AFREWATCH
African Resources Watch
Observatoire Africain des Ressources Naturelles

AGREEMENT

FOR THE SINO-CONGOLESE OF MINES :

A win-win deal for the DRC or CHINA

Evaluation of the performance of the obligations of the parties to the 2008 Cooperation Agreement.

June 2021

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ACKNOWLEDGEMENTS

We would like to express our deepest appreciation to all the persons who took a significant part in collecting the data and drafting the report, particularly **Jean Pierre OKENDA LOHESE**.

Special thanks to the **AFREWATCH** team for coordinating the research and finalizing the report, namely **Richard ILUNGA MUKENA** and **CELINE TSHIZENA TSHINATE**.

We are also extremely grateful to **Mrs JING JING ZHANG**, **Boniface UMPULA NYEMBO** and **Petrus YAV** for their comments and contributions.

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Executive Director

LIST OF ACRONYMS

ACGT: Congolese Agencyfor Great Works

AFREWATCH : African Resources Watch

BCSPSC: Sino-Congolese Follow-up Program Coordination Office

BP : Basis Point

CREC: China Railways Group Limited

EXIM BANK: Export-Import Bank of China

IMF: International MonetaryFund

GECAMINES : Générale des Carrières et des Mines

EITI: Extractive Industries Transparency Initiative

JV: Joint Venture

KCC : Kamoto Copper Company

N/A : Non applicable

ONEM: National Employment Office

NGO: Non-Governmental Organization

RDC: the Democratic Republic of Congo

SICOMINES : Sino-Congoleseof Mines

Libor Rate: London Interbank Offered Rate

TFM: Tenke Fungurume Mining

USD: United States Dollars

EXECUTIVE SUMMARY

Within the scope of its program on governance of the management of natural resources, AFREWATCH as a NGO focused on the follow-up on whether the DRC and CREC and SINHO-HYDRO (the Chinese Companies Group) fulfilled their commitments as shareholders in the Agreement signed in 2018. For this Agreement, the Chinese party had to give the DRC through SICOMINES, a JointVenture, a 6 billion US$ loan 3 billions of which had to fund the building of infrastructure (roads, railways, hospitals, stadiums, schools, etc.). The remaining 3.2 billion US$ were to be used for the creation of the JointVenture. The exploitation of the JointVenture was to make profits that were to be used for the repayment of the loan.

For that purpose, the DRC exempted SICOMINES from all taxes, royalties and duties that are to be paid to the State until the end of the repayment of the cost of the infrastructure investments. But, 11 years after the Agreement came into force, almost no complete information in terms of deeds has been provided on how the commitments by the shareholders were implemented, such as the financing of infrastructure, the mining investments and the profitability of the mine, the level of the repayment of the investments and its interests.

Based on those facts, AFREWATCH thought it was essential to conduct this preliminary study in order to provide information that could stimulate a public debate on the implementation of the Sino-Congolese Agreement and conduct a strong advocacy at both the national and the international level for the increase of transparency and the efficiency of the implementation of the Agreement. This five-month-long study, as of October 2020 through February 2021, is meant to answer concerns such as:

- Draw up an inventory of fixtures on the implementation of the Sino-Congolese Agreement with a focus on the level of payment of the mining investments and the infrastructure as well as the debt and the accrued interests compared with the fiscal and parafiscal advantages conceded by the Congolese party, the productivity and the profitability of the mine.

- Identify the gaps between a certain number of initial commitments related to the cooperation Agreement and/or the mining Agreement and its implementation;
- Inform and stimulate a public debate on how the Sino-Congolese Agreement is implemented andconduct a strong advocacy at the national and international level for the increase of transparency and an efficient implementation of the Agreement.

In order to reach its objectives, the AFREWATCH research team used the analytical and comparative through the observation technique and the documentary analysis.

