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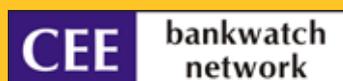
Challenging  
the European  
Investment  
Bank

# Soul mining: The EIB's role in the Tenke- Fungurume Mine, DRC

September 2008

The mission of “Counter Balance: Challenging the EIB” is to make the European Investment Bank an open and progressive institution delivering on EU development goals and promoting sustainable development to empower people affected by its work.

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## Introduction

On July 17, 2007, the board of the European Investment Bank (EIB), the 'public' bank of the European Union, decided to grant a loan of EUR 100 million for the Tenke Fungurume Mining SARL (TFM) Project in the Democratic Republic of Congo (DRC). It is the first project financed by the bank in this country since the end of the civil war.

Before this decision, numerous NGOs tried to convince the EIB to suspend their decision, in order to look more closely at a range of problems concerning the project, in particular:

- Serious problems concerning the transparency and corruption of the signing of the contract for the TFM mining permit;
- The impacts of the project regarding local development;
- The social and environmental impacts of the project.

The EIB, despite these problems, decided to grant the loan. This report sets out the situation surrounding the TFM project.

This report is based on fieldwork carried out by the Congolese non-governmental organisation Action Contre l'Impunité des Droits Humains (ACIDH). The ACIDH study is based on the Environmental and Social Impacts Study (ESIS) of the Tenke company and its evaluations as well as data available on the internet, as well as the report produced by the workgroup *Risks, responsibilities and real benefits: mining in the Democratic Republic of Congo* organised by Exportation et Développement (EDC) with the support of the Canadian Agency for International Development (CAID)<sup>1</sup>. ACIDH also visited the project sites, from Fungurume to Tenke via the major town in the area, Mont Kwatebala (in the centre of the mining concession), the main extraction site, numerous installations and factories for processing the minerals, as well as the villages of Mulumbu, Amoni, Kiboko, Kasolondo, Lukotola, Mpala and Mont Goma (the area that will be mined in the second phase of the project).

Numerous interviews with the employees of TFM, the traditional and local authorities, the local community populations and NGOs<sup>2</sup> were carried out. Information published in the Congolese and international press was also used.

The report also makes use of the parallel report by IPIS<sup>3</sup>, Swedwatch<sup>4</sup> and Diakonia<sup>5</sup>: *Risky Business. The Lundin Group's involvement in the Tenke Fungurume Mining Project in the Democratic Republic of Congo*, published in February 2008.

The conclusion of our research is that the TFM project is based on an unclear mining contract, with considerable doubts concerning corruption. This situation was already known when the EIB decided to grant the loan for this project. Moreover this project will not benefit the DRC. The mining has already started, and serious problems are already apparent, and it is above all the local populations that are suffering.

In the African, Caribbean and Pacific (ACP) region, the EIB is engaged by the Cotonou agreement which states as its objectives "reducing poverty" and "favouring sustainable development". The funding of the Tenke mine does not meet any of these objectives. The EIB therefore should never have got involved in the Tenke project.

The EIB needs to urgently put in place guidelines and strict rules for the evaluation of transparency, the social and environmental impacts as well as its development value for projects that it will finance, in order to avoid embarrassing the European Union with such projects.

1 Conclusions of the workshop organised the 24 May 2007, Maison Willson, Lac Meech, Quebec, available at: [http://www.edc.ca/french/docs/wr\\_independ\\_report\\_f.pdf](http://www.edc.ca/french/docs/wr_independ_report_f.pdf)

2 Résolutions de l'Atelier organisé le 24 mai 2007, Maison Willson, Lac Meech, Québec, disponible sur [http://www.edc.ca/french/docs/wr\\_independ\\_report\\_f.pdf](http://www.edc.ca/french/docs/wr_independ_report_f.pdf)

3 [www.ipisresearch.be](http://www.ipisresearch.be)

4 <http://www.swedwatch.org/>

5 <http://www.diakonia.se/>

## 1. Background

### 1.1 The DRC: thirty years of dictatorship, ten years of war and chaos

The DRC is an enormous central African country, surrounded by Cabinda (Angola) and the Republic of Congo to the west, the Central African Republic and the Sudan to the north, Uganda, Rwanda, Burundi and Tanzania to the east, and Zambia and Angola to the south. **Extremely rich in natural resources and minerals, the DRC contains massive reserves of diamonds, gold, copper and cobalt. The country is scarred by a recent and extremely violent history and chronic political instability.**

Up to its independence on June 1960, the DRC was a Belgian colony. The country was then controlled by Joseph Kasa-Vubu, the first president of an independent Congo and Patrice Emery Lumumba, his prime minister. In 1965, Mobutu took power via a coup d'état and set up a repressive regime, riddled with corruption and personal enrichment. In 1996, l'Alliance des Forces Démocratiques pour la Libération du Congo-Zaïre (AFDL) led by Laurent-Désiré Kabila started a war which only ended with the overthrowing of Mobutu in 1997. In 1998, the DRC suffered its second conflict, involving nine African countries and which lasted nearly six years.

The human toll has been extreme: 4-4.5 million dead, massive movements of refugees and terrible human rights abuses. In January 2001, Laurent-Désiré Kabila was assassinated by a member of his presidential guard. Named as his successor, his son Joseph Kabila entered into the peace process initiated by the international community. An agreement was signed between the feuding groups in 2003 to share power in a transition government, made up of the principal political groups in the country and meant to lead the country to free and democratic elections. The elections finally took place in 2006 and Joseph Kabila became president of the DRC.

The country is currently in a chronic state: 75 percent of the population live on less than a dollar a day, its infrastructure and services are completely run down or non-existent and conflicts continue in certain parts of the country.

### 1.2 The Tenke-Fungurume project: two contracts and the support of public funders

**Tenke Fungurume is one of the largest untouched deposits of copper and cobalt in the world.** Its name comes from the two towns in the area: Fungurume, 195 km from Lubumbashi and 125 km from Kolwezi, and the town of Tenke, at about 30 km from Fungurume towards Kolwezi.

During the 1990s, the DRC started to privatise its mining industry. In 1994, the state started a procedure to open negotiations to create a partnership with Gécamines, a public company, to exploit the deposits in Tenke Fungurume. In 1995, five companies which had replied were still in the running. The proposal of the Swedish group



Women in Katanga

© Wilhelm

Lundin Holding<sup>6</sup> was retained, and a 'heads of agreement' was signed on November 30, 1996 between Gécamines and Lundin Holdings, establishing a shared holding called the Tenke Fungurume Mining SARL (TFM)<sup>7</sup>.

The proposal made by Lundin Holding contained in particular a fund of USD 250 million, the promise of high output volumes, and a rapid start for the mining operations "as soon as possible".

In 1999, TFM froze the project, for the reason of 'force majeure', officially because of the war going on in the Congo. This situation of 'force majeure' lasted until 2005. A new contract was rapidly signed by the provisional government. It included a new partner alongside Gécamines and Lundin Holding: the American mining giant Phelps Dodge (which merged in 2007 with Freeport McMoRan).

On July 17, 2007, the EIB was the first public funder to agree to finance the TFM project, with a loan of EUR 100 million. This funding was followed in turn by the US export credit agency, the Overseas Private Investment Corporation (OPIC), in August 2007, and then by the African Development Bank in October.

