

Albert Yuma-Mulimbi

Words and actions

Executive summary

For ten years, Albert Yuma-Mulimbi, whether as President of the Federation of Enterprises of Congo or Chairman of the Board of Directors of GECAMINES, has profoundly influenced and transformed the mining sector of the Democratic Republic of Congo.

Reform of the 2002 mining code, presented as too favorable to foreign investors according to the World Bank opinion, national consensus on the need to rebalance the industrial mining sector in DRC through renegotiations with partners, adoption of the law on subcontracting in favor of Congolese economic operators, evolution of the legislation on artisanal mining with the creation of a state monopoly on minerals to control the artisanal sector in the cobalt, coltan and germanium, his name is too rarely associated with these major impulses he has been part of which have profoundly changed the industrial mining landscape of the country.

Why this situation, even though the economy of the mining sector has been deeply reformed? Why this situation even though the perception of the Congolese has changed on their mining sector and they no longer accept the dominant narrative of international donors, NGOs and foreign investors which would like to convince them that the management of the Congolese mining sector by multinationals would be the best a most rewarding solution to the exploitation of their raw materials?

Because he is the man who has never ceased to fight this narrative and because by his words and his actions, he deeply contributed to questioning this order established at the dawn of the 2000s which had consecrated the transfer of the Congolese mining sector to foreign interests. Since then, since he took office in December 2010, his name has never ceased to be associated, mainly by international NGOs, through acts of alleged corruption in the mining sector which have totally obscured the reality of his action.

By the way, one might also think in view of the extravagant nature of some of the accusations leveled against him that there could be no other object to these successive veritable smear campaigns than to seek to sully his reputation and blur his major role in favor of the country

through the reform of its mining policy.

Albert YUMA-MULIMBI is above all a patriot, whose words and actions consisted in defending his country against the mining mismanagement.

The junior miners formed for the most part during the period 1996/2002, and which were most often bought by multinationals a few years after, or now the semi-mechanized operations attracted by the rise in the prices of the rarest metals allow a full ecosystem to enrich itself at the expense of the DRC.

His convictions stand in a few words - Independence, Sovereignty and Respect for the Congolese people - in the face of the interests of those who tend to consider the DRC as a zone of free trade and lawlessness, in which one could come and help oneself without paying anything in return while enslaving - for the artisanal chain - part of the Congolese population in a form of modern slavery.

This document aims - based on his advocacy positions and his actions - to recall and put into perspective the action of Albert YUMA far from the unjustified accusations which continue to be propagated against him.

For this, the following analysis will perform a simple exercise, a double-entry Debit - Credit accounting.

At his debit, the document will analyze on the one hand what President Yuma has been accused of for many years now - the alleged losses for the State and GECAMINES he would have been the cause, and which would exceed, 8.8 billion US dollar.

This exercise will make it possible to demonstrate the emptiness of certain accusations which for them had at least the appearance of a certain credibility for 3.8 billion of them, and to demonstrate their grotesque character for the balance.

To his credit, he will be credited with what he said, what he did and what the results were.

Because at this time of speaking no one is denying:

- *That the 2002 Mining Code, which offered the DRC's mining patrimony to globalized liberalism without any tangible return for the country, was largely unbalanced in favor of foreign investors which the 2018 reform he actively contributed has rectified.*
- *That the mining partnerships formed mainly during the decade 1995-2005 have always been to the detriment of the country in general and of GECAMINES in particular is an entire system that must be rectified and that a global renegotiation is required with all players in the mining sector. It has been proved after renegotiations on a case-by-case basis with certain partners he has initiated that the mining patrimony of the State has been enriched by **5.255 billion dollars***
- *That these partnerships in the mining sector, but not exclusively, have captured all local subcontracting flows in favor of their subsidiaries, which does not allow the creation of a local entrepreneurial ecosystem, synonymous with the development of a middle class.*
- *That the mining industry in the country has become more specifically in recent years a form of modern slavery that should be regulated by giving the state the means to control it.*

Of course, other public actors have also defended these sovereigntist struggles for many years, and in particular since the failed revisitation in 2007-2009 which had not produced the expected effects on the rebalancing of the partnerships.

Engaged in this dynamic, endowed with his double legitimacy as National President of the Congolese employer federation since 2005 and Chairman of the Board of Directors of GECAMINES since December 2010 in direct contact with the imbalances of its mining partners, both advocacy actions and those in the field that he engaged were heard and supported by the highest authorities of the State and helped to change the system.

All these actions, whether they are the legislative and regulatory changes that he has supported, or the actions - if necessary, in court - that he has taken to renegotiate partnerships have contributed to calling into question economic and major financial interests who have

not ceased since then to exclude it from the public debate with the complicity of foreign NGOs.

Therefore, with each new accusation brought against the man, it is always interesting to wonder who benefits from his disqualification as a leading public actor? For the benefit of the Congo or for the economic interests that it has never ceased to shake up for many years now.

It is for the denunciation of this trickery that this document is intended.

To his debit

How many articles, reports, libels, letters addressed to the highest authorities of the state have attacked Albert YUMA mainly from 2016?

The list is long of those who slandered him between the former engineer's «house», «whistleblowers», associations, regionalist «resistante», coalitions of NGOs presented as Congolese.

These various attacks¹ have already been widely answered in two GECAMINES reports², entitled Lies of NGOs in the Democratic Republic of Congo in (November 2018) and Responses to NGOs and Civil Society Actors, compilation for citizens (June 2020).

Most of these attacks are often anecdotal compared to those which accused him of causing the Congolese state to lose billions of dollars. Thus, Global Witness in 2012, whose information was taken up in full by the Africa Progress Panel in 2013 and again taken up by Congo Is Not for Sale in 2020 or the Carter Center in 2017, accused it of having lost to the Republic \$ 3.76 billion and received the greatest media coverage.

The attacks of two other characters, who accused him of having caused the DRC to lose 5 billion dollars were also repeated, in particular one of them by a «well known» Belgian daily newspaper, but ultimately did not receive little or no echo as their defamatory or fanciful nature appeared as soon as they were published.

To his debit

Source	Global Witness 2012 Africa Progress Panel - 2013
Titre	The secrecy surrounding Glencore's transactions in the Democratic Republic of Congo risks exposing shareholders to corrupt practices Africa Progress Report
Pertes allégués	1.36 billion ³ losses for GECAMINES and the Congolese State for undervalued sales
Pertes réelles	The only sale that concerns him was made at the right price. No loss attributable to PCA.



Carter Center
Novembre 2017



State affair: privatization of the copper sector in the DRC



750 million dollars would be missing in the 2011-2014 GECAMINES accounts



All sums are in GECAMINES accounts – No loss



Rafael Ngoy Mushila
Novembre 2019



A mining dwarf, a national leech



A loss of minerals that would amount to 4 billion



The ores in question with a lower value are stored and the result of the mining process proposed by the GECAMINES engineer. – No loss



Jean-Claude Lumumba
30 janvier 2020



Letter to the President of the Republic



876 million losses for undervalued sales



Sheer defamation without the shadow start of a proof – No loss

**To
his debit**

5



Congo N'est Pas à Vendre (CNPAV)
Mai 2021



Billions lost
Financial investigation into Dan Gertler's
transactions in the extractive sector



- 1) 1,91 billion + sales of underestimated assets
(which is the revaluation of the APP)
- 2) 1.76 billion for the next 20 years



- 1) The only sale that concerns him was made
at the right price. For 2020-2040 sums,
how to consider income from goods sold
in 2011-2015-2017 as a loss?
- 2) No loss attributable to PCA.

**TOTAL losses
for which he is accused**

Considering duplicates
and accusations where the PCA was in charge

TOTAL losses for which he is accused	8,76 billion US dollars
Actual losses	No loss

To his credit

Thematic	Mining code
Action	Advocacy and active contribution since 2015 in favor of the revision of the 2002 Mining Code
Gains for the DRC	Rebalanced legislation, allowing the state to assert its rights.

1



Rebalancing of partnerships



Advocacy and renegotiations initiated with respect to KCC, Boss MINING, GGF and TFM



- 1.95 billion USD - STL recovery
 - 2.11 billion USD - KCC negotiation
 - 1 billion - Boss Mining Negotiation
 - 195,5 M - Change of partner
- For a total of \$5.255 billion
Pre-emption right - repurchase of a deposit of 4.6 million tons of copper and 0.4 million tons of cobalt

2



Mining subcontracting reform



Advocacy action in favor of Congolese subcontracting in the law and in Gécamines partnerships



Adoption of contractual stipulations in new partnerships reserving part of local subcontracting for the Congolese part and contribution to the adoption of the 2017 law on subcontracting

3



Artisanal Mining



Consideration of artisanal mining as a public policy
Creation of Entreprise Générale du Cobalt