Five months of work lead the research team to the following outcomes:

a. Level of implementation of the commitments by the parties

- The evaluation of the implementation of the obligations of the parties involved in the SICOMINES project shows a poor rate of implementation, that is to say 50%. Out of 23 obligations taken as samples for the analysis, only 11 have been completely implemented by the parties, that makes 47,8%, 8 have been partially implemented, that makes 34,7%; and 4 have not been implemented yet, that makes 17,3%. It should be borne in mind that the Chinese party has implemented 55.5% of the obligations whereas the Congolese partycarried out83,3%.

b. Transparency in disclosing the financing of the infrastructure and mine projects, production data, employment and reimbursements data.

b.1. The sum of the combined rates of the debt for the two components ‘infrastructures and mines’, that is to say, 1 179 507 661, 83USD and 1 702 814 509 USD is 2 88232 170 USD. In other words, the whole debt of the DRC vis-a-vis the Chinese Companies Group is around 2 882 322 170USD.

b.2. Disclosure of the data on the financing of the infrastructures

- What the EITI data demonstrated that as of 2008, when the convention of collaboration, to 2016, the Chinese Companies Group paid 1 179 507 661, 83USD for the financing of the infrastructure componentin the project. But only 802 874 082.6US dollars was used, that makes a 376,633,579.2 US dollar difference that EITI could not trace.
- There is no complete information on how the fund was received and spent for the infrastructure side, which does not help us to systematically and severely followup the financing mechanism of this component.

b.3. Disclosing data on how the mines were financed

As for the mines component, until 2016 the Chinese Companies Group paid 1 702 814 509 US dollars. But the SICOMINES JointVenture received only 2164139,0 40 USdollars. So, the gap is461 324 531US dollars paid by Exim Bank, but not yet cashed by the JointVenture. The explanation has two assumptions for this situation. Whether the sum was not paid, which means that it was entered into the accounts as a debt for the RDC and is thus supposed to bring about interests; or the sum was paid and might have been misappropriated.

b.4. Disclosing data on the mining production and the expected profits

- 2015 and 2017 EITI data demonstrated that SICOMINES did not reach up to 200000 tons of copper and cobalt that was expected for the first year of production according to the agreement. It did not either reach up to 400000 tons of copper planned for the third year of production.
- Moreover, most of the production stated by SICOMINES is matte copper, and not cathodes. In other words, SICOMINES exports basically raw minerals. Consequently, the Congolese party makes less money and will have trouble repaying the loans that are to come off the profits made by the Mine. Since the Chinese partydoes not fulfill its commitments, the Congolese party will be in trouble. The lesser SICOMINES produces,

the lesser it makes profits and the Congolese party repays the Chinese loans and the interests thereof.

b.5. Disclosing data on how much employment is brought by SICOMINES and how efficient it is on the local economy

- The 2009 and 2020 data in the EITI reports on how much employment was brought by SICOMINES show that this company disclosed only the jobs it created from 2015. These jobs are very weak in comparison to other projects of the same size such as TFM. The number of jobs moved from 566 in 2015 upto 1183 in 2017. These details do not help us to see how good the jobs are, how sufficient the wages are and what kind of trainings the project provided to the Congolese employees.

c. Entire fiscal exemptions, repayment of the loans and the interests by SICOMINES:

- The last EITI report covering 2017 and 2018 indicates 83.731.293,52 US dollars as the total sum repaid by SICOMINES at the end 2017 and1.878.696.921,85 US dollars as the remaining loan to be paid on December 31, 2017. At the same time SIMCO-the Congo Building Company-, one of the share holders in SICOMINES with 12% of shares, declared to EITI that it received 13226340, 22 US dollars in May 2018 from SICOMINES as dividends for 2016 and 2017.
- SIMCO stated that the branch of GECAMINES requires more transparency and control in the operations by SICOMINES.
- The unconvincing results of SICOMINES address the issue of how far the project will go in reach the objectives, notably, the development of the DRC and the rapid repayment of the loans, and the risk of indebtedness for the DRC in this project.