**The funding by these public bodies was extremely controversial because of the serious problems of transparency and corruption surrounding the TFM contract, and the fact that these public organisations had been warned by civil society before the decision had been made.**

The construction of the mining infrastructure was started in the beginning of 2007 and, according to the provisions, should be completed by 2008. The mining in Mont Kwatebala should start in 2008.

<sup>6</sup> LUNDIN HOLDINGS LIMITED Group, Registered under Bermudan law, with its headquarters at Cedar House, 41 Cedar Avenue, Hamilton HM12 (Bermudas)

<sup>7</sup> Information provided by the Direction of the Tenke Mining Group on the website: <http://www.tenke.com/s/DirectorsAndOfficers.asp>

## 2. Opacity and risks of corruption

Numerous sources of information cast serious doubts about corruption over the TFM contract. The unusual context of the DRC between 1996 and 2005 (the dates for the signatures of the TFM agreements) should be kept in mind: during the war or the period of transition, with a weak state, a failing and underpaid administration, the Congo was a country in which corruption was rife. **The country is also one of the most corrupt countries in the world according to the rankings of *Transparency International*.** Congo's politicians made a personal fortune from the country's exceptional natural resources for many years. And Katanga, a region rich in copper in the Tenke area, is in the area that the Kabila family comes from. The interference by the central government in the negotiation of contracts with the mining companies was criticised, in particular by the Lutundula Commission<sup>8</sup>:

*"The political leaders at the head of the government meddle in the shadows with their strategies to influence the decisions and their blunt orders given to the negotiators. They closely follow the business of the partners and meddle."*<sup>9</sup>

The NGO Global Witness relayed the damning statement made by a former administrator of Gécamines (Société générale des carrières et des mines), the public company in Katanga:

*"It's a system based on corruption. People are not appointed on the basis of competence."*<sup>10</sup>

The closure of the TFM contract was no different. **The negotiations took place in total secrecy.** During the negotiation of the first contract, Gécamines, the public company responsible for the partnership with the private companies, was in a weak position. Created in 1966, in order to manage the major part of the mining operations in the Katanga province, Gécamines was seen for years as the "economic heart" of the Congo. However, from 1990 onwards, the situation became disastrous: a fall in the price of copper, a reduction of production due to supply

problems (ageing production machinery and transport and an increase in the price of equipment imported), a collapse in the Kamato mine. Making up in the end of the 1990s, the majority of the state's resources and its economy, Gécamines found itself in decline. **A poor management, corruption, the war and serious debts forced Gécamines to negotiate the partnership contracts with private companies in extremely unfavourable conditions:** a serious lack of funds, an inability to correctly judge the value of the Congolese mineral reserves, a lack of juridic expertise and an economy in a sorry state. President Mobutu and the minister for mining were involved in the negotiations and took the final decisions.

The report *Risky Business, the Lundin Group's involvement in the Tenke Fungurume Mining project in the DRC*<sup>11</sup> cites press sources that indicate that **in 1996 the president of Gécamines had already chosen the Lundin group before even the final decision of the commission** responsible to choose the best proposals made by the five companies that were in competition for the contract<sup>12</sup>:

*"To everyone's surprise, the adjudicating committee set up by the GCM to evaluate the bidders was about to present its report when it was summoned by the Presidential delegate at that time (Umba Kyamitala) who read them, for one and a half hours, a document already prepared that blatantly chose Lundin, as the first to have shown its willingness to develop a project in partnership with GCM and that Lundin's investment – to buy the mining rights and investment for the mining activity – was the largest: USD 250 million."*<sup>13</sup>

The same report quotes the book *No Guts No Glory: A Portrait of Sweden's Oil and Mining Entrepreneur*<sup>14</sup> which tells the history of the businessman Adolf Lundin. Lundin admits in his book that he offered, during a meeting in his house in the south of France in 1996, to finance Mobutu's upcoming election campaign. This offer was made at the same time that Lundin Holding was in the running to obtain the partnership with Gécamines. If Lundin confirms that the payments to Mobutu were never actually made, it is probable that this type of promise could have had an influence on the choice of partner.

8 The Lutundula Commission is a special commission of the National Assembly, created in 2004 as a result of the Pretoria Peace Agreements, to reexamine the mining contracts signed between 1996 and 2003. Presided over by Christophe Lutundula, the Commission ended the first part of its report in June 2005 (the second part was never done), but its conclusions were never discussed by the Congolese parliament. The report is nevertheless available online: <http://www.freewebs.com/congo-kinshasa/>

9 The special commission of the national assembly formed to examine the validity of the economic and financial agreements made during the wars of 1996-1997 and 1998 (Lutundula Commission), summary report, first part, p. 86

10 "The system is based on corruption. People are not chosen according to their competence". Interview with a high level administrator of Gécamines, by Global Witness, November 2005 at Lubumbashi, and quoted in the Global Witness report *Digging in corruption, Fraud, abuse and exploitation in Katanga's copper and cobalt mines*, July 2006, available at: [http://www.globalwitness.org/media\\_library\\_detail.php/154/en/digging\\_in\\_corruption](http://www.globalwitness.org/media_library_detail.php/154/en/digging_in_corruption)

11 IPIS and Swedwatch, *Risky Business. The Lundin Group's involvement in the Tenke Fungurume Mining Project in the Democratic Republic of Congo*, February 2008.

12 The five companies in the running were: Anglo American Corporation of South Africa Ltd, Gencor – BHP, La Source Compagnie Minière, ISCOR Ltd and Lundin Holding.

13 See «Les Grands Enjeux» n°003/2005, <http://www.congoforum.be/fr/economiedetail.asp?subitem=31&id=21613&economie=selected>

14 Eriksson R, Adolf H Lundin: *Med olja i ådrorna och guld i blick*, Stockholm 2003. The title in English is *No Guts No Glory: A Portrait of Sweden's Oil and Mining Entrepreneur*.

Also the Lutundula Commission report<sup>15</sup> stated that, in 1997, Lundin Holdings had made an initial payment of USD 50 million dollars as a deposit, as was agreed in the agreement with Gécamines, but that half of the money was actually transferred into the accounts of the Comiex Limited company, in Rwanda. This company was partly owned by President Kabila, who had just taken power.



Concession where new houses should be built for displaced people from Mulumbu to Mpala

The renegotiation of the contract with TFM in 2005 was undertaken in secrecy and in a great rush. At that time a transition government was in place and a study was launched by the World Bank, the IMC report<sup>16</sup>, which criticised the legality of the existing mining contracts, including the TFM contract. The World Bank was also selecting a new consultancy firm to examine the contracts (Ernst and Young, IMC and Duncan and Allen), and even though they had not yet had the conclusions of these studies, the negotiations for the Tenke contract were already underway in 2004. In July 2005, the Council of Ministers approved the new TFM contract, due to be signed in September. The Presidential decree which confirmed the contract was published in October 2005.

Within this climate of corruption and secrecy, the interests of the Congolese state and the local populations were not major priorities during the drawing-up of the project. Contrary to the claims of the EIB, this project will not benefit the DRC.