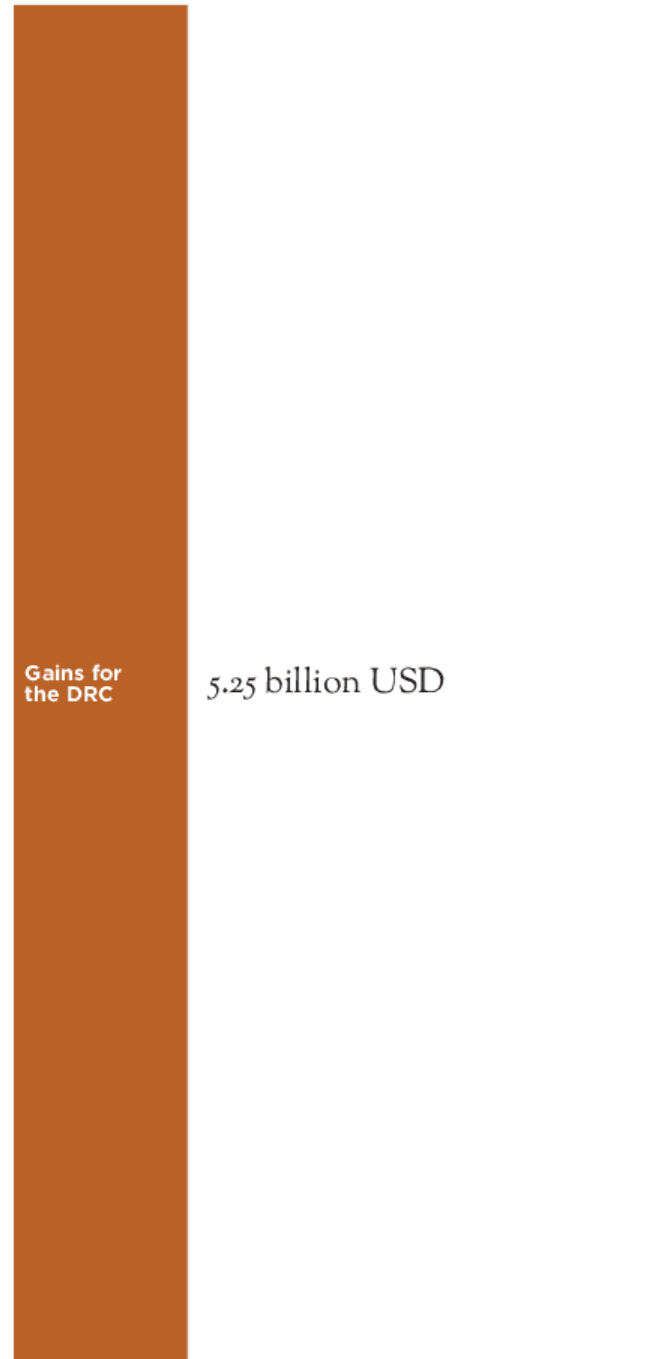
4-year earnings forecast
EGC / State: 1.376 billion

4

To
his credit

**TOTAL
gains**

Directly gains only,
i.e., through renegotiations



In the light of this double accounting, we therefore see the disproportion between on the one hand the enormity of the losses alleged by the NGOs and the financial valuation of Albert Yuma's direct contribution to the rebalancing of the Congolese mining sector.

Part 1 What it would have cost GECAMINES and therefore the STATE

The main accusations against President YUMA identified since 2011 include:



- This would be the value of the metals that would have been voluntarily thrown by the PCA of GECAMINES according to Mr. Rafael Ngoy Mushila



- These would be amounts lost by anticipation by GECAMINES over the period 2020-2040 according to the CNPAV



- These figures show the highest figure for alleged losses, concerning him as a PCA of GECAMINES and linked to the sale by GECAMINES of 20% of its shares in MUTANDA - figure retained among the 1.36 billion of the Africa Progress Panel. and Congo's 1.01 billion Is Not For Sale (CNPAV)



876 M USD

- This is said to be the amount collected in retro-commissions of which he was accused by Mr. Lumumba on a alleged value of 920 million supposed contracts.



750 M USD

- This would be the amount that would have disappeared from the accounts of GECAMINES according to the Carter Center

It will be analyzed on the one hand (A) the nature of these supposed losses and on the other hand (B) the credibility of the figures put forward.

A The nature of the charges

Why asks this question? Because the answer already sheds light on the methods used to discredit a man.

1st process: assimilating the contribution of a deposit in a JV as a sale

In terms of the sale of undervalued assets, for example, as with the releases of METALKOL, it is not the losses suffered that are mentioned but the losses of potential income. This means that the state has not lost any money, but it is claimed that it could have had more. Therefore, in July 2017 an NGO wrote that it is «a question of making the Congo lose 1.4 billion dollars in potential income⁵». Why not just say loss?

This is the main bias of this approach. The State has only very rarely sold its assets to companies with which it has dealt, it has almost always transferred its deposits free of charge into a joint venture - the famous JV or partnership - in which the foreign partner is still the majority shareholder in counterpart of its promise to carry out a feasibility study and to invest in the project. Possibly a signature bonus could be provided, but only represents a tiny part of the value of the deposit and can in no way be equated with a sale price of the deposit, which NGOs always do.

On the other hand, the foreign financier has never deprived himself of reselling his own shares to other investors while making very significant profits without GECAMINES / State receiving anything.

It is this inequitable system that should be denounced, and which has made many investors billionaires while having received a deposit for nothing - mainly between 1996 and 2002, hastened to sell their shares to new investors - generally multinationals - in making considerable margins. But recognizing this would force NGOs to denounce all transactions that have been made on the same principle and not just some of them.

Thus, the calculation could have been made between the wrongly called “*purchase*” price, - often a ridiculous «*Pas de Porte*» - and the selling price of the shares of the following groups in the various partnerships established since 1996 and in particular:

Lundin dans TFM, puis Phelps Dodge/Freeport McMoran
SAMREF dans MUMI,
Groupe CMC, Ruashi Holdings et Sentinelle dans Ruashi Mining,
Ridgepointe et Tremalt dans Boss Mining,
Swanapoel dans Swanmines, Chabara et Congo zinc,
KFL et GEC dans KCC,
EGMF dans Lulswishi
AMFI et CMD dans KMT,
United Ressources dans KICO,
COMIN dans Kipoï,
EMOKO dans SMK,
MCK dans Kinsevere,
Trillion dans SMKK,

The State / GECAMINES has never received any remuneration for these various transactions - mostly taking place outside the country and without asking its opinion - which had the effect of confirming almost definitively the breakage of Congolese raw materials through the outcome of a transaction often carried out on a stock market in London or Toronto⁶.

This is the origin of the Congolese mining disaster, to which Albert Yuma is totally external.

2nd process: assimilating a loss to an income which by construction no longer exists for a long time

For another NGO in 2020, the new accusation relates to an additional “*deficit*”, a term which means nothing, except to reproach someone who sold a property in 2011 for no longer receiving the income from this property between 2020 and 2040. And it is exactly this process that this NGO uses to attribute a loss to GECAMINES.

On this account one should never sell anything or borrow anything so as never to lose anything or never have to pay back anything. But the NGO should then explain how GECAMINES could have financed the salaries of its employees since 2010 - for \$ 730 million without counting the final accounts - or buy the DE-ZIWA deposit to rebuild an industrial future for itself for \$ 200 million - or finance the State through tax advances or loans for more than \$ 675 million for the great masses.

The NGO should also explain how GECAMINES could also have financed its structurally loss-making industrial activity due to the 12,000 employees in 2010, its almost non-existent mining patrimony in 2010 and its obsolete industrial facilities.

Unless one thinks that the NGO would have preferred that GECAMINES die without having sold anything, which would undoubtedly have made it possible to distribute the leftovers, i.e., the participations in partnerships that a functioning GECAMINES does not allow to do.

3rd process: outright defamation (Jean-Jacques Lumumba) or falsely documented (CARTER CENTER)

For the retro-commission charges - 876 million - in amounts beyond comprehension, the author fails to present the start of a proof and is mistaken in his own additions. For the disappearances of funds - 750 million - from another NGO, it has been publicly demonstrated, and without any denial of any kind, that the incriminated funds were all in the accounts of GECAMINES.

B How credible are the numbers?

1 The NGO's postulates that the sale of 20% of GECAMINES shares in MUTANDA MINING would have caused GCM to lose \$ 1.035 billion

This accusation comes from various protagonists who have successively estimated at 1.36

and then at 1.91 billion the potential losses suffered by GECAMINES over the period 2010-2012 on a certain number of operations.

We can already note that the Chairman of GECAMINES was not yet Chairman of the Board of GECAMINES for:

- the creation of the METALKOL JV in January 2010,
- nor when the shares of SMKK were sold in April 2010

Regarding Sodifor / Frontier or Nesserger, these three transactions are simply not in the scope of GECAMINES.

As for President YUMA, only the cession in Mutanda / Kansuki concerns him.

A bit of history.

The alleged loss was at the origin of the charges in 2013 valued at \$ 461 million following the sale of 20% of GECAMINES shares in the MUTANDA mine at a price of \$ 172 million.

For NGOs, the value of the sale price of this 20% was estimated at the time at \$ 633 million based on several assessments, unfortunately almost inaccessible, carried out by Deutsche Bank, Liberum, BMO, Nomura and Golder.

Selling price GECAMINES	172 millions USD
Estimated value GW/APP	633 millions USD
Alleged losses	461 millions USD

The novelty of the NGO's report to justify the upward revaluation to 1 billion, instead of 461 million, is linked to the method of calculation which is no longer based on the estimates made at the time of the sell to compare the hypothetical losses, but which is now based on their supposed selling price several years later.

This approach is inconsistent (1) and furthermore, as has already been demonstrated in the past, false (2).

1 | NGO's inconsistencies in its calculations

- i. The process is unprecedented, because it suggests that we could have known in 2011 what the shares would have been worth in 2017, as if the selling price of 2011 and that of 2017 could have been the same. This could possibly have been the case if the 2017 information could have been

available in 2011, which is by construction impossible.

This is equivalent to saying that a seller of shares on the New York Stock Market in 2011 will be considered to have made a loss, if the value of his former shares in 2017 is greater than his sale price in 2011. Imagine that you go and ask the buyer of your home in 2011 to top up the purchase price in 2017 because the prices have gone up!

- ii. The calculations are wrong. The royalties received during the period were calculated on a gross basis, whereas they should have been financially discounted to be able to make a comparison with their value in 2011, when they were sold.

This exercise, carried out in 2020 - and which had no other purpose than to reactivate accusations of 2013 in a context unfavorable to NGOs at the time- in addition to being financially false, is therefore pure speculation.

On the other hand, the only question that should be asked - and which never is - is whether the actions taken in 2011 by the Board of Directors can be challenged as to whether the sale of 20% of MUMI's shares was carried out under unfavorable market conditions. It is therefore useful to recall how GECAMINES came to sell its shares in MUMI at a price of 172 million dollars.

