EITI report contains three contradicting versions of where the first tranche went: In one paragraph, the report states that all US\$175 million went to Gécamines; in a table just below, it lists "the Central Bank and Gécamines" as the beneficiaries; and in yet another table, it indicates that US\$156 million has been used for infrastructure projects (EITI DRC 2010 Report, 110-111). The 2012 EITI report indicates that the Central Bank received the second tranche and does not mention whether part or all of it was transferred to Gécamines (EITI DRC 2012 Report, 19). Last but not least, the letter from the China Bureau to The Carter Center indicates that the total amount of the second signing bonus installment was transferred to the public treasury in two steps: US\$125 million on June 28, 2012, and US\$50 million on Nov. 16, 2012 (BCPSC letter, August 2017, 4). That said, the official presentation of the 2012 accounts indicates that only 54.6 billion Congolese francs (approx. US\$59.3 million) arrived at the Treasury (Ministère des Finances, Loi no.14/007 du 21 février 2014 portant reddition des comptes du budget du pouvoir central pour l'exercice 2012 [Law on the presentation of budgetary accounts of the central authorities for the fiscal year 2012], Journal Officiel (March 15, 2014) (part 1), Recettes exceptionnelles [exceptional revenues]).

548 Gécamines director interview, December 2011.

549 Gécamines employee interview, July 2015.

550 Gécamines employee interview, August 2015.

551 The lack of transparency of revenues and expenses is also an issue for other state-owned mining companies. The Carter Center's partner organization Le Cadre de Concertation de la Société Civile de l'Ituri sur les Ressources Naturelles has focused on highlighting this problem with respect to state-owned gold mining company SOKIMO in the northeast of the country, including an analysis of revenue flows and advocacy for the disclosure of financial statements. See, e.g., Le Cadre de Concertation de la Société Civile de l'Ituri sur les Ressources Naturelles, Dossier de Plaidoyer sur 1. La Redevance Minière : Cas de Kibali Goldmines SA 2. Les Revenus des Entreprises du Portefeuille de l'État : Cas de la Société Minière de Kilo Moto (SOKIMO) (June 2016); and Le Cadre de Concertation de la Société Civile de l'Ituri sur les Ressources Naturelles, Message de Plaidoyer à Son Excellence Monsieur le Premier Ministre du Gouvernement de la République Démocratique du Congo (June 2016).

552 EITI DRC 2013 report, 45, listing 21 joint ventures, including CMSK (then fully owned by Gécamines). In 2014, Gécamines sold its stake in Société d'Exploitation de Kipoi. In that case, it held on to the right to collect royalties.

553 Gécamines director 2 interview, August 2015.

554 TFM's annual gross revenue exceeded US\$1.5 billion in 2013 and 2014. The company became profitable in 2014, and its net cash costs are still significantly lower than the copper price (net cash costs of US\$1.15/lb of copper in 2014, while the lowest copper price between early 2010 and October 2016 was US\$1.96/lb). Freeport does not plan any significant new capital investment while the copper price remains relatively low, which means that TFM is expected to remain profitable in the next few years and will pay out significant dividends. Freeport-McMoRan, Value at Our Core—Annual Report 2014, 14; InvestmentMine, Historical Copper Prices and Price Charts and Six-month Copper Prices and Price Chart).