15 The Lutundula Commission is a special commission of the National Assembly, created in 2004 as a result of the Pretoria Peace Agreements, to reexamine the mining contracts signed between 1996 and 2003. Presided over by Christophe Lutundula, the Commission ended the first part of its report in June 2005 (the second part was never done), but its conclusions were never discussed by the Congolese parliament. The report is nevertheless available on-line: <http://www.freewebs.com/congo-kinshasa/>

16 See below

## 3. A project that will not benefit the Democratic Republic of Congo

### 3.1 Unfavourable contracts for the Democratic Republic of Congo

The EIB justifies its support for the TFM contract, stating that: *"The DRC absolutely needs this investment and the tax revenues that it will bring."*<sup>17</sup>

A state can in fact benefit from mining activities thanks to the tax revenues generated by these activities (taxes and royalties), from payments against the purchase of a permit, or income for the public companies involved in the mining. But in the case of the Tenke contract, the Congolese state will not have any of these benefits.

The signing of the TFM contract was overshadowed by a web of corruption, and as a result certain individuals and private companies profited at the expense of the DRC. Alongside strong suspicions of corruption is the fact that Gécamines, the mining company involved in the contract, was in a dire situation at the time of the contracts. As a result, once again, the national interest was dropped.

#### 3.1.1 The agreement for the creation of TFM in 1996: an unfair deal

Gécamines was in a disastrous financial state at the moment of the signature of the first TFM agreement. Badly run, the company urgently needed its own funds. In the book *No Guts, no Glory*, Bill Rand, an associate of Adolf Lundin, talks about the lack of experience of Gécamines in negotiations and describes these negotiations as chaotic. As well as the lack of experience and capacity of the public company compared to the powerful multinationals, the politicians (the president and the minister of mining) often interfered in the negotiations. As a result, the numerous contracts signed by Gécamines were repeatedly evaluated as being non-beneficial for the DRC.

Since 2003, numerous reports have looked into the terms of these contracts. As well as the Congolese parliamentary Lutundula commission, the World Bank financed an independent report on Gécamines in 2003 by International Mining Consultants (IMC), a UK based company. The World Bank also financed another series of studies via the intermediary of the Comité de pilotage de la réforme des entreprises publiques (COPIREP), a Congolese study group set up to reform public companies. As a result the accountancy company Ernst & Young was commissioned to undertake a financial audit of Gécamines, the legal agency Duncan & Allen a legal audit and the IMC a technical audit.

These different reports all conclude that the agreements drawn up with Gécamines contained numerous irregularities, all of which penalised Gécamines, including the TFM contract.

The IMC report was not published, but the researchers from IPIS were able to see it as part of their inquiry. It states that the conditions of the TFM contract had become worse:

*"GCM rushed into this partnership in 1996, without proper reflection in the hope of receiving USD 50 million and then, it was hoped, another USD200 million rapidly. This was not likely but has forced GCM to accept the rest of the agreement, to its loss, and moreover to handover mining concessions that were disproportional compared to what was promised by the project partner."*<sup>18</sup>

In addition, the study undertaken by IMC reported that the mining agreement in 1996 gave massive financial and para-financial advantages to TFM, as well as tax export exonerations for the export of the mining productions for a period of 16 years. TFM would also be exempted from paying land tax<sup>19</sup>.

Finally, according to the report *Risky Business*, the agreement stated that TFM should sign a contract with the Lundin group, which specifies that the Lundin group will receive several payments:

*"The heads of agreement also stated that TFM would sign a Consultancy Contract with Lundin Holdings, which allowed the usage of Lundin Holdings as TFM's consultant for issues related to prospecting, The Consultancy Contract stipulated that Lundin Holdings was to receive:*

- *An additional 7% of its expenses for prospecting,*
- *A premium of 5% of its exploitation costs, for its assistance on exploitation and*

17 Source: EIB website, <http://www.bei.org/projects/news/tenke-fungurume-mining-project,-democratic-republic-of-congo-drc.htm>

18 IPIS and Swedwatch, *Risky Business*. The Lundin Group's involvement in the Tenke Fungurume Mining Project in the Democratic Republic of Congo, February 2008, p.16, quoting the IMC report, Relevant chapters, 1.3.1.c.

19 IPIS and Swedwatch, *Risky Business*. The Lundin Group's involvement in the Tenke Fungurume Mining Project in the Democratic Republic of Congo, February 2008, p.13.

- 1.25% of overall revenue for its assistance on commercialization.<sup>20</sup>

The IMC concluded that all the partnerships should be renegotiated:

*“The partnerships should be analysed in a thorough manner and negotiated or renegotiated by a team of experts, including international experts. The aim should be to develop the industry sector and increase the income for the state with a new fairer balance between the state and the investors.”<sup>21</sup>*

### 3.1.2 The agreement changed in 2005: new conditions still more unfavourable for the DRC

In 2000, while the ‘force majeure’ clause was still applied to avoid starting the production on the Tenke site, the Lundin group was organising negotiations to find another financial partner; BHP Billiton and Phelps Dodge were interested. In the end, it was Phelps Dodge who signed the deal with Lundin, under the condition that, among other things, the planned production would be reduced, as well as the share held by Gécamines, and to cancel the deposit and to replace it with a 2 percent tax on the mine’s annual production. Some of these conditions were present in the new agreement in 2005.

The changed contract in 2005 also specified, among other things, the reduction of the share of Gécamines from 45 percent to 17.5 percent, whereas Lundin Holdings took 82.5 percent of these shares: Lundin Holdings is shared between Phelps Dodge (70 percent) and Tenke Holdings (30 percent) and the reduction of the payment for the securing of the contract from USD 250 million to USD 100 million (including the USD 50 million already paid in 1997).

**Between 2001 and 2006, the price of copper had quadrupled. However, although the price of the raw materials had shot up, Gécamines found its share in the extremely rich Tenke Fungurume seams drastically reduced.**

Concerning its financial aspects TFM has never published a financial viability study. It is therefore impossible to know how TFM foresees its income and, above all, how it plans to “share” the profits with the Congolese state. The partnership contracts are also unclear. The documents are unavailable and the central document of the contract that was changed in 2005 is unavailable.

20 « The Heads of Agreement also specified that TFM should sign a consultancy contract with Lundin Holdings, authorising the use of Lundin Holdings as the consultant for TFM for the mineral prospecting. The consultancy contract specified that Lundin receives:

- 7% extra for the costs of mining prospecting
- A 5% commission for the mining production costs, for its help with these activities and
- 1.25% of its overall revenues for its commercial assistance » Ibid., p.13, quote from the Heads of Agreement for Tenke Fungurume Mining between Gécamines and Lundin Holdings, art. 14.1. 30th November, 1996 and the report of the IMC, Annex B1, p.8

21 Ibid., p.16, quote from IMC Group Consulting Ltd, The restructuring of Gécamines. Draft Phase 2, November 2003. Document not published.

In 2007, the Financial Times quoted in an article an internal note written by Craig Andrews<sup>22</sup>, expert on the mining sector at the World Bank since 2005, in which he evaluated the updated contracts<sup>23</sup> as still very unfavourable for the country:

*“In a World Bank memo seen by the Financial Times and dated September 2005, Craig Andrews, the World Bank’s principal mining specialist, wrote to Pedro Alba, the bank’s country director for the Congo, to say the deals had not undergone a “thorough analysis, appraisal and evaluation” before being approved. He said the assets transferred to the companies exceeded the “norms for rational and highest use of the mineral assets”.<sup>24</sup>*

In addition, a Congolese inter-governmental commission also looked into the problems of this new agreement. It should be noted that the EIB had already decided to approve its loan for the TFM project even before the conclusions of this commission were available.