d. Analysis of how profitable of the SICOMINES project in comparison to the TFM project:

- The comparison is unequivocal between the contribution of TFM and that of SICOMINES to the Treasury. During the first six years of production, the DRC received 785 878671 US dollarsas taxes, royalties, rights and SICOMINES received 83 731293,52 US dollars. It means that the latter generated enough revenue for the Chinese party as repayment of the funds assigned for the infrastructure. The payments by the TFM project to the Government in the sixth year of production show us how the Congolese State did not model the number of payments conceded to the Chinese party.

- According to the available data, the SICOMINES project seems to bring huge losses to the Congolese party.

RECOMMENDATIONS

To the DRC Government:

- Hasten an independent audit of the SICOMINES project as well as the funds allocated for the infrastructures and theirs interests;
- Model the SICOMINES project in light of the provisions in the reviewed Mining Code so as to have an idea on the payments that the Government gave up for the Chinese party in comparison to the revenues received under the financing of infrastructure;
- Takeall required measures at the close of the auditin order to make the SICOMINES project and the financing of the infrastructure works advantageous and help the DRC to pay off both the loan and the interests that are produced;
- Provide guarantees on how capable the SICOMINES project is of repaying within the time limit the full loan for both the mines and infrastructures components as well as their interests;
- Improve transparency and accountability in the management of the SICOMINES project and the financing of the infrastructures;
- Get SICOMINES to meet its obligations as stated in the Agreement by producing copper cathodes and not matte copper.

To the Minister of Employment and Social Foresight:

- Disclose on an annual basis the statistical data of direct and indirect employment that the project brought to the Congolese population by including the gender dimension.

To the National Assembly, General Accounting Office and the General Finances Inspection:

- Hasten an independent audit on the SICOMINES project as well as the funds allocated for the infrastructures and their interests;
- Ensure a systematical and severe control on how the SICOMINES project is managed and how the funds for the infrastructures are used in order to make the project bene-

ficial and cost-effective and beneficial to facilitate the repayment of the loan and its interests.

To the Sino-Congolese Program Coordination and Follow-up Office:

- Publish the business model and the summary of the feasibility study on the SICOMINES project so as to conduct a good follow-up of the implementation of the commitments by the parties in the scope of this project as regards production;
- Publish at the beginning of each year the list of the infrastructures that are to be financed as chosen by the parties andin accordance with the provisions in the amendment n°3 of the agreement;
- Give some clarification on the factors that led SICOMINES to pay the shareholders the dividends in 2016 where as the complete repayment of the so-called most urgent infrastructure works has not been terminated;
- Publish detailed on the funding of SICOMINES and the funding of the infrastructures and their interests.

To GECAMINES and SIMCO :

- Provide some clarification on the factors that caused the distribution of the dividends to the shareholders in 2016 in violation of the provisions of the amendment n°3 according to which the dividends are paid to the shareholders only after the complete repayment of the **most urgent infrastructure works.**

To SICOMINES :

- Providesome clarification on the support brought to the SICOMINES JointVenture so that:
  - ➢ It can be able to repay themining investments and the Government's Infrastructure works;
  - ➢ It can reduce the cost price, economize the financial resources of the constructions, ensure modern design, the quality, the high yield, reliability and sustainability of the infrastructure and service worksthrough its participation to the current national reconstruction in RDC.

- Bring forth explanations on why the internal and external factors did not help the Joint-Venture to reach the objective of the commercial production that was set at 200000 tons of copper for the first year and 400000 tons of copper for the third year;
- Bring forth explanations on the gaps of 376633579.2US dollars and (461 324 531)that came out the comparison between the sums paid by the Chinese Companies Group and received by SICOMINES respectively in the mines and infrastructure components according to the data in the EITI reports running as of 2008 through the first six-month period of 2020;
- Publish at the beginning of each year the list of the infrastructures that are selected by all parties for construction;
- Disclose annually the statistical data of direct and indirect jobs that the project supplied to the Congolese population;
- Publish annually the list of Congolese companies chosen for all the furniture and services that they will be able to satisfactorily supply.

