



global witness

Congolese government should ensure transparency and independent oversight in mining contract review

London, 17 May 2007 – Global Witness today urged the government of the Democratic Republic of Congo (DRC) to ensure that its planned review of mining contracts breaks the legacy of decades of corruption and impunity in the mining sector.

During the conflict in the DRC, which began in 1996, and in the three year transition leading up to elections in 2006, large proportions of the country's mineral wealth were signed off in opaque deals which provided great benefits to the companies concerned but few or none to the country as a whole. Senior politicians, military officials, rebel leaders and other individuals also profited personally from these deals to the detriment of the population. Little is known about what happened to the money paid for these contracts. Profits were not channelled into development or used to reduce poverty.

On 20 April 2007, the Minister of Mines, Martin Kabwelulu, announced the creation of an inter-ministerial commission to 'revisit' mining contracts between private companies and the state or public enterprises.ⁱ

The announcement came after several years of domestic and international pressure by civil society and others to review unfavourable contracts signed over the last ten years.

"Global Witness welcomes the decision to review these contracts," said Patrick Alley, Director of Global Witness. "However, if this process is to be credible and restore public trust, the government needs to ensure the highest standards of transparency, independence and broad consultation."

Global Witness said the government should make clear that it is prepared to cancel contracts found to be illegal and significantly amend those which provide a raw deal for the country. The organisation is concerned at an apparent reluctance on the part of the government to consider cancelling contracts.

"The argument that cancellation of contracts might deter future investors should not be used as an excuse for rubber-stamping illegal or unfavourable deals," said Patrick Alley.

"This review is a unique opportunity to halt the systematic looting of Congo's resources and to set a precedent for responsible investment practices, in accordance with national and international laws and standards."

Global Witness also called on donor governments, the World Bank and mining companies to support a meaningful review of mining contracts, and in particular the renegotiation or outright cancellation of contracts which are manifestly illegal or inexplicably provide disproportionate advantages to certain parties.ⁱⁱ

Global Witness also expressed concern about the composition of the commission, which is limited to representatives of ministries and governmental departments, and recommended an independent oversight mechanism to guard against potential corruption and interference.

Global Witness's recommendations for minimum requirements for the review of contracts:

- The government should publish all the contracts under review and make them widely available.
- The review should cover all contracts transferring mining assets or assigning concessions.
- The commission should publish the terms of reference of the review and the criteria used for analysing and evaluating the contracts. All contracts should be evaluated against the same criteria.
- The commission should seek comments on the contracts from a broad range of actors at local, provincial, national and international levels, including civil society organisations and populations living in mining areas.
- The review should consider, among other things, whether the contracts and the circumstances of their signature conform to the law; the human rights, social and environmental implications of the contracts, especially on the populations in the areas concerned; and whether the proportions of the shares and profits allocated to the company and the state (or state-owned enterprise) are fair and reasonable.
- The review should take into account information contained in reports which have already been published, including the report of the Lutundula Commission,ⁱⁱⁱ reports by non-governmental organisations, and information in reports that have remained confidential, such as legal and financial audits funded by the World Bank.
- The commission should adopt a realistic time-frame for the review. The current time-frame of three months for analysing 60 contracts does not seem realistic if the review is to be thorough and a full range of opinions are to be sought.
- The government should ensure that the review is adequately funded and make public the funding sources.
- A mechanism for ensuring independence of the review should be set up as an integral part of the process. This could take the form of a separate oversight body made up of a small number of independent, international experts and representatives of civil society, who would have full access to all the contracts and provide advice.
- Members of the commission should resist attempted interference, pressure or corruption by companies or individuals with a stake in the contracts and should report any such attempts to pervert the course of the review.
- The full findings and recommendations of the review should be made public.

For further information, please contact Carina Tertsakian at +44 207 561 6372.

Note to editors:

Global Witness is an independent non-governmental organisation which investigates and campaigns on the links between natural resource exploitation, conflict and corruption.

All Global Witness's publications can be found at www.globalwitness.org

ⁱ Arrêté ministériel no.2745/Cab.min/Mines/01/du 20/04/2007 portant mise sur pied de la commission ministérielle chargée de la revisitation des contrats miniers.

ⁱⁱ An interesting precedent was recently set in Liberia, with the renegotiation of an iron ore contract with Mittal Steel, the world's largest steel company. Liberian President Ellen Johnson Sirleaf demonstrated that it is possible to renegotiate large deals in a way which provides much-improved terms and benefits for the country. As with many of the contracts in the DRC, the Mittal contract had originally been signed by an unelected transitional government; it was revised following the election of a new government. See Global Witness news release "Mittal Steel did the right thing – will Firestone?", 30 April 2007.

ⁱⁱⁱ The parliamentary commission known as the Lutundula Commission was tasked with reviewing the economic and financial contracts signed during the war in the DRC. In June 2005, it submitted a detailed report which concluded that many mining deals signed between 1996 and 2003 were illegal or of limited value to the country's development. Almost two years later, the commission's report has still not been debated by the National Assembly nor acted upon by the government.