### 3.1.3 Revision of the mining contracts in the DRC: full of uncertainty

*a) A revision procedure that denounced the illegality of 60 mining contracts*

**Under pressure from civil society and public opinion, the Congolese government accepted in 2007 to launch a revision of the mining contracts.** Moreover, on April 20, 2007, the Congolese mining minister established a commission under his jurisdiction, to examine the sixty mining contracts signed under the previous regime, in order to correct the errors in these contracts. The TFM project contract was one of these contracts.

The commission was made up of members of the government and civil servants, as well as representatives of the president, the prime minister’s office, the ministry of mining, the ministry of finance and the different ministries involved with the mining sector. The commission was placed under the control of the minister of mining and presided over by his cabinet director. The ministerial decree creating this commission specified that the commission could call on external expertise if necessary, but without giving more information.

22 World Bank Office Memorandum, Contracts between Gécamines and private companies, 8 September 2005, §3.

23 Two other contracts were signed as well as this one with TFM.

24 “In a memo of the World Bank, quoted by the Financial Times, from September 2005, Craig Andrews, the main specialists for mining at the World Bank, wrote to Pedro Alba, the regional director of the Congo, to say that the agreements had not been analysed, undergone a study or a thorough analysis before being approved. He judged that the value of the transfer to the companies went beyond the norms for the best and most logical use of mineral resources.” Financial Times, 3rd January 2007, Transparency fears lead to review of Congo contracts, [http://www.ft.com/cms/s/0/c918d3a2-9a8a-11db-bbd2-0000779e2340.html?nclink\\_check=1](http://www.ft.com/cms/s/0/c918d3a2-9a8a-11db-bbd2-0000779e2340.html?nclink_check=1)

The internal regulation for the commission specified that the general assembly of the commission can choose experts in order to have technical assistance.<sup>25</sup> Three organisations proposed their consultancy services: the Carter Center (an organisation based in the USA) and Open Society Initiative for Southern Africa (OSISA), both non-profit organisations, and the Compagnie Benjamin de Rothschild (CBdeR), based in Switzerland and part of the LCF Rothschild group.

The involvement of CbdeR was strongly opposed by the NGOs, who criticised the fact that the Compagnie de Rothschild was also the financial consultant for the major mining companies involved in the mining contract that were being investigated (in particular Phelps Dodge).

The Carter Center and the OSISA were given the task of legal analysis of a limited number of contracts, while CBdeR was given the legal analysis of the contracts.

The commission's work, which started in mid-June and which should have lasted three months originally, was prolonged until the end of October. The delay was due to technical difficulties, the refusal of certain companies to participate as well as the pressure and threats made against the commission members by the Congolese administration and by the international financial groups.

The commission examined the documents of each company and met the government authorities as well as the representatives and members of the governing boards of the mining companies. It also carried out site visits<sup>26</sup>.

**From November 2007 onwards, leaked information showed that the commission had classed the 64 contracts examined in three categories: viable contracts, contracts to be renegotiated and contracts to be canceled. None of the contracts was in the first category:** 37 contracts were to be renegotiated, 24 to be canceled and three contracts were not examined as they were simply sales contracts and not partnerships.

The commission's report was kept secret for some time by the government, despite the fact that there was no legal reason to justify this. The government found itself in a difficult situation as none of the contracts had been evaluated as valid.

The report was finally published in March 2008.

*b) The example of the Tenke-Fungurume contract: an agreement to be reworked*

The TFM contract fell into the second category, namely a contract that should be renegotiated.

25 Le secteur minier congolais à la croisée des chemins, p.14 concerning the external advice and consultancy is available at: [www.globalwitness.org/media\\_library\\_get.php/499/mining\\_contrat\\_re-view\\_oct07\\_fr.pdt](http://www.globalwitness.org/media_library_get.php/499/mining_contrat_re-view_oct07_fr.pdt)

26 Ibid



The newspaper *Le Phare*, which had published the outcome of the renegotiation in November 2007, relayed the observations of the commissions regarding the TFM contract:

- Non-respect of the terms of the Mining Convention following the call for bids, for the proportion of shares, the deposit and the carrying out of the construction;
- Violation of article 38 of the Mining Law, 1981, limiting the area concerned by the mining convention to the Zones Exclusives de Recherches (ZER) – Exclusive Prospecting Areas;
- Unjustified reduction of the rights of Gécamines (GCM), in particular the share of the project's capital, from 45 percent to 17.5 percent and the penalty of ending the contract from USD 250 million to USD 100 million of which USD 65 million was paid<sup>27</sup>;
- Failure to produce a viability study for the project within the timelines initially agreed<sup>28</sup>;
- Violation of Article 6 of the Mining Convention, concerning the stability of the financial stability of the project: GCM 45 percent and Lundin 55 percent;
- The use of the 'force majeure' clause was unjustified;
- From January 1997 to 2005, a freeze of the issuing and sale of shares by Lundin;
- Illegality in the agreement, after amendment and rewriting: taking advantage at the same time of the mining code and the mining convention of 1996 in contradiction of article 340 of the mining code<sup>29</sup> (15 July 2002);

27 Letter of the Vice President for the Economy and Finances, January 20, 2005

28 Art. 5 of the initial convention

29 Art. 2 and 51 of the amended mining convention

- Failure to provide the viability study as specified in the two contracts. This partner was, 13 months after the completion of the first phase, completed following the call for an international call for bids made by Gécamines.

Due to the non-respect of the conditions specified by the call for bids and the violation of article 340 of the Mining Code, the ad hoc commission advised the government to end all the contracts and to encourage the parties involved to sign new agreements that complied with the Mining Code, with a clause to favour the renewal of the contract with the current partner.

As the project was already in the phase of construction and development, the value of the reserves had been reevaluated, and increased from 9 to 18 million tons of copper; with this in mind the ad hoc commission recommended that the government:

- identify and evaluate the real value of shares of the partners in the joint venture in order to create a clearer balance in the partnership;
- oblige Gécamine's partners in the TFM project to pay the missing sum as a result of the non-respect of the contract: USD 185 million;
- increase considerably the production provisions with an increase in production capacities to reach at least 500,000 tons of copper per year;
- oblige the payment of royalties.

#### c) An uncertain future

Despite the numerous illegalities, there is no reason to expect that the TFM contracts will be renegotiated.

The commission report proposes an increase in Gécamine's share in the partnership from 17.5 to 45 percent (the conditions of the first agreement in 1996). However these renegotiations are bound to fail if they are not clear and fair.

In a speech made on February 5, 2008 during the "Mining Indaba" conference in Cape Town, South Africa, the vice-minister for mining in the DRC, Victor Kasongo, stated that the government of the DRC was setting up a rapid and clear appeal process to examine the mining contracts under the supervision of a special committee. This would enable each company whose contract had been examined to present their arguments concerning the reclassification of the contracts, and thereby reduce the risks of clashes and delays. This was in fact a rapid renegotiation process, undertaken in the greatest secrecy.