To the EITI Executive Committee:

- Update and publish the factual data of the SICOMINES project and of the funds for the infrastructures, including the timetable of the repayment of the financing of the Chinese Companies Group and their accrued interests;
- Regularly publishthe list of the infrastructures that are to be built as agreed on by the parties at the beginning of each year according to articles 9 of the Agreement and article 4 of the Amendment n°3;
- Bring forth explanations on the lack of statements on how much money the Chinese Companies Group paid as regards mines and infrastructures in the SICOMINES project in 2018, 2019 and2020;
- Bring forth explanations on the gaps of 376,633,579.2 US dollars and (461,324,531) that came out the comparison between the sums paid by the Chinese Companies Group and received by SICOMINES respectively in the mines and infrastructure components

according to the data in the EITI reports running as of 2008 through the first six month period of 2020;

- Organize a public debate with the stakeholders on the findings of this study on SICOMINES and the future of the project.

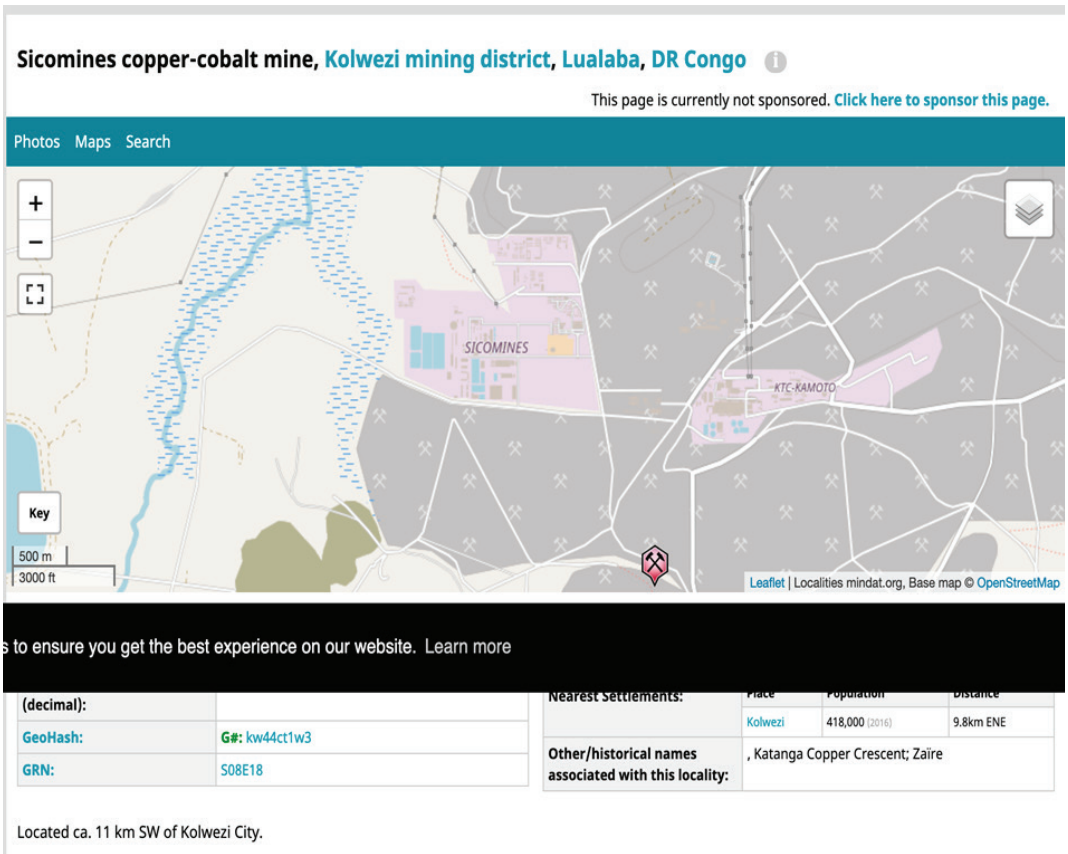
To the Civil Society :

- Use the findings of this study to ask for more account for how the SICOMINES projectand the infrastructures were financed and managed.