2 | BNP PARIBAS CORPORATE BANKING report

In April 2010, Banque BNP PARIBAS CORPORATE BANKING submitted to the Minister of Portfolio a valuation report on all of GECAMINES 'holdings in its main partnerships. It should be remembered that at that time, the World Bank encouraged the Congolese Government to transform GECAMINES to make it abandon its production activities to privatize it (2008 Report N ° 43402-ZR) «To dispossess the State of the majority of its shares in public enterprises. (...) Launch a public offer for the sale of one or more public enterprises. A serious option would be to consider placing the shares of a restructured state-owned company on a stock market in London or Toronto.» It was in this context that BNP's mission was initiated.

A specialized team from BNP PARIBAS CORPORATE BANKING, mandated by the Congolese Government, came to carry out the evaluation of the various holdings of GECAMINES in the field for 6 months. It can be noted that their work cannot be contested, unlike the evaluations presented by NGOs and carried out from their offices by, on the one hand, investment bankers (Liberum and Deutsche Bank) or specialized firms (Golder) in charge of the IPO of Glencore in its merger with XTRATA and necessarily interested in overselling their client or market analysts (Nomura and BMO) without any access to various operational information, nor to management.

It is also this office work and these related interests, which can only explain why the evaluations fluctuated from simple to triple between \$ 965 million for Liberum Capital and \$ 350 million for Nomura Security, when BNP evaluated the participation of GECAMINES at 172 million dollars.

It would be interesting if the NGOs, which have been clearly informed since 2012 that BNP PARIBAS carried out this evaluation, seek to understand why there was such a difference between the evaluations of the different banks between them regarding MUTANDA. They only send one mail.

Unless you think that banks use different valuations depending on whether it is the DRC that is the seller of its mining assets or international financial groups that exchange Congolese mining assets among themselves, it seems difficult to question the work. It would also constitute a very serious accusation of an agreement between financial and industrial groups to appropriate the riches of the DRC to its detriment.

Unlike NGOs which have only cited financial analyzes, often on the grounds that financial institutions demanded for unknown reasons a form of anonymity the main elements of the assessment of BNP PARIBAS have been reproduced by GCM in a former report.

The value of GECAMINES shares valued at the time by BNP is therefore indeed 107.8 million USD and those of royalties of 80.6 million dollars, or 188.4 million.

1st observation: The sale price by GECAMINES

of 20% of MUMI's shares for 172 million dollars was therefore, within 9%, the price evaluated by BNP PARIBAS.

In addition, it is difficult to fault the new Board of Directors for anything.

3 | The action of the Board of Directors to reassess the initial price

On the appointment of the Board of Directors and its effective assumption of office during the month of December 2010, the Board took note on its arrival of the planned sale of Mutanda Mining for 108 million dollars during one of the first meetings of Administration which was scheduled for March 7, 2011.

It was also during this Board that 25% of Kansuki's shares were also sold; the first 75% of which had already been sold in July 2010. The chronological proximity of sales of Kansuki, is a good illustration of the process already engaged when the Board took office.

The Board after the sale took note of the BNP study and requested that the price be reassessed, which was done on December 19, 2011, at 172 million, a figure more in line with the assessment of BNP PARIBAS.

2nd observation: the Board of Directors renegotiated the price upwards as soon as it learned of this valuation by BNP Paribas, the only one able to base an opinion on the sale price of the 20% of MUMI.

In summary: from the above we can therefore deduce on the one hand that the sale price of 172 million was a price in accordance with the only serious information available to GECAMINES and its new Board and that, on the other hand, the Board reacted as soon as he knew that the price of 108 million corresponded only to the present value of the future flows and that he took steps with the buyer to almost reach the price of the valuation of BNP.

GECAMINES therefore had all the legitimacy to sell its shares at this price and it is astonishing the NGOs have continually used their own figures, without ever trying to understand why the BNP price dating from April 2010 was so different from that of analysts whose evaluations they advance.

2 Jean-Jacques Lumumba President of UNIS - Allegations of embezzlement and undervalued sale of assets for \$ 876 million in retro commissions

The author in a letter addressed to the President of the Republic accused GECAMINES on several operations of having “benefited 44 million USD when it should have benefited off 920 and the difference would have vanished into retro-commissions, or \$ 876 million”.

All the same, this amounts to 95.2% retro-commissions on the total amount of the various contracts, a figure whose disproportionate nature should a priori call out to any responsible person, and in particular the owners of the Belgian newspaper who have reproduced in double page these accusations.

As it has already been demonstrated, and for more details, see the part of the GECAMINES report devoted to this subject, in addition to the defa-

matory nature of the accusations, the author was moreover wrong in his additions by mistakenly attributing 225 million USD of retro-commissions that do not even exist in its own calculations. If there was any need to demonstrate the ludicrous nature of his accusations, this error alone would be the most convincing demonstration.

Moreover, in the quoted report, it was proved in response to the accusations that:

- GECAMINES did not wipe out 64 million USD from the state but had transferred it by bank channel to the state for compelling reasons of sovereignty, which the records reproduced by GCM proved.
- GECAMINES did not sale two mining permits for \$ 2 million, instead of \$75 million but \$ 25 M in accordance with independent financial assessments carried out for the occasion (and reproduced). In addition, the mining assessments of this whistleblower are so unrealistic that they can only discredit his entire approach, as a quick comparison shows.

Mines	Goma Mining (2018)	DEZIWA (2013) purchase by GECAMINES at PLATMIN	KISANFU (2021) ⁷ purchase by CMOG at Phelps Dodge RDC
Ressources Copper	Between 100 000 et 500 000 tons	4,000,000 tons, i.e. between 8 and 40 times more copper than in Goma Mining	6,200,000 tons, i.e. between 12.5 and 62 times more copper than in Goma Mining
Ressources Cobalt	Between 8 000 et 44 000 tons	400,000 tons, i.e. at least 10 times more cobalt than in Goma Mining	3,100,000 tons, fools at least 70 times more cobalt than in Goma Mining
Value	300 M USD value estimated by the whistleblower	198 M USD market price paid	500 M USD market price paid

By making a simple extrapolation based on the valuations put forward by the whistleblower, DEZIWA should have been worth between \$ 2.4 billion and \$ 12 billion for his deposit alone, which makes no sense. For KISANFU, if the deposit had been valued by the whistleblower, the price should have been between \$ 3.7 billion and \$ 18 billion.

- GECAMINES had sold at a fair price 35,000 tons of copper contained in rejects based on studies carried out and that asserting that this would have been worth 400 million according to a study by the World Bank never unveiled to date, is once again disconnected

in all reality. The simple turnover - which is not income - is already equal to a maximum of half of the figure mentioned.

- That finally GECAMINES had not sold for 1 million which was worth 220 because quite simply no sale had been made.

In summary: The author, who has not ceased to attack President YUMA for several years now, in this latest letter to the President of the Republic has provided no evidence for his grotesque accusations, which, in view of values attributed to the offending mining assets are in any case quite simply beyond the realm of possibility.

3 CARTER CENTER - Out of \$ 1.1 billion in revenue from partnerships collected between 2011 and 2014, GECAMINES would have wiped out \$ 750 million that would not appear in its accounts

In its November 2017 report, the NGO accused GECAMINES of having wiped out \$ 750 million between 2011 and 2014 out of \$ 1.1 billion in income from partnerships. In fact, Carter Center was unable to find \$ 702.9 million that did appear in the accounts and therefore did not disappear.

We reproduce here the missing amounts as presented by the Carter Center in its report.

Entity	Period	« Missing » amounts	Error on imputation by CC	Error on the amounts by CC	GCM (financial account)
TFM	2011	30 M USD	30	-	30
GTL	2012-2014	132 M USD		56,4	75,6
KCC	2013-2014	115 M USD			120
Mutanda Mining	2011	189 M USD		-	189
SICOMINES	2012	175 M USD		-	175
AMCK/MMG	2012 et 2014	61,9 M USD	40		66,5
TOTAL	2011 - 2014	702,9 M USD		712,5 M USD	

After collating the necessary documentation, it appeared that all the sums noted as missing by the Carter Center were indeed traced in the GECAMINES accounts and therefore had not disappeared.

The details of all these sums can be found in the GECAMINES report (p. 13 to 20) published in November 2018, entitled The Truth about the lies of NGOs in the Democratic Republic of Congo and accessible on the Gecamines website.

In summary none of the sums that this NGO described as missing in GECAMINES 'accounts has disappeared from its accounts and all appear in its financial statements. GECAMINES has therefore not eliminated more than \$ 700 million in revenue from its partnerships.

4 Mr. Ngoy MUSHILA - GECAMINES would have lost 4 billion dollars of metals not recovered in the process of metallurgical treatment which would then have been thrown away.

As with the previous author, this accusation has already been answered in detail in a GECAMINES report and it is recommended to refer to it for further details on GECAMINES's website.

Nonetheless, it is interesting to summarize his main accusation, the one that was accepted by the press, and which refers to a massive loss. GECAMINES would have voluntarily lost \$ 4 billion, linked to the market value of metals not recovered in the metallurgical process of mining - that is, the industrial treatment process of treating the raw ores excavated to recover as much of metal as possible which will then be marketable.

As a preamble, it seems difficult to make the Chairman of the Board of Directors accountable for the recovery rates of industrial units in the field, while the Board on the one hand had inherited obsolete factories in 2010, described by the author as «real museums of metallurgy» and on the other hand has financed new units, and in particular the one precisely incriminated by the author at the Kamfundwa mine, on the very recommendation of the engineers of GECAMINES.

Beyond that his accusation is factually false for two reasons:

1. On the one hand, the value of potential 4 billion represents the eventual turnover and not the profit for GECAMINES which could have been at best only 1.4 billion dollars. It is a common mistake of NGOs to confuse the market value of a product with the profit achievable by the company, as if producing copper from

the ground to cathode was a free activity.

2. On the other hand, because the metals have not been thrown away, but are stored in waste, some already sold and others could be reprocessed in the future when GECAMINES has adequate facilities, as it has been doing from the start of its activity in 1908.