#### d) The government tries "to push back" the renegotiation

In mid-March, the Congolese government announced the setting-up of a special inter-ministerial team, charged with the investigation of the „reaction of the investors“ after the commission's criticisms. It proposed contacting the companies, for an additional phase of the process, according to the conclusions that are made (renegotiation or canceling of contracts)<sup>30</sup>.

This team did not give any guarantee of impartiality or of independence, despite the demands of the international NGOs asking for inclusion of international legal experts and the participation of civil society.

Numerous observers feared that the government had chosen this "quick route" in order to get the renegotiation done as quickly as possible, to reassure the mining companies and to improve the climate for investment.

This renegotiation could, therefore, once again be subject to secrecy, without any means of control or responsibility.

The fears of the government are made clearer if one reads the statement of Christophe Asselineau, lawyer and head of the Global Mining Group Simmons & Simmons:

*"The risk for the DRC is, if the revision of the contracts result in the ejection of companies, as the commission report seems to suggest, even if it is just for a few key elements, the country would find itself with a flurry of international legal cases which would freeze the mining sector, as few serious new companies, regardless of their nationality, will engage the sums required for an active development if this depends on the outcome of a ruling. For the DRC and Gécamines, this would cause the payment of compensation for damages and the loss of important revenues that these companies would have generated."*<sup>31</sup>

Between the menace of legal actions by the multinational mining companies (whose profits and powers exploded with the increase in the price of raw materials), the climate of corruption and secrecy and the absence of strong international political pressure, doubts remain about this rapid and secret revision of the contracts that will not benefit the DRC's public coffers or enrich the country.

<sup>30</sup> <http://www.afriquecentrale.info/central.php?o=5&s=44&d=3&i=1453>

<sup>31</sup> Interview of April 4, 2008, Les Afriques – le journal de la finance africaine, „La France a une occasion unique en RDC“

### 3.2. Fraud on the ground

Field research by ACIDH found that, according to the information provided by villagers, the company is already mining in the area. The concession area contains, in fact, other precious materials, such as gold, which do not require industrial mining procedures. Additionally, the company seized important quantities of minerals illegally mined by local miners. According to the statements made, these minerals were exported without being declared. This widespread practice in the DRC deprives the state of important revenues.

## 4. A project that does not benefit the local communities

### 4.1 Biased consultations with the local population

In accordance with its legal obligations, TFM undertook a series of consultations with local communities prior to the start of the project. TFM held more than one hundred<sup>32</sup> meetings and discussion groups, some of which were reserved only for women, men or young people, and others held with tribal chiefs. The meetings were publicised on television and local radio. During these meetings local people's expectations for the project were clear, notably on the creation of jobs, improvement of domestic services (water, health, electricity and education) and the administration, modernisation and improvement of the overall quality of life in the region.

The main concerns with the project questioned increased employment, better working conditions and massive influxes of migrant workers.

In reaction to these concerns, TFM endeavored to develop a recruitment policy in coordination with the government and local organisations in line with DRC legislation.

While in principle the consultation processes appear positive, these should have been based on an Environmental and Social Impacts Study (ESIS), a study and plan for the management of the mining project and a Plan d'Atténuation et de Réhabilitation (PAR, Reduction of Impacts and Rectification of Problems). **However, because of high levels of illiteracy in the region and the fact that TFM did not translate the documents into Swahili, the local language, a large segment of the population could not read these documents. It is difficult therefore to call the public consultations properly informed debates with the population.**

Additionally, ACIDH points out that these meetings, despite being numerous, did not allow enough time for participants to analyse and understand the questions under debate, and above all, to develop their own criticisms. The discrepancy in the time allotted for debate between different stakeholders (TFM and the communities) biased even more results of these consultations.

These conditions partly explain why today the population has already started to reject the project.

### 4.2 Guarantees of the project promoters

The Tenke Fungurume region suffers widespread poverty, lacking potable water, public services and employment. The main economic activity is agriculture, either subsistence or for small-scale trading with neighbouring provinces.

The region's inhabitants hoped to see improvements in standards of living as a result of the Tenke project, and TFM has made numerous promises to this effect.

#### 4.2.1 The hopes of the population

Questions and concerns have been raised to TFM on a number of issues:

- **Health infrastructures** and basic medical products in the region: locals suggested that TFM address this problem by contributing to the construction of hospitals or clinics, upgrading existing facilities to provide basic medical products in the mining area, or establishing training programs for health workers.
- Access to **electricity**: since the project would consume electricity from existing infrastructure, locals proposed that TFM contribute to electricity supplies for the communities.
- Improvements to **communication infrastructure**, including telephone, television, and radio, as well as the installation of television antennas.
- **Housing and construction**: TFM was asked to provide housing for local communities and tribal chiefs, and credit facilities and construction materials. Further, locals wanted guarantees from TFM to support a building company that would hire construction workers for the mine who would have already acquired useful construction skills.

Reinforcing support for communities' activities, addressing educational needs, access to potable water and hygienic facilities and the lack of infrastructure were also amongst the major concerns expressed by the communities.

While it is clear that TFM could not replace the government in providing all public services for the community, TFM nevertheless acknowledged that the population in the mining area had clear priorities concerning support for agriculture, improvement in economic opportunities through job creation and support for local businesses, and better access to medical care and education. Effectively TFM accepted these priorities as the basis of its program for community development.

<sup>32</sup> Figure provided by a TFM worker who wished to remain anonymous, interviewed by ACIDH in Fungurume .

## 4.2.2 Formal engagements of the TFM promoters

From its *Summary of the initial report and responses to the issues concerning the project*<sup>33</sup>, TFM set out its plan of engagement with local communities:

### 1. Concerning community development

- 0.3 percent of net revenue from the production sales will serve to create an investment fund for agriculture and social development in the area.
- TFM will work with the DRC government, local organisations and NGOs, and in consultation with local populations, on projects that will be beneficial in the long term.

### 2. Concerning human rights

- TFM engages to respect fundamental human rights and the dignity of everyone in the zone of operations.
- TFM will draw up an official policy based on the Voluntary Principles on Security and Human Rights.

### 3. Concerning financial transparency

- The high official and other members of TFM will all receive training to fight corruption. Corruption and bribes will not be tolerated.

### 4. A fair recruitment process

- TFM hires women and will continue to do so.
- TFM will not employ children

### 5. Social and environmental concerns

- TFM will run the project in a responsible manner, for both social and environmental issues.