INTRODUCTION

a. Contextualizing:

In In 2008 the DRC and the Chinese Companies Group (CREC and SINOHYDRO) signed a cooperation Agreement financed by EXIM BANK.This cooperation consists of two projects, namely: building infrastructure for the DRC and developing a joint mining project by the name of SICOMINES in which the Chinese party has 68% of shares and the Congolese party has 32% represented by GECAMINES (General Company of Quarries and Mines). For the creation of SICOMINES, a joint-company, the DRC was committed to make available the DIKULUWE mines, Jonction Dima, Mashamba Ouest, Cuvette Dima, Cuvette Mashamba and Synclinal DikColline in the current Province of Lualaba.[1] (INFRA)



[1] Read Article 4 of the Collaboration Agreement between the Democratic Republic of Congo and the Chinese Companies Group. *http://congomines.org/system/attachments/assets/000/000/276/original/B5bis-Sicomines-Convention-Incl-Anx-2008-Consortium-Entreprises-Chinoises-RDC.pdf?1430928308*

According to the initial terms of the contract, the two projects are funded as loan which the Chinese Companies Group provides to the DRC through SICOMINES: 6 billion US$ for the infrastructure side and 3.2 billion US$ for the mining side. After the objection by the IMF which feared the risk of in debtedness for the DRC [2], the loans for the projects of infrastructure were later on evaluated as 3 billions.

The repayments of the Chinese investments as well as the accrued interests were to come out of the profits by SICOMINES. For that purpose, this company has the advantage of exemptions from all taxes, royalties and rights owed tothe State until the end of the repayment of the investments of the infrastructures. Such exemptions should have made the repayment time as short as possible within a transparent system.

However, 11 years after the agreement came into force, and 5 years after the kick-off of the production of the mine, there is no complete factual information on how the contract terms were applied, notably the payments for the construction of the infrastructure, the mining investments and their return on capital employed, and the level of repayment of the investments and their interests.

The Extractive Industry Transparency Initiative (EITI) is the only source that discloses information on the projects of the agreement by SICOMINES. Nevertheless, this information is insufficient, irregular and not much based on facts. With poor transparency in the application of the contract terms there is no control, no civil participation, no follow-up.

Therefore, it seems difficult to support sustainabilitythe project. From the point of view of the International Monetary Fund,in 2018 the DRC's external debt was as high as 13,7 % of the GDP, almost 40 % of which was covered by the commitments for the "SICOMINES"[3] mining infrastructures.

[2] Stefaan Marysse, The standoff between China, the DRC and the IMF: The review of Chinese contracts in the DRC. *http://congomines.org/system/attachments/assets/000/001/281/original/Bras_de_fer_sur_les_contrats_chinois.pdf?1502457781*

[3] International Monetary Fund, report n° 19/388, the Democratic Republic of Congo, Programme de référence et de demande de décaissement au titre de la facilite de crédit rapide—Un communique de presse, décembre 2019, p.17

To date, there is no a public report by the institutions in charge of the control for the DRC, no independent study that could bring forth the public debate in order to increase responsibility for both the Congolese and the Chinese parties as regards the commitments in the agreement.Based on that, AFREWATCH decided to conduct a preliminary study.

b. Purpose of the study

In initiating this study AFREWATCH aimed to produce a preliminary report including information that could stimulate the public debate on how the Sino-Congolese agreement was implemented on the one hand, and on the other hand conduct a strong advocacy at both the national and international level focusing on how to increase transparency and an efficient implementation of the agreement.