In summary: the author of the accusation therefore reports a loss which would be equivalent if it were confirmed to 35% of what he announces and, moreover, does not constitute a loss but a form of immobilization which awaits to be converted when the technical conditions permit.

5 CNPAV - GECAMINES would suffer from an additional deficit estimated at 1.76 billion over the next 20 years

This «deficit» is based on calculations by the NGO on:

- Mutanda's royalties for the period after the 2020s
- KCC royalties - ditto
- Metalkol royalties – ditto

7 | Several errors and biases distort their calculations.

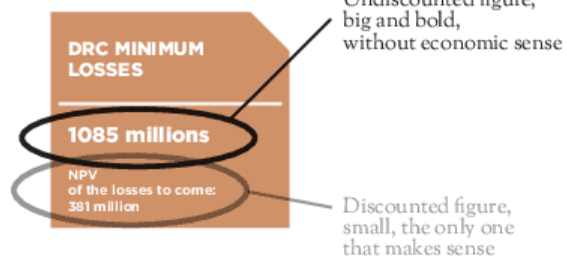
First bias: the NGO talks about a deficit, which is purely speculative. How can we talk about a deficit for income that could only have been collected over the period 2020-2040 on the condition that the assets were not sold in 2011, 2015 and 2017?

Second bias: the NGO puts forward the figure of 1.76 billion dollars which would represent the gross value of the flow of royalties to be collected to know a loss compared to a sale price at a T instant it is appropriate to discount the flows.

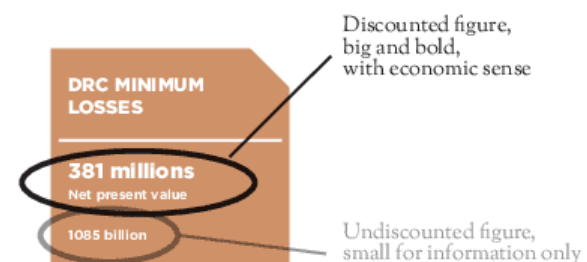
The NGO is aware of its scheme because it also made a calculation of net present value which is the only valid one to know the possible loss or gain compared to the sale price at the time. We can see that the summation of updated figures by the NGO now only comes to the sum of 711 million, which is already 69% less than the 1.7 billion that CNPAV claims.

As for the KCC example:

Biased presentation



Relevant presentation



\$ 381 million over the life of the mine - which would be the only acceptable net present value for comparisons - is obviously far less impressive than bringing up the figure of \$ 1,085 million, which although not true, will undoubtedly strike everyone's mind.

3rd bias: the NGO calculates the value of royalties on the basis of information known in 2021 and not on that which was available at the time of their sale, i.e., in 2011 for MUMI, 2015 for KCC and 2017 for Metalkol.

But in addition to this truncated economic presentation, these figures are false, because:

1st mistake: the NGO does not consider the tax on profits that will be paid by the owner of the royalties to the state, whoever it is. If we take the raw figures, it is therefore 510 million dollars that the State will collect over the period which will therefore be deducted from the 1.76 billion invoked.

2nd error: when the NGO discount the "future" flow of royalties, it does not do so from their disposal but in 2020 when they were in 2011, 2015 and 2017. The information is perhaps anecdotal, but without this subterfuge, the figure of 711 million would be only 362 million.

Ultimately

- a. Of the gross 1.76 billion «deficit», which after tax will be only 1.21 billion, the financial value of the expected royalties would be 304 million.

By its crude rather than discounted presentation ploy and accounting errors, the reader is 72% mistaken.

- b. In addition, according to their own terminology, it is a deficit that only exists in relation to a situation that no longer exists for a long time, the goods having been sold in 2011, 2015 and 2017 to meet the needs of GECAMINES treasury.

If we compare what is comparable - that is, the net present value of the royalty flows - and recalculate the different present values of the royalty flows according to the dates of disposal, taxes and known information, the calculations of the NGO are overestimated.

	VALUES OF ROYALTIES			TOTAL
	Metalkol	KCC	Mutanda	
Values of royalties actualized by the NGO	155 M \$ US	381 M \$ US	276 M \$ US	812 M \$ US
NPC calculated according to the know facts, the right actualization date, and the tax	45	129	130	304 M \$ US
Variance	110	252	136	498 M \$ US

In summary : Beyond the obvious calculation errors, the main criticism made against these NGOs with this totally truncated presentation is **never to admit that GECAMINES to survive needed funds and would have preferred, if it had had the choice, not to have to part with some of its assets.** In 2010 GECAMINES was bankrupt, and the World Bank demanded its liquidation. To revive itself industrially, Gécamines could not finance itself on the markets because of a highly indebted balance sheet inherited from the past and did not benefit from any dividend from its partners, nor from aid from the State shareholder; it therefore had to initiate certain disposals or obtain loans secured by future flows. These NGOs would surely prefer an ideal world where Gécamines would not have to make difficult choices in terms of financing to reindustrialize itself, finance its social charges, make tax advances in favor of the State, but this world does not exist. And without this external financial support, which never came, Gécamines had to make difficult but necessary decisions to survive.

Conclusion Part 1

It appears from reading all these figures that «potential losses», «missing sums», «deficits» or «retro-commissions» are non-existent. It is recommended to refer to the various reports which explore and respond to the various accusations in depth.

It is therefore not illegitimate to question the deep meaning of all these attacks, if not to discredit President Yuma in the eyes of international and national opinion to force him to no longer commit himself in the mining sector.

But perhaps it is precisely this action which is the cause of these smear campaigns? Why is it mainly the one who fought to rebalance the mining sector, to renegotiate partnerships, promote industrial subcontracting, bring social peace in the company and to improve the condition of artisanal miners who is their first target? Asking the question is already answering it.

Part 2 Credit

Backward to the accusations of which President YUMA has been the target, his action in the mining sector, mainly since 2014, has been particularly decisive as President of GECAMINES, but also as President of the Federation of Enterprises of Congo.

President of the FEC, which includes the Chamber of Mines, and Chairman of the Board of Directors of the largest mining company he has been an attentive observer to assess and understand the imbalances of the system and a committed actor to denounce and fight them.

These imbalances have crystallized around four main themes:

- The need to support the reform of the 2002 mining code towards a more balanced system between the DRC and international investors.
- The need to renegotiate mining partnerships with international investors whose results were notoriously unsatisfactory.
- The need to promote local subcontracting in the national mining economy.
- The need to reform the country's artisanal policy, strongly impacted by the rise in cobalt prices more specifically.

A The mining code

1 Advocacy

Leading player in the mining sector, President of the employers of a country whose economy depends mainly on the mining industry, the action of President Yuma has been pro-active for the outcome of the 2002 reform of the mining code.

Convinced of the need to rebalance the 2002 mining code, he engaged the FEC in the revision process initiated by the Government through its participation in all the work of the tripartite from 2013, which brought together the Government, the Civil Society and the Private Sector.

Aware, however, of the heavy economic stakes for the industry and the budgetary constraints weighing on the State, he nevertheless welcomed the Government's position to temporarily postpone the continuation of the revision in 2015, at

a time when world copper prices had fallen sustainably below the \$ 4,600 per ton mark. This decline posed major short-term risks to the industry, which in fact resulted in the shutdown of several mines, including KCC in September 2015.

Nevertheless, as soon as the prices rose, at the end of 2016, he clearly specified his position in favor of the reform of the code, which he invariably supported despite the most resolute oppositions until when it was adopted in March 2018 and even after.

Thus, during the DRC Mining Week 2017, he challenged his mining colleagues on the subject:

«And I ask it in conscience to my mining friends, is it not necessary to return to a more balanced legislation which was conceived at the end of the war in a country devastated by 10 years of conflict? Isn't it legitimate to amend a regime that was designed at the time to encourage foreign investors to return to a country that then appeared to all to be particularly inhospitable?»

Also, far from certain excesses, which I can sometimes hear, I am convinced that our country will remain attractive to international investors, even with the new provisions of this revised code and even despite the recurring difficulties that we all know.»

He specified his refusal to be intimidated by international investors during the inauguration of the GECAMINES head office on December 22, 2017, in Lubumbashi in the presence of all the authorities of the Republics.

«Regarding the reform of the 2002 Mining Code, I note that even when the evidence is made known to all, some players in the mining sector still want to retain advantages that are no longer justified.

I am outraged when I discover in the press that Glencore, Randgold and Ivanhoe allow themselves to challenge our Government, even to threaten it indirectly, by indicating that the new mining code, discussed in the Chambers, through the tax revision it is proposing to institute, will cause long-term damage to investment in the DRC.

No. No, three times no. This situation is unbalanced. It was time to fix it. So, no thank you, to our altruistic partners who offer us the gracious help of their experts to revise OUR mining code. In matters of sovereignty, the DRC is not in co-management, and our natural resources are still an element of sovereignty. We are not under a protectorate.»

Thus, during the new year greetings of the President of the FEC to economic operators on January 25, 2018, he unambiguously confirmed his position.

“Recovering the value created in the Democratic Republic of Congo requires a priority in rebalancing relations between the State and mining investors. This is the whole purpose of the 2002 Mining Code Revision, which you have been hearing about for several years. The reform of this code, which is underway, is an absolute necessity if we ever wish to benefit from the fruits of the exploitation of our subsoil once again. To not reform it today is to condemn us to look to others than ourselves to exploit our resources and never to take advantage of them.»

Even after the adoption and promulgation on March 9, 2018, during DRC Mining Week June 19, 2019, he continued to campaign for a full and complete application of the code without underestimating the pressures that the seven main mining companies in the country, constituted as a lobby after their departure from the FEC, weighed heavily on the DRC and in particular the threats of recourse to arbitration.

