

CONGO SIASA

A BLOG ON CONGO, ITS POLITICS AND TRIBULATIONS.

PAINTING BY CHERI SAMBA

Lokuta eyaka na ascenseur, kasi vérité eyei na escalier mpe ekomi. Lies come up in the elevator; the truth takes the stairs but gets here eventually. - **Koffi Olomide**

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Congo's Mining Contracts Still Shrouded in Secrecy

This is a guest blog by Elisabeth Caesens, DRC Mining Governance Project Coordinator for the Carter Center. The views expressed here are her own and do not represent those of the Carter Center.

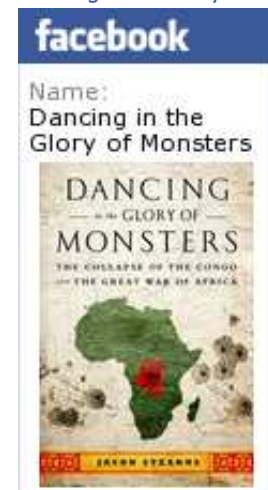
A few days ago, the World Bank reviewed Congo's improvements in natural resource governance and expressed its satisfaction on mining contract disclosure, something the Congo promised to do after it signed a few disquieting contracts in 2010.

The optimism stands in sharp contrast with the current state of contract transparency, as the overwhelming majority of agreements are carefully kept confidential. For copper rich Katanga, only two contracts are in the public domain. Two out of 30, or 40, or 50 - who knows.

Let's start with what is public: : the controversial Metalkol and Sodifor contracts which replaced First Quantum's cancelled KMT project (in which the World Bank's IFC had a 7.5% stake) and its revoked Frontier license. The deposits were awarded to unknown companies. This 'asset flipping' did not only affect legal security, it also implied several billions of dollars

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of potential new debt. “If Congo wants debt relief, don’t recognize the Metalkol contract”, the IMF reportedly told President Kabila on the eve of the 50th anniversary of independence celebrations. The President promised, debt relief got through, but so did the Metalkol contract a month later. Barely had the presidential endorsed the deal when the junior sold a majority stake to London-listed ENRC.

The president’s betrayal understandably depressed diplomats in Kinshasa who have been working for years on DRC mining governance to improve the business climate and attract major players who find Congo to risky to invest in. After the Metalkol debacle, Promines, a \$90 million World Bank-DfID sponsored mining governance project, was put on hold; other donors reconsidered projects they had in store.

Anti-depressants quickly came in the form of the “[Economic Governance Matrix](#)”, a list of steps aimed at improving extractive industries governance. Congolese authorities promised to publish contracts, concessions, revenues. Ironically, the transparency guidelines themselves were kept secret for several months. Before the Matrix was even finalized, the Government published the Metalkol (KMT) and Sodifor (Frontier) contracts to alleviate political pressure. Technically, not doing so could trigger a repeal of debt relief. But what is nice about the Matrix is that the Government pledges transparency across the board: not just for Metalkol but for all contracts, not just for contracts but for tax payments, concession maps, policies.

Now let’s see what the Matrix did for contract transparency across Katanga’s copper belt. Unfortunately, nothing much. All the copper-cobalt contracts other than the above are secret. There’s probably about 40 of them, including investments just as important as Metalkol. There is Freeport’s two billion investment in Tenke Fungurume Mining (TFM), China’s six billion Sicominex contract, Glencore’s involvement in Katanga Mining (with deposits richer than TFM’s), ENRC’s control over the world’s richest cobalt deposit at Boss Mining well before it added Metalkol to its growing portfolio, OM Group-Forrest exploiting the lucrative Lubumbashi tailings. These are the copper-cobalt lungs that should make Congo breathe, but at this point we don’t know whether it will produce any oxygen, let alone how much, as we ignore the rules the lungs obey to.

Mind you - the Government considers these agreements already public. The Matrix asserts that mining contract disclosure... «Has been carried out. The Ministries of Finance and Mining had published the joint venture contracts between public and privates companies in June 2007 (...) The Metalkol one was published in the Journal Officiel [the journal of state record]. Since January 2011, six (6) new contracts have been published on the website of the Ministry of Mining.”

Indeed, a lot happened since June 2007, when the Government published [63 contracts](#) it wanted to revisit. The Revisitation Commission listed all

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contracts as either 'to be renegotiated' or 'to be cancelled'.

Renegotiations ensued in 2008. In 2009 and 2010, the Ministry of Mines announced the end of the renegotiation process several times, sharing some sector-wide results. But the new terms for individual contracts have never been published. We know barely anything about their content, other than the little information some companies published on the stock-exchange to reassure their shareholders in Toronto or Johannesburg.

We don't even know for sure whether renegotiated contracts exist. I have asked diplomats, activists, investors and government officials alike for copies. A lot of promises ('je peux te les avoir facilement'), a few summaries of renegotiated terms ('they're not final, they need updating'), 3-4 draft supplemental agreements full of track changes ('bon, vous gardez ça pour vous'). The one signed amendment I could glance at is that of TFM ('vous voyez que ça existe'). The amendment was dated December 10, 2011, meaning negotiations went on for at least two more months after the official announcement that the deal was sealed. Four months after signature, the new TFM contract is still awaiting presidential approval. In other words, the terms governing the single biggest private investment in Congo's mining sector could still be changed. The same may be true for many of the other revisited mining contracts.

Other, non-revisited contracts are equally kept secret. Take China's 9 billion infrastructure-for-minerals deal signed in 2008 and renegotiated down to 6 billion in 2009 after strong IMF criticism of the new massive debt it implied. The 2008 contract was leaked efficiently, but hunting down the 2009 amendment is a real pain. There are also the infamous Caprikat and Foxwhelp contracts for oil blocks in Lake Albert which, with three contracts for the same oil blocks in a five year period, were as much of a torn in the eye of the IMF and the World Bank as the First Quantum saga. It didn't help the new investors were better known for their political connections than their geological expertise. Here again, copies circulate from inbox to inbox: we've been waiting for an official publication in vain.

So what is needed now is not anti-depressants, it's vitamins, coffee and other stimulants for people to demand contract transparency for as long as it takes to get the job completely done. Now that Metalkol is published, the Bretton Woods institutions should press for disclosure of all the rest. Global Witness should extend its [advocacy for transparency](#) beyond the China contract. One cannot accuse China of opacity while tolerating it for all the other mining investors. The same goes for local civil society, now absorbed by the new advocacy in vogue - [tax transparency](#). A crucial endeavor, but you cannot track whether companies have paid their dues if you don't know what they owe in the first place. For that, you need contracts. We need them all up there, along with [Metalkol and Sodifor and a few gold and tin contracts](#). *Site en cours de maintenance* (website under construction)? Transparency is like

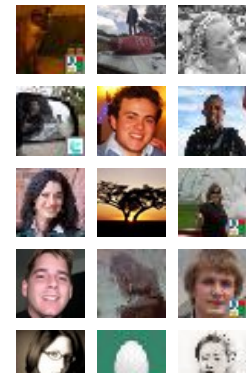
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POSTED BY JASON STEARNS AT 5:40 AM

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