



## ACTION POUR LA DEFENSE DES DROITS HUMAINS

ADDH

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#### "The Kamoto Copper Company Mining Project: Who benefits from it? "

(English version translated from original French text.)

*L'Action pour la Défense de Droits Humains (ADDH)*, a civil society organization specializing in mining issues, is concerned about the unprofitable nature of the Kamoto Copper Company (KCC) project for both the Congolese State and the *Générale des Carrières et des Mines (Gécamines)*.

Indeed, during the research leading to the publication of its report entitled "The Kamoto Copper Company Mining Project: Who benefits?" ADDH considered the issues related to the suspension of production by KCC, to fiscal and parafiscal advances, and to the impact of fiscal and parafiscal flow payments.

The main fiscal and parafiscal risks identified in the above-mentioned points are as follows:

1. The non-payment of significant income tax through a strategy that seems to minimize the tax base by:

- The high cost of capital from 2013 to 2015;
- The reliance on loans from the subsidiary companies of Glencore, the parent company of the project, at rates that appear to be high, in violation of Article 254 of the Mining Code, which requires loans from affiliates be as favorable or better than the rate and the conditions that the title holder can obtain from non-affiliated lenders;
- The addition of supplemental elements to operating costs contrary to those provided for in Article 252 of the mining code, such as marketing studies, temporary or permanent installations and equipment related to the extraction and processing site, transportation infrastructure and equipment, and on- and off-site accommodation and office facilities;

2. The contradiction between the US\$22,165,101 income tax amount reported to EITI in 2014 and the US\$1,111,409 reported in KCC's financial statements;

3. The concealed sale of Gécamines shares in the KCC project, which took the form of a transfer of royalties to Africa Horizon Investment Limited, a subsidiary of the Fleurette group;

4. The declaration of advance payments of the road and drainage tax without a formal agreement between KCC and the provincial authorities, which would define the terms of compensation;
5. Gécamines' indifference to claiming its rights (a signing bonus of US\$15,000,000 in 2013) in the KCC project, despite Article 14.2 of the 2009 Consolidated and Reformulated Joint Venture Agreement providing for notification for non-execution of clauses;
6. KCC's non-payment of lease payment to Gécamines for a total amount of US\$9,450,000 for 2009, 2010, 2011, 2012, 2013 and 2014 in accordance with Article 6.10.a of the Amended, Consolidated and Reformulated Joint Venture Amendment;
7. The non-respect of Article 242 of the Mining Code regarding, on the one hand, the allocation of the mining royalty by the central government to the former province of Katanga and, on the other hand, from the province to the local entities where KCC operates;
8. The lack of sources of verification for the payment of surface area fees by KCC in 2009 and 2010, representing an amount valued at US\$36,651;
9. The shortfall in potential revenues for the Congolese State and Gécamines for the period between 2009 to 2014 totals US\$30,048,531 for all flows analyzed.

Considering the above, ADDH recommends:

***To the National Minister of Mines:***

- Implement the recommendations made in 2007 in the Lutundula Parliamentary Commission Report.

***To the Provincial Government of Lualaba:***

- Significantly reduce the anticipated collection of road and drainage taxes to avoid misallocation and lack of control;
- Undertake continuous monitoring to prevent mining products from being transported untaxed.
- Demand the central government strictly respect Article 242 of the Mining Code regarding the distribution of the mining royalty to the State.
- Transfer the prorated portion, according to the proportion fixed by law, of the amount actually received, from the central government to the territorial entity.

***To the CAMI:***

- Update and make public the indexation rate for the payment of surface area fees in accordance with the provisions of the Mining Code and its regulations.

***To the Revenue-Collection Departments:***

- Ensure that mining companies correctly pay taxes by setting up a rigorous control mechanism that can counter the minimization of flows.

**To KCC SA:**

- Pay the signing bonus in accordance with the 2009 Amended, Consolidated and Reformulated Joint Venture Agreement;
- Pay the lease payment in accordance with Article 6.10.a of the 2009 Agreement;
- Clarify the reason for the additional payment of surface area fees in 2013 and 2014.

**To the GECAMINES:**

- Clarify if the signing bonus of US\$20,000,000 paid in 2010 also covered 2009;
- Publish the agreement signed with Africa Horizon Investment Limited transferring the royalties to it;
- Require KCC SA to pay the lease payments for 2009, 2010, 2012, 2013 and 2014, in accordance with article 6.10.a of the 2009 Amended, Consolidated and Reformulated Joint Venture Agreement;
- Require a revision of Article 6.10.a of the 2009 Amended, Consolidated and Reformulated Joint Venture Agreement to separate the applicable base for the lease and the royalties.

**To Local Communities Impacted by the KCC project:**

- Ask the provincial government for the retrocession of the mining royalty in accordance with Article 242 of the Mining Code.

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