c. Objectives of the research

Here are the objectives of this research:

- Draw up an inventory of fixtures as regards the implementation of the Sino-Congolese agreement with a focus on the level of payment for the mining investments and the infrastructures as well as the debt and the accrued interestsin comparison to the fiscal and parafiscal advantages conceded by the Congolese party, the productivity andthe profitability of the mine;
- Analyze the comparative advantages of the agreement that created SICOMINES in comparison to other projects of this magnitude such as TFM and KCC in order to evaluate the loss of expected earnings for the DRC;
- Identify the gaps between a certain number of initial commitments inherent in the agreement for cooperation and/or in the mining agreement and their implementation;
- Inform the public and stimulate a public debate directed towards the implementation of the Sino-Congolese agreementand conduct a strong advocacy at both the national and the international level so as to increase transparency and the efficient implementation of the agreement.

d. Methodology of the research

In order to reach the objectives, we used the analytical and comparative methods. The analytical method helped us to systematically analyze the available diverse data regarding the research topic. The comparative method helped us to confront the facts in the SICOMINES project with those in the TFM project. So we could see the comparative advantages of the State (Payments andother generated profits) and assess the potential loss of earnings expected for the Democratic Republic of Congo.

These two methods were supported by the documentary technique. Which consisted of looking through the available literature on the agreement and the amendments, the DRC-EITI reports for 2008 to 2017, the websites of ACGT (Congolese Agency for Big Works) and BCSPSC (the Sino-Congolese Program Coordination and Follow-Up Office) and the reports by Non-Governmental Organizations such as ASADHO, ADDH, etc.?

e. Delimitation

This analysis does not claim tohave fully-documentedthe level of the implementation of all the commitments by the contracting parties in the agreement. We did have enough time and logistics for a field research due to Covid-19 barrier measures, neither do we look into the quality of the infrastructures built in the framework of this project.

I.TAKING STOCK OF THE IMPLEMENTATION OF THE OBLIGATIONS BY THE CONTRACTING PARTIES

This section draws up the inventory of the agreement obligations for the two parties, the DRC and the Chinese Companies Group, notably the operational, financial, social obligations and the local content as stated in the April 22, 2008 agreement and in its annexes as well as their amendments.[4] This aims to present the level of implementation of the obligations by the two parties in the agreement, identify the challenges, set each party's responsibility and formulate recommendations.

[4] Read the Collaboration Agreement between the Democratic Republic of Congo and the Chinese Companies Group: http://congomines.org/system/attachments/assets/000/000/276/original/B5bis-Sicomines-Convention-Incl-Anx-2008-Consortium-Entreprises-Chinoises-RDC.pdf?1430928308

The chart below shows a synthesis of the obligations taken as samples for the research according to each component of the project and each party. A detailed description of the obligations is shown in Annex 1 of this report.

Chat 1: Summary of the commitments by the parties concerning the Mines and Infrastructures components under analysis

Type of the obligation	Person/institution responsible	Number of obligations		
		For each party	Common	Total
Mines Project	The DRC government	6	2	17
	The Chinese Companies Group	9		
infrastructure Project	The DRC government	1	1	6
	The Chinese Companies Group	4		
Total of the obligations				23

Source: Collaboration Agreement between the DRC and the Chinese Companies Group in 2008 and Amendment n°3

As indicated in the section regarding the limits of the study, the evaluation of the project was done on twenty or so obligations that were selected as samples so as to measure the level of the implementation of the obligations by the parties within the framework of the Agreement.In total, 23 obligations were kept for analysis particularly because of their importancefor the achievement of the object of the cooperation, notably for the DRC, « to find financial resources for achieving national infrastructures considered to be important and urgent », and for the Chinese Companies Group, « invest in the sector of non-ferrous-metals in the DRC».[5]