- 555 See, generally, Elisabeth Caesens, Podcast on mining in the DRC—Part I, Congo Siasa blog (May 28, 2015).
- 556 Bloomberg Chabara License Sale, 2015; Gécamines SA, Communiqué sur la situation de la JV Chabara, press release (June 26, 2015).
- 557 This can be seen when superimposing mapping layers of artisanal mining sites and mining concessions allocated by the Mining Registry (CAMI).
- 558 Les Patriotes Katangais—Aile Radicale (PAKAR), letter from Mr. E. Mulubwe to Gécamines Chairman A. Yuma—subject: Notre réaction à votre discours tenu lors de la cloture du Conseil d'Administration fin mars 2016 (April 19, 2016), 3 (on file with The Carter Center); Tom Wilson, Glencore Cobalt Supplies in Congo Face Holdup Over Mine Row, Bloomberg News (April 19, 2017); Tom Wilson, Congo Cobalt Miner Warns of Shutdown After Court Declines Ruling, Bloomberg News (May 26, 2017).
- 559 Wilson, Gecamines Sold Copper Mine, October 2016; see also Aaron Ross, Congo Urged to Release Contract on Metalkol Stake Sale, Reuters (Oct. 26, 2016).
- 560 The Carter Center, Carter Center Urges DRC to Disclose Sale Contract for State-owned Mining Company's Metalkol Share, press release (Oct. 24, 2016).
- 561 According to separate sources on both sides of the negotiation table interviewed between May and November 2016, the initial fee Gécamines reportedly requested was a multiple of US\$100 million.
- 562 Wilson, US\$100 million to Clear China Moly Buy, February 2017.
- 563 Gécamines, Gécamines déplore le rapport biaisé de Global Witness et répond aux allégations, press release (July 27, 2017), 1.
- 564 EITI Standard 2013, Requirement 3.6.c.
- 565 EITI Standard 2013, Requirement 3.6.a.
- 566 EITI Standard 2013, Requirement 3.6.a.
- 567 EITI Standard 2013, Requirement 3.6.a.
- 568 EITI Standard 2013, Requirement 3.6.b.
- 569 See, generally, EITI DRC 2012 report, EITI DRC 2013 report, EITI DRC 2014 report.
- 570 EITI DRC 2012 report, 42; EITI DRC 2013 report, 46.
- 571 EITI DRC 2012 report, 39–40; EITI DRC 2013 report, 42–43.
- 572 See, e.g., Gécamines, Réponses de Gécamines Sarl au questionnaire du FMI sur la Cession des Parts Sociales dans MUMI Sprl (Sept. 16, 2011); “Les parts sociales vendues sont au nom de Gécamines Sarl et non au nom de l'Etat. La Loi de désengagement de l'Etat s'applique au désengagement de ce dernier vis-à-vis du capital social des entreprises du portefeuille de l'Etat mais ne s'étend pas à la cession, par ces dernières, des éléments de leur patrimoine.” In response to questions from the IMF about directing funds received as a result of the sale of shares in Mutanda Mining to the state, Gécamines argued that the requirement to share such revenues and generally to conform to the law on state divestment only applied to sales of assets held directly by the state and not to those held indirectly via its state-owned companies. See, e.g., Gécamines vs. FG Hemisphere, 2012, 68: “The board is equally unpersuaded that any real significance should be attached to Gécamines' failure to achieve payment of more than half the premiums on the mining review renegotiations. Gécamines maintained its right to the whole, and succeeded in getting half, and it sought to achieve a setoff of the balance, even though unsuccessfully.” See also EITI DRC 2012 report, 72–73, stating that revenue flows from share sales, signing bonuses, and royalties are all collected by state-owned companies rather than by the state.
- 573 EITI DRC 2012 report, 189–195; EITI DRC 2013 report, 226–230.
- 574 Franck Nzira, on behalf of the EITI-DRC Technical Secretariat, response addressed to The Carter Center, titled Demande d'informations (Aug. 5, 2017).
- 575 The World Bank and the finance ministry's reform committee (Comité Technique de suivi et evaluation des réformes) meet to assess the implementation of the economic governance matrix. See e.g., governance matrix, March 2011; governance matrix, May 2013; Ministry of Finance of the Democratic Republic of Congo, Comité Technique de suivi et évaluation des Réformes (CTR), Programme de Gouvernance Economique—Matrice d'actions à mener suivie conjointement par la Banque Mondiale et le CTR (September 2015) (on file with The Carter Center) [hereinafter “Governance Matrix, September 2015”].
- 576 Governance matrix, May 2015, 2.
- 577 Governance matrix, May 2015, 2. See also EITI Standard 2013, Requirement 3.12.b; EITI DRC 2012 report, 42; EITI DRC 2013 report, 46.
- 578 CdC/RN, MMKi & POM, Qui Cherche Ne Trouve Pas 2015, 18–21.
- 579 Governance Matrix, September 2015, 2.
- 580 SEK Asset Sale Agreement, 2014. The government published the asset sale contract so there was no reason not to communicate this with Parliament.
- 581 Governance Matrix, September 2015, 4.
- 582 Governance Matrix, September 2015, 4.
- 583 Governance Matrix, May 2013, 2; Governance Matrix, September 2015, 4–5.
- 584 Governance Matrix; COPIREP interview, 2014.
- 585 Franz Wild, Congo Violated Decree by Not Posting Copper Mine Sale, IMF Says, Bloomberg News (June 26, 2015).
- 586 The Carter Center interview with World Bank representative Eustache Ouayoro in Kinshasa (September 2013).
- 587 Law on the Transformation State-Owned Enterprises 08/007 2008, Art. 14. While this transitional measure was supposed to end after three years (i.e., July 2011), the measure was extended. République Démocratique du Congo, Loi No. 12/009 du 31 décembre 2012 modifiant la Loi n° 08/007 du 07 juillet 2008 portant Dispositions Générales Relatives à la Transformation des Entreprises Publiques [DRC Law Modifying the Law Concerning General Provisions Related to the Transformation of Public Enterprises] (Dec. 31, 2012), Art. 1. See John Williams, Recommendations for Improving Oversight of State-Owned Companies of the Democratic Republic of Congo, The World Bank—Promines Project (Oct. 13, 2011), 5 (on file with The Carter Center) noting that the government was in the process of extending the bankruptcy moratorium. COPIREP staff confirmed in December 2014 that a law was adopted to extend the moratorium but that it would “expire soon” (COPIREP interview, 2014).