However many of these requirements are legal obligations anyhow: banning child labour, respecting fundamental human rights, and fighting corruption. Further these provisions are also very vague and imprecise, such as “TFM will run the project in a responsible manner, for both social and environmental issues”<sup>34</sup>. And while TFM committed to engage in community development, ACIDH researchers found that, **on the ground, unsatisfactory solutions to local people were selected and then implemented without real concern for long-term sustainability. Moreover, the fundamental obligations of TFM, including respect for labour laws and human rights, were not respected in practice.**

33 Résumé du rapport de cadrage préliminaire et du rapport sur les réponses aux enjeux du projet, May 2006, p. 1

34 Though other documents nevertheless detail these engagements

## 4.3 The situation on the ground: poverty and anger of the populations

### 4.3.1 Violation of the rights of the displaced

In its Environmental and Social Impacts study, TFM explains that for displaced populations, it will apply the directives of the “Equator Principles” and ensure “that the situation of the populations impacted will not deteriorate and, preferably, their quality of life will be improved by the project.”<sup>35</sup>

To enable construction of the factory, the population of Mulumbu will have to be displaced to the site of Mpala. TFM had planned in its program of construction to resettle the population during a period of at least five months, from May to September 2007.<sup>36</sup>

From the October 13-20, 2007, ACIDH researchers in Mulumbu and Mpala **found that the populations had been displaced before the construction of their new housing had even started at the new site. As a result, the displaced populations were without housing and forced to sleep under plastic sheeting shelters.**



**Displaced people, without housing, were forced to sleep under plastic sheets.**

An interview carried out by ACIDH provides an overview of the local population’s situation:

“We are about 226 families and the last group will arrive tomorrow from Mulumbu. TFM had promised that we would move during September this year into our new housing. Unfortunately up till now nothing has been done for us, we were forced to come here. Look at the state our families are in, some of us sleep under plastic sheets, we are in wattle huts<sup>37</sup>. We are new here, we have no land or relatives with us, but the company has moved us here without any

35 Environmental and Social Impact study, executive summary, p.45

36 Ibid

37 Plastic sheets and straw bails were provided by TFM.

care for our welfare and our families, or schooling for our children, because as you can clearly see here, there is no schooling. The same is true for medical care. The area is full of mosquitoes, we have no mosquito-nets and the huts don't have doors. The TFM workers who deal with us don't care at all for us. It seems as if the TFM company has more power than the state because despite all that is going on, the state does nothing, and the local mayor here in Fungurume hasn't even visited. As for our land, the company paid us USD 120 per hectare. To date we have received a part of the payment and the total we are expecting is USD 270 and it is with this that we are supposed to be compensated for our fields and to feed our families. You see the company has evaluated the real value of our fields, despite the fact that they had promised to pay us 150 percent the value of our fields. And the company had promised to support us for three years, but now they say that they will only help for a year. This limits us to two hectares each, even for those who could farm ten hectares previously"<sup>38</sup>.

In addition to the extremely difficult situation for the people displaced, this resettlement occurred without regard for the relationship between different communities in the area, thereby creating a risk of conflict. ACIDH discovered that for the population already on the Mpala site, the arrival of the newly displaced population was seen as a violation of their rights.

Because of this situation, construction of the camp for the displaced population has stopped. An interview with the Chief Mpala shows clearly the bitterness and resentment that has resulted:

*"The company doesn't try to work with me, but prefers to deal with the Chief Munongo,<sup>39</sup> forgetting that they are operating on my land. I live in extreme poverty but the company only uses me for ancestral ceremonies and gives me nothing. See how I live whilst it's on my lands that the company makes its fortune?"*

In a country that has just emerged from ten years of civil war, aggravating tensions between neighbouring communities is irresponsible.

In its guide for good environmental and social practices, the EIB sets out provisions for the movement and relocation of project affected communities. It explains that project analyses should take into account the willingness of the local population to be resettled, and that there should be consultation processes set with public authorities who take responsibility to manage the procedure. The guide further adds that EIB staff must be convinced of the project promoter's ability to effectively apply the displacement plan<sup>40</sup>. These statements though are not accompanied by any detailed procedures or more precise instructions.

During the implementation of the Tenke project, the displaced populations were moved without the agreement of the communities living in the relocation zone and thus conditions for resettlement were not respected. Shifting hundreds of families into sheet housing is a serious affront to their dignity and their fundamental rights.

**The principles announced by the EIB were not respected.**

These principles were not associated with clear procedures, funds or obligations, so it is not surprising that the outcome was unacceptable. Moreover, well before the EIB approved the project, civil society groups contacted bank staff to highlight the inevitable problems of the project. This raises questions about the ways in which the EIB assessed the project and why it ultimately decided to finance it.

#### 4.3.2 Job insecurity, illegality and a source of conflict

The EIB often presents the projects it finances as an opportunity for the host country to create a large number of jobs.

*In the case of the Tenke project the EIB states that the project will create about 1100 jobs directly and will provide the livelihood for another 5,000 people.*

However, the state of the project reveals that even if jobs were created, fundamental labour laws and rights have not been respected. Additionally, the recruitment process has already created serious problems in this regard.



**Mulumbu : man cutting a tree in front of the future site of the TFM reprocessing plant**

38 Entretien traduit du Swahili par ACIDH

39 Chef de groupement attiré des Bayeke et du territoire de Lubudi dans lequel se trouve situé la concession TFM

40 EIB Environmental and Social Practices Handbook, p.144 <http://www.eib.org/about/publications/environmental-and-social-practices-handbook.htm>

a) *Work conditions: safety respected but working hours abused*

The interviews carried out by ACIDH with the TFM workforce and subcontractors indicate that although safety standards are respected at the mine, legal limits for working hours are not and 'overtime' is not paid.

The workforce testified that the limit for working hours is not respected and that in the case of some subcontractors, people work six or seven days a week:

*"We are critical of the fact that we work more hours than set down by our labour laws and we are not paid more. Work starts at five in the morning- this is the time by which we have to be in the compound. The bus takes us to work, and we stop at six in the afternoon and the bus takes us back. We generally get back home at seven in the evening, and apart from the workers directly employed by TFM who do a five-day week, everyone else works on Saturday and some even work on Sunday".*

b) *No freedom for trade unions*

Trade union representation is one of the four basic rights set down by the International Labour Law, and the EIB is supposed to ensure its application in the projects it finances. Union representation is also a constitutional right in the DRC<sup>41</sup>.

ACIDH researchers interviewed about thirty TFM workers, and all confirmed that there is no trade union freedom for employees of the subcontracting companies:

*"Apart from the workers directly employed by TFM who have trade union representation, the other subcontracted companies do not allow us to organise trade unions, which means that many of our rights are squashed, in particular the hours of the working day, through setting and breaking illegal contracts, overcharging for various items that are taken from our salaries by SESOMO<sup>42</sup>, the absence of a fixed monthly salary, and even when we work on Sundays, overtime is not paid and so on."*<sup>43</sup>

**Most of the workers on the Tenke project, employed by subcontractors, do not have the basic right to organise themselves in trade unions, nor can they defend their rights, salaries and working hours.**

c) *Illegal work and tensions from the recruitment process*

TFM claims to have directly created 1000 jobs. However data collected by the province division of work and employment are the following: of 28 workers, 25 are Congolese, including 24 men and one woman, and the remaining three are expatriates, only men. The differing

41 Specified in article 255 of the Congolese work code: "The representation of workers in a company or any type of structure is ensured by an elected delegation".

42 An accountancy firm that specialises in the calculation of wages

43 These statements were made in the local Swahili language.



**TFM builds huge roads in the concession**

data highlight not only the common practice of tax avoidance by the company but moreover the insecurity of non-declared workers. This means that the state loses revenue from income taxes and that these workers have no contracts. They are effectively illegal workers and therefore do not have the possibility to defend their rights and can be dismissed at any time.