«I am therefore particularly grateful to His Excellency the President of the Republic, Félix-Antoine Tshisekedi-Tshilombo for having affirmed and reaffirmed with force and constancy that he would not allow the reform of his predecessor to be altered as some wish, while as I am grateful to His Excellency, the President of the Republic Joseph Kabila Kabange for having in his time maintained against all odds his desire to reform this mining code for the benefit of the Congolese people, by promulgating the Law of March 9,

2018 It is a common good for all Congolese and it should be defended as such. And I can assure you that I, as the National President of the FEC, will oppose any attempt to change the new Mining Code.»

2 The actions

In December 2017, aware of the heavy challenges that were at stake as of the attempts of the mining players to weigh on parliamentarians, which he had publicly denounced, the President of the FEC sent them all, a memorandum reproduced in annex, and whose proposals were largely incorporated into the legislation adopted by Parliament.

It should be remembered that these proposals were supported by the highest authority of the State in the direction of all political actors in a fight which unfortunately went beyond the sole framework of the economic interests of the Democratic Republic of Congo.

In this memo, several fundamental principles have indeed been included in the law or, when they were not, have become essential subjects of any discussion on the rebalancing of mining partnerships.

- The strategic nature of certain minerals, which will allow, in addition to a royalty increased to 10%, to apply a derogatory regime from the law and the regulation.
- The value of the deposits in the structuring of the partnerships to return on the original defect of all the partnerships formed in the years 2000 and having resulted in a minority participation of the companies of the portfolio in the JVs.
- The obligation to finance a minimum part of the investment in equity so that finally the partners are real investors interested in the economic profitability of the project and not mere financiers.
- The immediate ending of the mining regime conventions to put an end to this practice denounced by all and granting unjustifiable advantages 22 years after the first convention.
- Mandatory local processing so that the added value stays in the country.
- The ban on change of control without referring to the partner and the offshore taxation of profits made and preventing financial vehicles housed in tax havens from allowing partners to recover value to the detriment of the DRC.

In March 7, 2018, Proof of his active involvement in the process of revisiting the Mining Code, he was one of the four Congolese personalities invited by the President of the Republic to participate in the meeting in the presence of the CEOs of the seven's main mining companies in DRC, some of them being global multinationals.

This meeting, which will ultimately lead to the promulgation of Law 18/001 of March 9, 2018, is today an example and a hope for all African countries. President YUMA, on behalf of the Congolese private sector, has been and still is personally involved despite the pressures and threats he has suffered and continues to suffer today.

Proof that his commitment went well beyond defending the categorical interests of some of the members of the FEC, they left the Federation by denouncing its economic nationalism. They then created two structures, one for Chinese industrialists and one for Western industrialists, thus demonstrating their total lack of attachment to the institutions and development of the country that had hosted them and where their priorities were.

B **Mining rebalancing and partnership policy**

1 **Advocacy**

From 2013, the first signals within GECAMINES revealed worrying differences between the projections of the feasibility studies of the various partnerships and the actual economic and financial results. In 2015, these differences, by their recurrence and their structural nature, could no longer be justified by the sole excuses of delays in the operational implementation of the different projects or the production contingencies.

This is what prompted the Board of Directors of GECAMINES to engage the international Audit firm, MAZARS, to carry out audits of the main partnerships and evaluate their actions since the launch of operations.

In 2017, based on these audits, GECAMINES requested from EY to model all the partners' mining results to understand the structural reasons for these unsatisfactory results and the areas for improvement for truly rewarding projects for GECAMINES and the country.

In annex are the reproduced results of this modeling which was presented in INDABA (Cape Town, 2018):

Thus, from June 8, 2016, at the DRC Mining Week (Lubumbashi), the announcement was made that GECAMINES 'policy would shift towards its partners.

"The analysis of our past partnerships has shown that although our region exceeded one million tons in 2014, the real benefits for the national economy have not been up to expectations, both for the Government and for the population as a whole and of course the minority partner Gécamines.

In terms of partnerships, we have also started to consider a more restrictive policy in view of the almost total absence of dividends on all our holdings. This mining sector liberalization strategy, which the Government had put in place on the recommendations of our external partners, should, according to the latter, generate the income necessary for the reconstruction in Katanga of a large national production apparatus, which did not unfortunately yet been the case."

During the inauguration of the GECAMINES head office on December 22, 2017, he noted a totally unsatisfactory situation.

"Contrary to what is written, here and there, it is not the income from partnerships forged with foreign investors that will allow our country to take off. Of course, these investors allow the exploitation of our reserves. We applaud the production records every year. But in no case do they contribute sufficiently to the needs of the Nation, as was the case with Gécamines. And this situation is more unbearable as the whole world is riveted on our wealth, especially cobalt-rich, to allow the development of clean vehicles.

... When we arrived at the end of 2010, four truly mining partnerships were in commercial production out of 12. Namely Kamoto Copper Company, Tenke Fungurume, Boss Mining and Ruashi Mining. ... These partnerships alone represent more than 29 million tons of copper and 2.7 million tons of cobalt.

..., You heard me right, no dividends, which means

that all our partnerships are in deficit. The turnover of these joint ventures in 2016 was just over \$ 2.6 billion. The revenues for Gécamines from these partnerships, the royalties, the Pas de Porte, the management fees, and the rents will have been 88 million dollars and we should say what, Merci Patron?

We are dissatisfied, because beyond certain partners who act with us as if we did not exist, we regret a lack of frank collaboration which results from this unbalanced partnership system which has been the norm since 1995.»

At Mining Indaba, on February 6, 2018, before the entire international mining community, President YUMA on the one hand denounced the main deviations from partnership contracts, as well as the main causes and he announced that renegotiations would be initiated.

«... We have therefore decided to implement our contractual right to audit our partnerships to try to understand the reasons for these discrepancies.

What did we find out? We mainly discovered that the real situation of our joint ventures would deprive us of profits for many years, or even for the entire duration of the partnerships, due to:

- Recurring overruns of the assumptions provided for in the CAPEX and OPEX feasibility studies
- having led to an explosive debt load, moreover, mainly benefiting our partners, and depriving us of both dividends and income taxes for the state.

You will understand, the results of the modeling of these four partnerships are conclusive. Over a production period between 2009 and 2016, the State and Gécamines shortfall amounts to billions of dollars, these billions of dollars which our country lacks to be able to initiate a dynamic of development. We therefore call for an overhaul of our past partnerships to enable them to achieve the sole purpose for which they were signed: to generate profits for the State and Gécamines.

Today that is not the case. We have paid dearly in drastic and irrecoverable losses of minerals, an industrial tool that does not pay off. We are the-

refore justified in re-considering the terms of these partnerships, which do not correspond to what they were signed for.”

During the DRC Mining Week June 14, 2018, in front of the mining community present in the DRC, he reiterated his intention to launch negotiations and set the priorities, namely the capitalization of projects and governance mechanisms.

«This is why with our Legal Advisors, we will take the bond of all our other partners in the days and weeks to come to invite them to come and discuss with us, for a frank and open discussion on the finality that covers for them and for us, these partnerships, which is that of producing wealth for the country and its population through the exploitation of its subsoil.

If they agree to engage with us in a constructive discussion, to restructure the partnership in a sense in accordance with the interests of both parties, I said both, that is to say with reasonable capitalization levels, and more shared decision-making mechanisms, then we are ready to look with them to a future that will be beneficial to all. Otherwise, we will not hesitate to use all legal remedies.»

During the DRC Mining Week June 19, 2019, he concluded on the deficient nature of the traditional JV which had frozen a situation of imbalance imposed during the crises experienced by the Congo and which resulted in this situation of real losses for the country.

«The dominant model of joint-venture or traditional farm-out which has prevailed until today, by which the State, or the companies of which it is the owner, concedes the management of the national resource to investors, has clearly shown its ineffectiveness in generating wealth for the country.

I know that there is a way of thinking at the international level, currently widely relayed by certain NGOs, which attributes the weak development of our country to its own faults and in particular the corruption of its so-called public companies and its administration. Unfortunately, this trend completely leaves aside the imbalances between investors and the host country, imbalances which

represent financial stakes far greater than the broadest estimates of embezzlement of which our companies had been accused.»

2 The actions

In accordance with the announcements made in these various mining forums, GECAMINES entered negotiations very quickly after February 2018, in particular with KCC and Boss Mining. Others partnership are currently under arbitration.

In addition, it completed the negotiations initiated in 2016 with the Forrest Group on the Lubumbashi Heap. Finally, since 2010, she had questioned the sacrosanct rule, yet defended by civil society activists, that an investor can sell his stakes in joint companies without even referring to GECAMINES or the Congolese state.

1 | **First act:**

How GECAMINES took over the Société du Slag heap de Lubumbashi (STL)
Direct gains for State assets / GECAMINES
\$ 1.95 billion

Following a difference in assessment concerning the contractual agreements between GECAMINES and the Forrest Group, a dispute arose between the two partners over the exploitation rights of the Heap of which GECAMINES claimed the exclusive exploitation following a period that she felt had been reached.

GECAMINES then claimed the right to operate the Lubumbashi Heap on its own, when the Forrest Group - the majority in the operating JVs - considered that it had the right to continue to operate jointly with it.

At the end of this dispute, which ended in negotiation, the parties signed a transactional agreement under which GECAMINES became the sole owner of the STL plant and would henceforth operate the Lubumbashi Slag heap on its own.

This represents an immense gain for the State's patrimony, that of the return to its fold of all the metals contained in the Slag heap. It will now finally be able to benefit and exclusively for the future from revenues derived from the recovery of copper, cobalt, zinc, gallium, germanium, and silver.

This outcome, which saw the rights of GECAMINES and therefore of its sole shareholder recognized by the State - and two times in front of the Belgian courts before which the Forrest Group had sued GECAMINES - nevertheless gave rise to an unprecedented defamation campaign against GECAMINES and in particular its Chairman of the Board. Albert YUMA was notably accused of having sold the Lubumbashi Heap, which nevertheless remained the property of GECAMINES, to subsequently resell it to multinationals.