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# Case Studies

The Carter Center study of Gécamines and its partners includes four in-depth case studies of some of the most important investments in the DRC copper belt, as described in the introductory portion of this report.

## **Case Study 1: Kamoto Copper Company**

In the Red: Limited Benefits From Congo's Heavily Indebted Former Flagship Mines

## **Case Study 2: Mutanda Mining**

Strictly Private: Lost Opportunities in the Early Sales of Congo's Stakes in the World's Largest Cobalt Mine

## **Case Study 3: Tenke Fungurume Mining**

Reading the Fine Print: Repeated Negotiations to Split the Benefits From Congo's Largest Copper Project

## **Case Study 4: First Quantum Minerals**

Hard to Heal: The Long Aftermath of Congo's Decisions to Cancel Two Fast-Growing Mining Projects

These case studies will be released under separate cover in late 2017 via the Carter Center website ([www.cartercenter.org](http://www.cartercenter.org)) and Congo Mines website ([www.congomines.org](http://www.congomines.org)).

# List of Abbreviations

<b>AFDL</b>	Alliance des Forces Démocratiques pour la Libération du Congo-Zaïre/ Alliance of Democratic Forces for the Liberation of Congo-Zaire	<b>EGMF</b>	Entreprise Générale Malta Forrest
<b>AMCK</b>	Anvil Mining Concentrate Kinsevere	<b>EITI</b>	Extractive Industries Transparency Initiative
<b>BCC</b>	Banque Centrale du Congo	<b>ENRC</b>	Eurasian Natural Resources Corporation
<b>BCPSC</b>	Bureau de Suivi et de Coordination du Programme Sino-Congolais	<b>FGH</b>	FG Hemisphere
<b>BVI</b>	British Virgin Islands	<b>FQM</b>	First Quantum Minerals
<b>CAMEC</b>	Central African Mining and Exploration Company	<b>FTSE</b>	Financial Times Stock Exchange
<b>CAMI</b>	Cadastre Minier	<b>Gécamines</b>	Générale des Carrières et des Mines
<b>CDM</b>	Congo DongFang Minerals	<b>GTL</b>	Groupement du Terril de Lubumashi
<b>CEO</b>	Chief Executive Officer	<b>IFC</b>	International Finance Corporation
<b>Chemaf</b>	Chemicals of Africa	<b>IMF</b>	International Monetary Fund
<b>CMSK</b>	Compagnie Minière de Sud-Katanga	<b>KCC</b>	Kamoto Copper Company
<b>CMT</b>	Compagnie Minière de Tondo	<b>KMT</b>	Kingamyambo Musonoi Tailings
<b>CNMC</b>	China Nonferrous Metals Mining Company	<b>KOV</b>	Kamoto Olivera Virgule
<b>COMILU</b>	Compagnie Minière de Luisha	<b>MIKAS</b>	Compagnie Minière de Kasombo
<b>COMMUS</b>	Compagnie Minière de Musonoi	<b>MKM</b>	Minière de Kalumbwe Myunga
<b>COPIREP</b>	Comité de pilotage de la réforme des entreprises publiques	<b>MMG</b>	Minmetals Resources
<b>CSP</b>	Conseil Supérieur du Portefeuille	<b>SEK</b>	Société d'exploitation de Kipoi
<b>DCP</b>	DRC Copper and Cobalt Project	<b>SIMCO</b>	Société Immobilière du Congo
<b>DGRAD</b>	Direction Générale des Recettes Administratives, Judiciaires, Domaniales et de Participations	<b>SMCO</b>	Shituru Mining Corporation
<b>DPA</b>	Deferred Prosecution Agreement	<b>SMK</b>	Société Minière de Kisenge
<b>DRC</b>	Democratic Republic of Congo	<b>SMKK</b>	Société Minière e Kabolela et Kipese
<b>EGM</b>	Economic Governance Matrix	<b>SOKIMO</b>	Société Minière de Kilo Moto
		<b>STL</b>	Société pour le Traitement du Terril de Lubumbashi
		<b>TAF</b>	traitement à façon
		<b>TFM</b>	Tenke Fungurume Mining





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