The entrepreneurs have a dominant position over the workforce and appear to abuse this power. A non-local confided with ACIDH that the subcontractors who deal with recruitment "play the locals against the non locals" in order to reduce salaries and hire day workers without contracts. Yet during the consultation period prior to the first phase of the TFM project, the company promised to hire a local workforce<sup>44</sup>. And while well-aware of the situation, local authorities do not apply relevant laws.

On January 14, 2008, more than 5000 people<sup>45</sup> living in the town of Fungurume demonstrated against the TFM company and its subcontractors, whom they accused of neither giving jobs to the local population nor helping the community as it had promised. A lorry was set on fire and a TFM warehouse was ransacked by the protesters, as reported by ACIDH in its January 21 press release:

A local official explained how she saw expatriates and certain privileged officials living in luxury in her town while the majority lived in misery<sup>46</sup>. These feelings were shared by a police officer from Fungurume and the majority of his force. After the violence he stated: "We were all aware that we should not fire on the protesters, bearing in mind our meager salaries and the fact that we do not benefit at all from the presence of the company

44 See the Environmental and Social Impact Study, May 2006 p.8 relating to the creation of jobs and favorable benefits of the TFM project.

45 Estimation of the number of protesters given by Fungurume's town head during a telephone conversation, with ACIDH, 18 January 2008.

46 The fundamental right for the Congolese people to benefit from the country's natural resources is set down in Article 58 of the National Constitution: "All Congolese have the right to benefit from our national richness. The state has the duty to equally distribute this wealth equally and to guarantee the right to development."

here. On the contrary, we could not help but notice the comfort of the company staff in our town". The police officer said that he had a monthly wage of 30 USD, paid sporadically by the Congolese state.

Following the protests, more than twenty people were arrested, and ACIDH is certain that human rights abuses took place in the process.

The project has not improved the employment situation and has created serious tensions at the local level in the process.

#### 4.3.3 The forced eviction of local miners

The Tenke project has dealt a serious blow to the small-scale local mining sector. All small-scale mining is now banned in the area, where previously hundreds of local miners worked. Their departure was not peaceful; in 2005, mixed teams of private security guards and members of the Congolese police carried out a program of expulsion in the TFM concession area. ACIDH denounces the serious human rights abuses that took place during this program, notably the killing of four miners and one mother, as well as numerous injuries by gunshot amongst both the miners and the police<sup>47</sup>.

Though the project may create some jobs, these are not many and are by nature precarious, illegal and a source of conflict. Additionally the project has caused the loss of livelihood for hundreds of local miners. Can one therefore talk about an improvement in the quality living of the Congolese population? ACIDH points out that while TFM has implemented some local projects for community development, such as the fabrication of lattices or bricks (see below), the number of people employed by these is negligible compared to the number of local miners who were expelled.

An ACIDH researcher concludes that the announcement of the creation of 1100 permanent jobs during 20 years of mining<sup>48</sup> and 1800 to 2600 indirect jobs for a population of 41.000 habitants could hardly have a substantial impact on the reduction of poverty.

#### 4.3.4 Community development from the top-down, increasing tensions

One of the reasons for the January 2008 protests against the Tenke project was the local population's dismay at the absence of social improvements guaranteed by the project promoters. TFM's community development plan consisted of seven main axes: support for agriculture, health, education, transport, access to water, housing and electricity for the communities.

This report highlights some aspects of the community development plan: access to water, electricity, education, and the program for the development of a brick production industry. Some actions were taken in these areas, but in none of these cases did the development of these projects take into account local realities, the real needs of the communities, or the future sustainability of these activities. Further the population was not allowed to determine the priority for these projects or their implementation. TFM decided this without public participation, resulting in projects with limited benefits and poorly adapted to the local situation.

##### a) Access to water: limited and poorly adapted

TFM promised to construct 42 wells in 42 villages, via the intermediary Pact Congo<sup>49</sup>. Pact Congo was merely tasked to carry out these projects; neither it nor the population had any say regarding the execution of the project, which is controlled by TFM. To date, ten of the 42 communities have benefited from a well- less than a quarter of the total- and the drilling of the well provides each village with only one fountain and extremely limited access times: from eight to ten in the morning, and from three to six in the afternoon. The villagers therefore must wait extensively to access twenty litres of water per day; many give up. This improvement is therefore extremely limited.

A woman fetching water, interviewed by ACIDH, complained about the situation:

*"We absolutely need another solution, this is no good, everyone comes here to get drinking water and not only are there no other fountains or wells but the hours of access here are limited by the company. It is high time that a solution is found, because the day when there is no water in the fountain, we will be forced to drink dirty well water which will make us ill. What's more, the majority of the population already drinks well water with a high risk of catching an illness. Today I still haven't had any water and I don't know if I'll have any as it's nearly five in the afternoon and the queue is still long"<sup>50</sup>.*

49 Pact Congo is an American NGO specialised in the development of the capacities of local organisations and community development. Pact is funded by USAID (United States Agency for International Development) and DFID (UK's Department for International Development). Pact Congo has to date signed six contracts with mining companies to help community development in areas impacted by mining activities. As such Pact Congo is funded by these companies for the social development schemes of the communities. It is clear from interviews with Pact Congo that it acts as a liaison between the company (TFM) and local communities. Pact Congo clearly states that the priority and choices of projects are made by TFM.

50 Statement from a woman who preferred to remain anonymous, made in Swahili and translated by the ACIDH researchers.

47 Statement from a former miner who preferred to remain anonymous  
48 See the Environmental and Social Impact Study, May 2006 p.10



Medical center in Fungurume, where some patients lie on the floor

### b) No progress towards access to medical care

TFM, in its Environmental and Social Impacts study in May 2006, committed to improvements for the health sector, including “Medical care: support for hospitals and clinics in the region. New health structures could also be built”.

There does not seem to be any real improvement yet.

The health district of Fungurume, with nearly 90,000 inhabitants<sup>51</sup>, has many functional problems. The Medical Director explained the following to ACIDH researchers:

*“Our most important health centre has 12 beds for an estimated population of 89,792 habitants. We cannot carry out laboratory analyses, there is no electricity or water. Patients are received and hospitalised in inhuman conditions. Can you imagine that because of a lack of beds the patients have to stay the night on the floor? Sometimes we are forced to send people away, and they have to go over 45 kilometers to Kambove. There is no real operating theatre. The operating table we have is thanks to Vision Mondiale; apart from that there is nothing. Only TFM has a well-equipped clinic but the local population doesn’t have access”.*

### c) Access to electricity: no progress yet

Nearly everywhere in the DRC electricity is a rare commodity for the population, and the problem is especially serious in Katanga. The reasons for this are many and complicated. SNEL (the national electricity company) and the public authorities continue to allow new mining companies, which use massive amounts of energy, to operate without first giving back to the electricity supply. As a result, the energy supply is insufficient and the mining industries are systematically favoured to the detriment of the population. SNEL is forced to regularly cut power supplies and the town of Fungurume suffers frequent blackouts as a result of the mining companies’ consumption.

51 According to the director of the Health District of Fungurume.

There are some districts where there is no power at all and others that only have a weak current with random cutoffs and blackouts. One local tells that “SNEL always prioritises the TFM mining company, which can always pay its bills, while the poor are condemned to live without electricity. It’s here where we live that we have all the problems but we seem to be forgotten and brushed aside in every way. We tell [SNEL] that we also have the right to electricity even for our hospital and maternity centre. If this situation continues it is worrying for the social harmony. We demand the authorities to ensure application of the law”.