This was relayed by a certain number of actors, who one can think that they should normally have welcomed the persistence of a man who allowed GECAMINES to relaunch in Lubumbashi an industrial activity of its own - through its 100% subsidiary, the Société du Slag heap de Lubumbashi.

To judge the relevance of the accusations, it is useful to refer to the GECAMINES report Responses to NGOs and other civil society actors on page 90 et seq.

Now, thanks to the addition of a local processing unit allowing the transformation of alloys into finished metals, the project revenues for STL / GECAMINES through the marketing of finished metals recovered from slag in the Slag heap - something that has never been the case in the past where only the alloy was sold - are estimated at **1.4 billion dollars** for STL.

In addition, the activity will generate for the state **550 million dollars** in royalties and income tax (this figure does not consider the various operating taxes).

TOTAL OF GAINS
\$ 1.95 billion
over the life of the project

2 | **2nd act:**

How GECAMINES renegotiated the KCC partnership? Direct gains for State assets / GECAMINES **\$ 2.11 billion**

On April 24, 2018, GECAMINES initiated actions vis-à-vis KCC which resulted in a partial renegotiation of the partnership on June 13 2018, whose main advances were a general rebalancing of the partnership. Only the main terms are used here, those that directly earned money for the State and GECAMINES.

To respond to the unsustainable and difficult to

justify indebtedness of KCC towards the GLEN-CORE group its majority shareholder, President Yuma imposed and obtained to reduce it from 9 billion USD to 3.45 billion USD on January 1, 2018, i.e. **5.6 billion in debt reduction** (cancellation) conceded by Glencore to KCC. In addition, a transactional indemnity of **150 million USD** was paid in favor of GÉCAMINES.

These direct gains do not include other major advances such as the increase in the «Pas de Porte» from 35 usd per ton of copper or equivalent copper to 110 and 170 usd maximum, the limitation of the interest rate to 6% maximum, the promises of dividends of 2 billion dollars linked to new production rates, new governance rules, which are all advances that will enrich GECAMINES and the State in the future.

- i. The gain for the State / GECAMINES assets corresponds to the appreciation in the value of its shares to the tune of **1.4 billion dollars** - or 25% of the 5.6 billion dollars of debt cancellation.

This appreciation will be reflected later in its dividends, which can also be collected more quickly than if it had been necessary to repay this principal debt of 5.6 billion as a priority.

- ii. The gain for the State represents annually in income tax the portion of the operating margin that would have been reduced due to the payment of the interest charge generated by this mass of loans, i.e., approximately 170 million the first year, and declining for 10 years from 2019, estimating that KCC would have repaid this debt over 10 years. It is therefore a gain for the State equal to an additional **\$ 710 million** in tax.
- iii. **150 million in cash** that GECAMINES partially transferred to the STATE for urgent financing needs in this pre-election period.

**TOTAL OF GAINS
STATE / GECAMINES patrimony
\$ 2.11 billion**

3 | 3rd act:

How GECAMINES renegotiated the BOSS MINING partnership. Direct gains for the State assets/GCM **\$ 1.008 billion**

Following the renegotiation between GECAMINES and the majority shareholders of Boss

Mining, a transactional agreement was reached on December 10, 2018, the main terms of which were:

- i The increase in GÉCAMINES 'stake in BOSS MINING SAS from 30% to 49%, while ENRC's stake was reduced from 70% to 51%. At a time EITI reports point to the imbalance in the value of deposits contributed by GECAMINES in return for its low shareholder share, it should be noted that GECAMINES had already made this fight a priority.
- ii The cancellation of 100% of the financial debt of BOSS MINING SAS towards the ENRC group, via the conversion into capital of the outstanding intra-group loans granted by the ENRC group to BOSS MINING SAS, for an amount of more than a **1.5 billion USD**.
- iii The payment by ENRC to GÉCAMINES of a transactional indemnity in the total amount of USD **30 million**.

Future gains will obviously be linked to the increase in the share of dividends received by GECAMINES but are impossible to calculate while awaiting the new Business Plan and the resumption of operational activities of BOSS MINING, which are still at a standstill.

On the other hand:

- For GECAMINES, the cancellation of all ENRC's indebtedness in Boss Mining and the change in shareholder distribution enriches GECAMINES 'stake by **\$ 735 million**, or 49% of 1.5 billion, which will materialize in dividends and will be collected more quickly than if it had been necessary to repay this principal debt as a priority.
- For the state, an estimated income tax increment of **\$ 247.5 million** over 10 years.

**TOTAL OF GAINS
\$ 1.009 billion**

4 | 4th act

Transfers between investors - Opportunities to rebalance partnerships. Direct gains for State assets **195.5 million dollars** Reconstruction of its mining patrimony for **4.6 million tons** of copper and **388,000 tons** of cobalt

GECAMINES has been confronted throughout President YUMA's mandate with the propensity of its JV partners to think themselves above the laws of the Republic and the contracts they had signed to the point of selling their shares between investors without referring to GECAMINES.

However, GECAMINES enjoys a right of preemption to acquire their shares when they wish to sell them or a right of refusal if the new partner does not suit GECAMINES.

This mechanism has been designed for two scenarios.

The first is the right of refusal which is linked to the fact that GECAMINES has transferred its deposit to an investor who has been chosen and that GECAMINES does not wish to have a new partner imposed without having a say in the identity or the skills of this new partner.

In addition, on these disposals, the initial investors realize an appreciable capital gain, from which GECAMINES is excluded, which attract no comment by anyone. Their capital gain is the direct result of the lack of initial valuation of the deposit graciously transferred to the JV against a majority of the shares. As a result, all the partners have made significant capital gains on the resale of their shares without having making any real investment or paid any money, because all investments when they are made, are financed by the debt that is left to their successors.

It therefore appeared quickly to the new GECAMINES Board that it would still be fairer that GECAMINES benefits from part of this unjust capital gain realized on the back of its deposit.

The second is the right of pre-emption, which allows GECAMINES, if it can, to recover the shares of its partner when the latter wishes to sell them. This is a way of recovering - by buying it back at market conditions however - what has been given away for free and valued through a simple certification and sometimes a feasibility study, costing only a few million dollars.

It is also surprising to note that these rights are contested to GECAMINES by activists, see on this subject the answers provided by GECAMINES in its report of November 2018 p. 48 and s.

This is how they were able to write *«In certain cases, if one of the investors wishes to buy back shares of the other, the GCM requires the buyer to pay it or advance several million dollars», or even «When a partner intends to sell its share in the joint venture to a third party, Gécamines exercises its right of first refusal to buy at an offered price - thus recovering full ownership of the project. All reserves previously identified by the investor will thus end up in GECAMINES 'portfolio'.* To understand all the gale this sentence conceals, see the report p. 49 concerning the ranching of the DEZIWA deposit.

Thus, GECAMINES, in the context of the changes of partners, has perceived:

- \$ 10.5M, in the acquisition of METOREX, for a transaction valued at 1.32 billion dollars. Which equals 0.79% of the transaction
- \$ 55M in the sale of ANVIL to MMG which is reported to have been made at \$ 1.3 billion, or roughly 4.2% of the sale price.
- \$ 100 M for the sale of TFM by Freeport McMoran to CMOC on more than 4.4 billion transactions, or less than 3% of the gain realized by Freeport and Lundin for a deposit acquired in exchange of a promise to invest and a Pas de Porte de 100 million dollars.

On this sale which had covered the world mining news shocked that an African country could not agree to let it go its most valuable asset without giving his opinion, we can also specify:

- That the «partners» of GECAMINES which had sold for some of them and bought for the others the most beautiful mining asset in the country - the Tenkefungurume mine – did it without deeming it useful to notify either the Government or GECAMINES.
- That GECAMINES had had to initiate complex legal actions with the appointment of a provisional administrator and the initiation of an international arbitration procedure to show how buyers and sellers had sought to circumvent their legal obligations by creating legal vehicles in tax havens.

- That President YUMA had to face very harsh internal political opposition which sought to make him bend⁸.

But, with all the support needed, he didn't. It is also interesting to note that it was following this case that the 2018 Mining Code enshrined in legislation the absolute necessity for a partner to obtain the agreement of GECAMINES and the State before any sale of its shares.

Within the framework of the right of pre-emption, GECAMINES notably exercised it in 2012 vis-à-vis a dishonest partner, Platmin, who had sought to sell its stake on the Hong Kong Stock Exchange without informing its partner. In addition, this company had not announced the same figures in the DRC as in Hong Kong.

Announcements made by on the deposit PLATMIN	Copper	Cobalt
Hong-Kong	4 600 000 tons	388 800 tons
RDC	959 000 tons	85 375 tons

GECAMINES has therefore exercised its right of pre-emption and has recovered this asset which is today in activity within a JV where GECAMINES has 49% of the shares and which will become its full property on January 14, 2029, in all cases of figure.

The direct gain for the State's patrimony through its GECAMINES company was therefore the reconstitution of part of its mining heritage, at the cost of a financial effort of 198 million dollars. Surprisingly, no one has ever tried to find out, to denounce it, what has been the gain of Platmin, who for having carried out a feasibility study before selling his shares succeeded in recovering nearly \$ 200 million.

Conclusion

The theme of the renegotiation of contracts, for which President Yuma has made a strong commitment with others to erase the initial imbalances has today become a problem recognized as necessary by all actors in Congolese public life and the entire population.

It was even made a public policy priority by the

highest authority of the State, the President of the Republic, His Excellency Félix-Antoine TSHISEKEDI TSHILOMBO during his tour to Haut-Katanga on May 14, 2021, during which he called for "*readjusting mining contracts to seal win-win partnerships*".

This announcement was followed by a first initiative of unprecedented scale in the mining sector initiated on August 2, 2021, with the creation of the Ad'Hoc Commission within the Cabinet of the President of the Republic responsible for clarifying data relating to minerals resources, mining reserves and valuation of the shareholding of GECAMINES SA in the TFM mining project.

