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PRESS RELEASE N ° 001/2017

Analysis of the fiscal and para-fiscal obligations of the Mutanda Mining project

(English version translated from original French text.)

L'Initiative Bonne Gouvernance et Droits Humains, IBGDH, is developing a project to improve the transparency of the DRC mining sector, which is experiencing resurgence with positive and negative effects on the national economy and local communities' way of life, namely those of the province of Lualaba, which is rich in mining projects including Mutanda Mining. This project is ranked among the five major mining companies at the national level, and IBGDH believes that it could play an important role for the State budget, in the revitalization of Gécamines and in the development of local communities through the payment of significant fiscal and parafiscal revenues.

Hence the importance of analyzing and understanding the fiscal and parafiscal obligations applicable to the Mutanda Mining project: annual surface area fees, the mining royalty, the income tax (IBP), the road and drainage tax, the concentrates tax, royalties, signature bonuses, and assets sale.

Based on this, IBGDH has published a report entitled "MUTANDA MINING: A Withdrawal that Benefits the Giant," the conclusions of which are summarized as follows:

- The Congolese State collected more than it should for the surface area fees relative to the Exploitation Permit 643. This stems from the fact that Mutanda Mining and Kansuki Mining would have both paid for the same permit at the time of their merger, in 2013, for a total of US\$105,797;
- The mining royalty raises the problem of the rate of deductible expenses applied to Mutanda, the calculation of which is not known. There is a difference of US\$260,543.64 between the amounts contained in the debit note established by the Provincial Division of Mines and those declared by Mutanda Mining to EITI;
- For the IBP, the team noted the nonexistence of Mutanda Mining's financial statements. In addition, it noted the enormous gaps between Mutanda Mining's statements to EITI and the team's estimates of US\$131,914,232 in the case that Mutanda did not constitute the legal reserve, and US\$115,054,232 in the case that Mutanda Mining did constitute a legal reserve.
- As for provincial taxes, Mutanda Mining's statements to EITI are higher than the researchers' estimates of US\$17,451,471 for the road and drainage tax and US\$4,369,990 for the tax on concentrates;
- The withdrawal of Gécamines assets in the Mutanda Mining project without a true valuation is a loss of future gains for the Congolese State and for Gécamines itself. By remaining a shareholder in the project, Gécamines would have received US\$225,824,070 in royalties and signing bonuses until 2016, without including the dividends that it would have received as a shareholder. Why withdraw, then, when it only benefits the other shareholders.

Considering all of the above, the IBDHR recommends:

To the Central Government:

- Effectively apply the provisions of Article 242 of the Mining Code concerning the distribution of the mining royalty;
- Require public and private companies to publish their financial statements in accordance with OHADA accounting rules;
- Prohibit state-owned companies from selling their assets without valuations and a prior public tender;
- Conduct an audit to evaluate Gécamines' assets in the Mutanda Mining project and recover the shortfall;
- Publish the rules and practices governing financial reporting between state-owned companies and the State, and in particular the Ministry of the Portfolio;

To the National Ministry of Mines:

- Publish all contracts, amendments and terms of transactions involving Gécamines in the Mutanda Mining project, in particular Amendments 1 and 2;

To the DGI:

- Demand payment of the unpaid IBP of US\$115,054,232 for the period between 2012 to 2014;

To the Provincial Government:

- Refrain from levying advance and lump sum taxes on income owed by mining companies to the province;
- Require that the central government transfer to the province its share of mining royalty, namely the 40% owed to the province of Lualaba;
- Publish provincial edicts fixing rates of the road and drainage tax as well as concentrates tax;

To the Mining Registry:

- Update and publish the list of mining title holders;
- Annually publish the indexation rate of surface rights;
- Ensure payment of the surface rights before transferring a title between two holders;

To the DRLU:

- Publish the amount received from the central government for the mining royalty;
- Publish the sums allocated to the province of Lualaba after the territorial dismemberment;

To the ETD (Luilu Sector):

- Demand from the central government the share of the mining royalty attributable to the Mutanda Mining project, approximately US\$13,268,540.20 for the years from 2012 to 2015;

To the Gécamines:

- Evaluate and make public the value of its assets before the signature of any contract;
- Necessarily use a tender process for any contract or transaction relative to the exploitation of its deposits in accordance with the provisions of Article 33 of the Mining Code and Decree No. 011/26 of 20 of May 2011 regarding the obligation to publish natural resources contracts and their annexes;
- Publish its annual financial reports for the Congolese public;
- Justify the use and the allocation of its various revenues from Mutanda Mining;

To Mutanda Mining:

- Publish its annual financial reports for the Congolese public;
- Clarify its relationship to the Bazano Group;
- Publish the rates used in the calculation of the IBP;
- Indicate whether the legal reserve is considered in the calculation of the IBP;

- Clarify the payment of Exploitation Permit 643 surface area fees during the merger between Kansuki and Mutanda Mining;
- Facilitate an audit to assess the sale of Gécamines' assets in the project.

To civil society organizations:

- Support the actions of the provincial government and the Luilu sector in their demand for the distribution of the mining royalty.

Completed in Kolwezi, January 18, 2017