Far from improving the local population’s access to electricity, the Tenke project has reduced access.

### d) Education: quota access to schooling

During ACIDH’s most recent visit to the Tenke area, only one building of poor quality with six rooms and a capacity for thirty students had been built. So far it is the only primary school built by TFM and it lacks an administrative office for school officials.

At Fungurume, there is one main school built by TFM, comprised of two buildings with three classes each, almost exactly as at Tenke. Another school has been rebuilt two kilometres from Fungurume near Kolwezi. However, despite the efforts of TFM in this area, the coordinator of TFM’s community development project, Madame Ida Efinda, admits that the completed projects are far from adequate in terms of the number of students schooled<sup>52</sup>.

Due to a lack of capacity, the company is forced to use a system of tokens that allows children to be registered on a first-come, first-served basis. Access to education is therefore on an arbitrary basis, without the involvement of the population, and only a small minority benefits, whereas a large majority of the population feels tricked.

A Tenke resident<sup>53</sup> describes the situation:

*“How many of our children can the school really accept? To ensure a place we must have tokens that are given as part of the enrollment process. We parents have to battle to get our children signed up- why not build a larger school with more places? [TFM] have done this so we waste our time and energy; when will they start to think about improving our well-being? Our minerals and our wealth, they are already helping themselves to, already they’re mining for a long time or they have messed up and they haven’t yet started the mining. It’s a lie if they say that or they are busy stealing and pillaging. Because we know that they are already mining, especially at night ; their planes take away the precious minerals. If only they would tell us the truth”*

52 Statement by the coordinator for TFM Community Development program, Madame Ida Efinda

53 42 years old, married, with nine children

*e) Community brick kilns: deforestation and viability problems*

The creation of brick kilns is one of the projects supported by Pact Congo with local communities. The project suffers from numerous problems. The number of jobs created is limited, and the long-term viability of the project is suspect, as **TFM is the only client**. Additionally, baking the bricks requires wood, which had been provided by TFM via its permits to access forests in the area around the mines. However this quantity of wood is not sufficient to meet demand, and **brick makers have no choice but to cut down additional forest to supply wood for their factories**. The resulting deforestation is a perilous threat to the local environment, with negative implications for farming activities essential to the region.

**All measures set up by TFM to address community development lack long term vision for their sustainability and involvement of the local population**, as well as an overall evaluation of the local situation. People living in the area whom ACIDH met believe that TFM has clearly created a situation where basic services are lacking. As a result resentment towards the company is strong, as evidenced by the January protests.



Brick fabrication requires a lot of wood

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## 5. Conclusion

### 5.1 The EIB has knowingly financed the Tenke Fungurume project in flagrant contradiction of its own declared principles

In addition to financial backing, the EIB also lends its political support to the project as a lead investor. The EIB therefore has an important responsibility and should bear this in mind when choosing its projects.



The trend of EIB investments in the mining sector follows the rise of metals prices

Though the EIB has stated its support for the Extractive Industry Transparency Initiative (EITI)<sup>54</sup> it has nevertheless loaned 100 million EUR for the TFM project. The project is tarnished by suspicion of illegality and corruption, as the promoter's contract was investigated by the inter-ministerial commission charged with reviewing mining contracts. To approve the loan, the EIB only required proof of a complete budget for the project and a letter confirming that the Congolese government had no objections to the project. The government has been in favour of this contract since the project's inception, though disadvantageous for the Congolese state, and it is unlikely that the approval of the project will guarantee fair wealth distribution for the Congolese people.

### 5.2 A shocking negligence by the EIB, the European Union's bank

The EIB is part of the European Union Treaty and presents itself as "the development partner in most of the ACP countries for 30 or 40 years"<sup>55</sup>. It operates in the African, Caribbean and Pacific region under the Cotonou agreement, which aims to reduce poverty and promote sustainable development. The shareholders of the EIB are the EU member states, which underwrite the bank's capital with public money. However, the financing of a copper and cobalt mine of this scale does not meet the EIB's objectives with regard to the cooperation between the DRC and the European Union. The Tenke Fungurume mine will exhaust a limited resource and the project will deteriorate conditions for the local populations.

The local situation is already tense, despite the fact that the project has only just begun: protests, displaced populations without housing, conflicts over hiring conditions, conflicts with local miners, and constant tensions between the population and the company. The EIB has, for the moment, not commented on any of these. It is unclear how the EIB will monitor such a project, given the lack of safeguards in place and the bank's own means<sup>56</sup>. It seems also unlikely that the EIB would take corrective measures irrespective of TFM's project implementation, as neither clear guidelines nor a system of penalties as been established. It seems the EIB plans to turn a blind eye to the activities of TFM.

54 See: <http://www.eib.org/projects/news/eib-support-for-the-extractive-industry-transparency-initiative.htm>. This initiative aims to ensure transparency regarding the payments and profits generated by the mining industries, by obliging companies to publish their transactions and for governments to declare how much they receive. See [www.eitransparency.org](http://www.eitransparency.org)

55 <http://www.bei.org/projects/regions/acp/index.htm>

56 See Friends of the Earth's report on the EIB: Six years financing the plundering of Africa, November 2007, available online at: <http://www.amisdelaterre.org/Nouveau-raport-des-Amis-de-la.html>

## 6. Recommendations

Bearing in mind the level of corruption and lack of benefits that this project, in its present form, will generate for the Congolese population, civil society alerted the EIB about its concerns well before the EIB decided to grant its loan. However, now that the EIB is engaged in the project, we ask it to take responsibility, specifically:

- to require the Congolese government to explain publicly the process that they intend to follow for the renegotiation of the mining contracts, including **the criteria employed during the negotiations and to publish the updated contracts**;
- to encourage a **transparent revision** of these contracts, under the supervision of international, independent legal experts and members of civil society;
- to insist that all payments made to the government by TFM, as a result of the renegotiations, are fully **declared and justified**;
- to commission a study on the ground in order to understand the situation of **local communities**; and to tie the payment of their loan to the respect of the social obligations undertaken by TFM; and
- bearing in mind the weak control exercised by the DRC government, to put in place regular **procedures for the management of the project**, including in particular visits to the sites and public annual reports about the state of the project, the profits received by the Congolese state, the protection of the environment, and progress made in terms of community development and the reduction of poverty.

In order for the EIB to aid in development, and act against the destruction of the environment and local livelihoods as a result of mining projects, we also ask the EIB to freeze all loans for new mining projects in Africa, until the current way of doing things has been reformed and improved.

The EIB should, above all, in the course of its reforms:

- Adopt best international environmental and social norms, notably the Extractive Industries Review (EIR) and the recommendations of the report *"EIB: six years financing the plundering of Africa"*;
- Finance as a priority projects that truly help to reduce poverty, based on genuine social and environmental criteria and in cooperation with the countries concerned;
- Considerably increase the transparency of its operations and take concrete measures to adhere to the recommendations of the *Extractive Industry Transparency Initiative*, which should become a key element in evaluating future projects.



Action to promote reform of the EIB at its Annual General Meeting, Luxembourg, June 2008

# Notes



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