C Subcontracting

The theme of the subcontracting, based on the example of mining subcontracting, very quickly emerged as an essential lever for action in favor of local economic development.

Indeed, if the development of a mining industry with Congolese capital could appear as a long-term objective due to the lack of financing available on the financial markets and of players of critical size, with the exception of GECAMINES, the development of industrial subcontracting players appeared very quickly as a necessity.

However, this sector of activity, particularly in the mining sector, although it represents many economic operators and large-scale cash flows, is captured by major mining contractors often for the benefit of their own subsidiaries.

Through the modeling work carried out by EY based on the MAZARS audits, it appeared that the subcontracting costs were overestimated in favor of the affiliated companies. This had the impact of indirectly increasing the profits of GECAMINES 'partner companies, of weighing directly on the profits of the JVs and therefore on the dividends of GECAMINES and the State profit tax. Thus, it was calculated that over the modeled period (2009-2016), State / GECAMINES revenues would have increased by 36% if the sector had been fully competitive.

In addition, it appeared very quickly that the sums devoted to mining subcontracting representing several billion dollars annually - between 3 and 4 billion - constituted a unique opportunity to contri-

bute to the development of a class of Congolese entrepreneurs, rather than to help create jobs and wealth abroad.

1 Advocacy

January 24, 2014, in Lubumbashi, during the opening ceremony of the Round Table on subcontracting within the framework of the Federation of Enterprises of Congo.

«It is important to guarantee that nationals should subcontract in all the productive sectors controlled by foreign companies, but also to proactively ensure the preference of nationals in strategic sectors such as mining, hydrocarbons, telecommunications, banks and insurance companies and the agri-food sector.

Gécamines at the time of its splendor had pushed for the emergence of certain subcontracting companies around it, by encouraging the Congolese to participate in the development effort of their country.

It has maintained business relations, for the supply of goods and services, with several companies in the mining hinterland of Katanga operating in various sectors of activity including, agri-food, hydrocarbons and lubricants, transport, goods and people, the flour mill and the hotel industry.

Also, Gécamines has always had recourse to Congolese SMEs for the execution of certain works on its behalf. The combination of all these elements has made GECAMINES a real pole of development due to the spillover effects on other sectors of economic and social life.»

On June 8, 2016, during the DRC Mining Week in Lubumbashi, President Yuma made the issue of the distribution of subcontracting in his partnerships a future central element of Gécamines' negotiations with its partners.

«In addition, an obligation to subcontract for the benefit of local companies in proportion to the shareholding has been specified in the

contract, which will allow our local economic fabric, and especially our SMEs, whose role in the creation of jobs, the redistribution of wealth and the development of the middle class, to effectively benefit from the significant spinoffs from mining production in our region.

On June 14, 2018, at Lubumbashi DRC Mining Week, he called on contractors to join the dynamic created by the state to promote local economic development through the law on subcontracting.

«Subcontracting, I keep repeating, is an essential element of local economic development and it is important that the major contractors contribute to the development of the local economic fabric.

The law on subcontracting, the implementing texts of which were adopted by the Government, created an incentive framework for its development. It is now up to Congolese investors and large mining companies established in our country to play the game of local development and stop outsourcing their activities through intra-group companies.

On June 19, 2019, at DRC Mining Week, he regretted the inertia of large mining groups who sacrificed the country's development for the benefit of the margins of their subcontracting companies.

«The local added value also concerns local subcontracting, of which the African Union notes that without a strong correlation between the primary mining sector, the producers, and the local ecosystem, there is no transfer that takes place, whether economic and financial, but perhaps and above all technological, skills, research and development, and which spreads to all other sectors of the economy.

Unfortunately, for various reasons, some legitimate, others less, local subcontracting remains largely in the minority and confined to certain sectors, when the major contractors prefer to resort to their global purchasing centers or their affiliated companies which do not only capture

the flows, but also and above all, do not allow the development, capitalization and local transmission of knowledge and know-how.

It is therefore necessary that the law of February 2017 on local subcontracting, for which the Regulatory Authority has been installed, is applicable and that all operators comply with it. The mining industry in the DRC will not be able to continue to be what it is today, a kind of no man's land for the Congolese companies.»

2 The actions

From 2016, GECAMINES imposed in all its new partnerships and in renegotiated partnerships, to reserve a part for local subcontracting, at least equal to its participation in the capital.

Thus, within the framework of the partnership in SOMIDEZ (signed in 2016) where GECAMINES has 49% of the shares, the contractual documentation provides that GECAMINES can effectively control that the company allocates 49% of all economic flows necessary for the operational functioning to Congolese companies.

Gécamines thus wants to reconnect with its historic role as the driving force and transmission belt of the Congolese economy and wants to be at the forefront of the implementation of Law 2017-08 of February 8, 2017, setting the rules applicable to subcontracting in the private sector, adopted by Parliament, at the initiative of the Executive.

Thus, the feasibility study of the project shows a potential market of \$ 3 billion in operating goods and services, after the construction period.

In proportion to the participation in the share capital of 49%, Gécamines will have the possibility, if the DRC market is ready to absorb it, to direct a flow of 1.8 billion dollars, for an annual average of 180 million over the 10 years of the project before GECAMINES becomes the sole owner.

Three main sectors of activity are more particularly concerned:

- Mining and related services
- Metallurgical extraction and related services
- Marketing of metals

D Artisanal Mining

The theme of the artisanal mining protection has been a great concern of the President of GECAMINES for many years. The surge in cobalt prices that began in 2016, with a peak in mid-2018, has indeed caused a massive influx of artisanal miners exploited for the benefit of foreign traders, who have come to invade GECAMINES 'main concessions.

This illicit exploitation, without financial return for the STATE, nor for GECAMINES, was coupled with an exploitation of men, women and sometimes children, forced to work in unworthy conditions and for low wages for the benefit of these new players, connected to major processing industries located outside the DRC.

This is how President YUMA campaigned to change the legislation in this area and through the innovation of so-called strategic minerals in the revised mining code. This specific classification made it possible to set up a derogatory treatment, which resulted in the exercise by the State of a monopoly on the marketing of strategic minerals exploited in an artisanal way and requiring industrial processing.

This plea will have been heard by the most authorities of the Democratic Republic of Congo who:

- Classify cobalt, coltan and germanium as a strategic mineral on November 24, 2018, by decree n ° 18/042 declaring cobalt, germanium and colombo tantalite "coltan" as strategic mineral substances.
- Create the Enterprise Générale du Cobalt to set up a monopoly for the purchase and processing of Congolese artisanal cobalt by decree n ° 19/15 of 05 November 2019 safeguarding activities relating to strategic mineral substances for artisanal mining.
- Create ARECOMS to regulate in a derogatory manner the artisanal mining sector of strategic substances, by decree n ° 19/16 of November 5, 2019, establishing, organization and functioning of the regulatory authority and market control of strategic substances

1 Advocacy

As early as June 2016 at DRC Mining Week, President Yuma called the attention of actors to recent developments in the artisanal sector.

«Having said that, a good business climate also implies that companies respect their obligations towards their employees, towards the populations, towards their industrial partners and finally towards the State. We cannot be satisfied, for example, with these installations which encourage the illegal work of artisanal miners by buying back minerals illegally exploited on private concessions, in defiance of the most basic of rights.»

During the new year greetings of the President of the FEC to economic operators, January 29, 2019, he denounced the intolerable situation experienced by artisanal miners and the significant losses suffered by the State and called for a strong response from the STATE.

«This fall (in cobalt prices, editor's note) is not the result of chance or speculation, but mainly that of the massive influx into the markets of cobalt from uncontrolled Congolese mining crafts, which would represent, according to the various studies around 30% of national production, i.e. the equivalent of 24,000 tons of cobalt per year.

This influx of minerals, at discounted prices, often obtained from the most fragile populations and in dangerous conditions, is a social scourge, as much as an economic one, through the downward effect it has on prices.

I therefore hope that the new Government will take resolute action on this priority subject to regulate the situation, improve both the living conditions of minors and their income, and put an end to this fall in prices, which handicaps the State, and all mining industry companies in the DRC.»

During DRC Mining Week June 19, 2019, he challenged the mining community in the DRC and

insisted on the need for the STATE to take charge of the sector.

«According to analysts, this informal artisanal production represents 30% of national production and allows both intermediaries and locally established refineries to buy the raw material extracted at extremely low costs, to process it and then resell it legally, at prices well below the market price.

The classification of cobalt as a strategic substance, today offers the State the opportunity to create a specific regime applicable to the extraction and sale of cobalt ores, by putting in place mechanisms to control the supply chain, value of the informal artisanal sector, from extraction to export. It is an absolute necessity for the country and the people: we will propose a plan in this direction to the new Government.»

During the FEC's greetings to the economic operators on February 25, 2021, he praised the action of the State and called for the generalization of the mandate of EGC and ARECOMS to coltan and germanium, but also to reflect on its extension to other minerals not yet classified as strategic.

«The State has taken a certain number of courageous measures by classifying certain minerals as strategic, by offering them a status derogating from the common mining law and by creating a structure - ARECOMS - Authority of Regulations and Control Strategic Minerals.

Once the effectiveness of the new system has been proven, it will be time for ARECOMS and EGC to look at germanium and coltan, which are also strategic substances, and perhaps one day to think of gold and diamonds and Lithium, which constitute just as much, if not more, a shortfall for the State and a tragedy for the millions of diggers who are exploited throughout the country.»

On March 31, 2021, during the official launch of Enterprise Générale du Cobalt in Johannesburg, President YUMA paid tribute to the action of the Head of State who had bet on a strong vi-

vision for the development of artisanal mining in the DRC.

“ENTREPRISE GENERALE DU COBALT is in my opinion the main innovation in artisanal mining economic policy that our country has known for several decades.

Our State has chosen this vision that I qualify as optimistic. His Excellency the President of the Republic, Félix-Antoine Tshisekedi Tshilombo, who currently chairs the African Union, endorsed this vision in favor of «a developmental state integrating the mining sector into broader processes of economic development. This is not only to end the isolation of the mining industry from other basic socio-economic activities, but also to ensure that it benefits all stakeholders.

Our country, by exercising a monopoly on its strategic minerals, has chosen to ensure that the mining industry benefits all stakeholders and in particular the hundreds of thousands of artisanal miners who live and work in the Democratic Republic of Congo.»

Finally, as part of his National FEC Presidency, he contributed to the awareness of the inadmissibility of the illegal exploitation of minerals from the DRC by artisanal workers for the benefit of foreign contractors by organizing a number of missions. Inside the country with journalist Alain Foka who has produced several reports on the subject, one of which has had a particularly important impact, such as *«Ending with the slave trade in Africa»*, and whose concrete effects have been numerous since its publication.

2 The actions

December 2, 2019: official launch of Enterprise Générale du Cobalt SA (EGC)¹⁰ and appointment of President YUMA as Chairman of the Board of Directors of EGC in recognition of his active support for the implementation of this new public policy and of the role called to be played by GECAMINES in the system whose deposits are the main sources of illegal extraction for crooks traders and intermediaries.

November 23, 2020: Enterprise Générale du Cobalt signs a supply agreement with Trafigura to transform the artisanal and small-scale cobalt mining sector in the Democratic Republic of Congo.

The supply agreement includes the establishment of funding of \$ 80 million to support the establishment of strictly controlled artisanal mining zones, the installation of ore purchase stations and the costs associated with transparent delivery and traceable to export cobalt hydroxide. Under the terms of the supply, EGC will ensure that the ore traded by Trafigura complies with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict and High-Risk Areas.

Wednesday March 31, 2021: Enterprise Générale du Cobalt (EGC), officially launches its activity in Johannesburg to supervise the purchase and marketing of responsible artisanal cobalt in the DRC. EGC also publishes on this occasion its *«Responsible Mining Standards»* to define the highest standards to oversee the sector which will guide its operational activity to best support the creation and supervision of artisanal cobalt mining areas, secured and strictly controlled.

Today, EGC's Business Plan has been defined, all the players have been defined, the work has started since January 2021, the preparatory work on site has been carried out, the equipment has been purchased, the US NGO PACT specialized in the artisanal mining field is accompanying the whole process, and EGC is just waiting to have a site to start its operations.

Conclusion

We hope that upon reading this document, anyone interested will have been able to form a more precise opinion of Albert Yuma's real contribution to the re-appropriation of the mining sector by the Congolese.

Far from the biased and outrageous accusations that have focused on his person, all his words and all his actions, that he acted as President of the FEC and therefore defender of the economy of his country, or as President of GECAMINES, the main and almost only mining company in the country, had only one ambition : alert and sensitize leaders and public opinion on the failings of an economic system that deprives the DRC of its wealth and take the necessary measures, whenever possible, to rebalance what could be.

Whether it is the reform of the 2002 mining code,

the rebalancing of GECAMINES partnerships, the adoption of a law on subcontracting or the structuring of artisanal mining, his fights as a socio-economic actor speak for himself.

It is important that no one is mistaken. It is his battles that have earned him the recurrence of attacks launched against him at home and from abroad, accompanied and supported by NGOs who have become the spokespersons of these industrial and political interests.

One does not oppose with impunity multinationals which weigh tens, even hundreds of billions of dollars in turnover, one does not call into question an economic and industrial system that allows a global supply of strategic minerals at low costs, one does not fight external and internal economic interests which take advantage of the weakness of national structures to develop their business, without suffering the consequences.

Beyond the Albert YUMA case, all Congolese and all those among the men and women interested in the development of the Democratic Republic of Congo must be convinced that without an overhaul of the national mining system, without an economic and financial rebalancing of all the partnerships formed in the 2000s, without a legal rebalancing of the rights of each, the mining sector will remain a free zone for the Congolese economy which will have lost its best asset to finance its development.



Notes

- 1 / Note sur l'analyse du rapport GECAMINES intitulé « La vérité sur les mensonges des ONG en RDC » par le COGEP, Manque de transparence de GECAMINES par l'ASADHO, Gécamines Yuma : un nain minier et une sangsue nationale par Rafaël Ngoy Mushila, Demande d'audits de transactions de GECAMINES entre 2010 et 2018 pour relancer sa production, COGEP, Allégations de détournement de fonds et ventes sous évaluées d'actifs, par Jean-Claude Lumumba, Lettres ouvertes (2) sur la « gestion catastrophique de la GECAMINES par les Patriotes Katangais Aile Radicale (PAKAR), l'Opération de cession de certains actifs industriels de GECAMINE à sa filiale STL, par Congo N'est pas à Vendre notamment.
- 2 / <https://www.gecamines.cd>
- 3 / https://www.gecamines.cd/rapports/Reponses%20aux%20ONG%20et%20autres%20acteurs%20de%20la%20soci%C3%A9t%C3%A9%20civile_FR.pdf
- 4 / The report refers to \$ 1.91 billion, but the PCA is only concerned with one accusation against MUMI, others relating to the oil industry, other companies or decisions made before his arrival.
- 5 / Global Witness - Cash Machine
- 6 / See RAID report on the Alternative Market of London
- 7 / <https://www.reuters.com/article/us-cmoc-catl-mine-idUSKBN2BY0BZ>
- 8 / <https://zoom-eco.net/secteur-public/rdc-rachat-des-parts-dans-tfm-le-duel-matata-yuma-plombe-la-gecamines/>
- 9 / <https://www.youtube.com/watch?v=WF01zfB5nrQ> En finir avec la traite négrière en Afrique
- 10 / <https://www.egcobalt-rdc.com>
- 11 / <https://www.egcobalt-rdc.com/app/uploads/2021/03/20210326-EGC-Responsible-Sourcing-Standards-English.pdf>

Annex 1

Mémorandum to the MP's

1

PREAMBULE

Il est important de rappeler que le code minier de 2002 avait été promulgué, sous les conseils des partenaires multilatéraux, dans des conditions particulières : celle d'un pays post-conflit, sortant de longues périodes de troubles. Les capacités de négociation, les capacités financières et d'investissement de l'état étaient érodées par la destruction du tissu économique et la faiblesse de l'administration. C'est ainsi que le code minier de 2002 a été trop généreux pour les investisseurs étrangers.

Aujourd'hui, la situation du pays a changé sur le plan sécuritaire et politique, le monde a évolué et surtout le code minier n'absolument pas produit les effets escomptés pour le pays, la population et les entreprises commerciales du portefeuille.

Dès lors la révision s'impose en considérant en priorité que :

- Les ressources minières sont épuisables. Il faut donc les exploiter en tirant un profit maximum pour le pays.
- La rareté de certains de nos minerais et la qualité des gisements dont on dispose font de notre pays un partenaire recherché et unique. Nos gisements doivent être désormais considéré comme la ressource rare d'un projet minier et non plus l'argent apporté par les investisseurs étrangers.
- Les investisseurs étrangers n'ont aucun intérêt objectif à développer notre pays.

C'est pourquoi, en tant que Président de la FEC, tout en reconnaissant le travail énorme réalisé par les députés nationaux pour améliorer le projet de code minier révisé et augmenter ainsi les retombées réelles pour la RDC, je voudrai proposer les amendements et ajouts ci-après, à la lumière notamment de l'expérience très négative des partenariats noués par la Gécamines fin des années 2000, en ayant à l'esprit que la Gécamines avait du cédé la quasi-totalité de ses meilleures mines contenant des réserves de 32 millions de tonnes de cuivres et 2,7 millions de tonnes de cobalt.

Annexe 1

Mémorandum to the MP's

2

- 1) Considérant le contexte actuel de l'évolution des matières premières, les minerais de cobalt, coltan, germanium et gallium sont déclarés produits stratégiques dont l'exploitation et l'exportation seront soumises à une fiscalité particulière basée sur le prix et la demande mondiale.
- 2) La prise en compte, même rétroactive, de la valeur des gisements, mis à dispositions d'un partenariat industriel, doit être reflétée dans le capital de la société comme un apport de l'état ou des sociétés commerciales du portefeuille. Elle doit apparaître dans les états financiers de la Joint-Venture à sa juste valeur.
- 3) Pour éviter que l'endettement excessif n'empêche jamais tout résultat bénéficiaire, les partenaires étrangers doivent apporter au minimum 30 à 40 % du coût de l'investissement en fonds propres comme part au capital de la société.
- 4) L'obligation d'obtenir l'accord de l'état et de la société du portefeuille pour tout changement de contrôle de maisons-mères à l'étranger. De plus un impôt mobilier et un impôt sur le bénéfice exceptionnel doivent être payés à l'état sur toutes les transactions à l'étranger qui concernent au final des actifs situés en RDC.
- 5) La cessation immédiate des conventions minières. Dès la promulgation du nouveau code minier, tous les intervenants dans le secteur doivent y être soumis.
- 6) La suppression de l'extension des régimes privilégiés du code minier aux sous-traitants étrangers et sociétés affiliées. Seuls les sous-traitants de droit et capitaux congolais peuvent en bénéficier.
- 7) La cessation du bénéfice des droits d'entrée au taux préférentiel pour les titulaires qui auront accompli 3 ans et plus d'exploitation (conformément au B.P initial)
- 8) La suppression de l'autorisation exceptionnelle d'exporter les minerais bruts. L'accès aux avantages du code minier est conditionné à la construction d'usines de transformations jusqu'au niveau minimum de la cathode.
- 9) L'obligation de construire, avant le début de toute exploitation minière, un siège social aux normes des standards internationaux, dans la ville capitale de la province d'exploitations.
- 10) Les taux d'intérêts appliqués aux emprunts extérieurs doivent être acceptés par la Banque Centrale du Congo, au regard des pratiques sur les marchés bancaires internationaux.

Annex 2

Modelization of the economic efficiency of the partnerships