[5] Article 1 of the Collaboration Agreement between the Democratic Republic of Congo and the Chinese Companies Group, China Railway Group Limited and Sonahydro Corporation Limited, related to the development of a mining project and an infrastructure project in the Democratic Republic of Congo of April 22, 2008 : *http://congomines.org/system/attachments/assets/000/000/276/original/B5bis-Sicomines-Convention-Incl-Anx-2008-Consortium-Entreprises-Chinoises-RDC.pdf?1430928308*

17 obligations out of 23 came from the 'mines'component and 6 others from the'infrastructures' component. 9 out the 17 obligations of the 'mines' componentrefer to the commitments of the Chinese Companies Group towards the DRC, 6 to those of the Congolese State and GECAMINES towards the Chinese party, and the remaining 2 to those of the parties. On the infrastructures' component, 4 out of the 6 obligations refer to the Chinese Companies Group, 1 to the Congolese party and another 1 to a joint commitment for the two parties.

In order to facilitate the understanding by the readers, the obligations are classified and presented within a matrix as stated in the Agreement and its amendments. These obligations are stated by category, then groupedby sector and finally by person (s) or institution (s) in charge.[6] The evaluation of the implementation of the Agreement has three colors as described below with their meanings:

- Green = the obligation has completely been implemented by one party or both parties depending on the case.
- Yellow= the obligation has not completely been implemented.
- Red= the obligation has not been implemented at all.

Being available and accessible, the EITI reports were used as sources for verifying whether the obligations were completely or partially implemented, or whether each of the obligations has been implemented by the party or both parties depending on whether it is in one or the other case.
The synthesis of the results of these evaluation works is shown in the two following charts:

[6] See Annex 1 of the report related to the matrix of the obligations/commitments of the contractual parties.

Chart 2: Synthesis of the results of the evaluation of the implementation of the obligations of SICOMINES for the mines and infrastructures

Type of the obligation	Person/institution in charge	Number of obligations	Implemented	Partially implemented	Non implemented	Rate of obligations completely implementedin %
Mines Project	The DRC government and the Chinese Companies Group	17	11	3	3	64.1
infrastructure Project	The DRC government and the Chinese Companies Group	6	0	5	1	0
Total		23	11	8	5	47.8

Chart 3: Synthesis of the evaluation of the implementation of the obligations in the SICOMINES project by component and by party

Wording of the obligation	Party	Number of obligations	Completely implemented	Partially implemented and/orbeing implemented	Unimplemented	Rate of completely implemented obligations in %
'Mines' Project	The Chinese Companies-Goup	9	5	3	1	55.5
	The Congolese State and GECAMINES	6	5	0	8	83.3
	The Congolese State and the Chinese Companies Group	2	1	0	1	50
Infrastructure Project	the Chinese Companies Group	4	0	3	1	0
	The Congolese State and GECAMINES	1	0	1	0	0
	The Congolese State and the Chinese Companies Group	1	0	1	0	0

In analyzing the data and evaluating the level of implementation of the obligations by the parties in the SICOMINES project, we can see that only 11 out of 23 identified obligations have been completely implemented by the parties, (in other words47,8%); 8 have been partially implemented(34,7%); and 4 have not been implemented yet(17,3%). The Chinese party has implemented 55.5% of the obligations, whereas the Congolese party has implemented 83.3%.

As shown above, the total rate of implementation of the obligations is still very low, inferior to 50%. Most of the obligations should have been implemented as soon as the kick-off of the activities of the implementation of the Agreement as planned. All the obligations partially or not yet implemented are very important,for they depend upon the loan and its interests or the repayment of the loan and the interests. Here are the obligations:

On the side of the Chinese party:

- Make sure the JointVenture is capable of facing a rapid repayment of the mining investments and the infrastructure worksfor theGovernment;
- Do everything in their power toreduce the cost price, economize the financial resources of the constructions, ensurethe modern design, the quality, the high yield, the reliability and the sustainability of the works of infrastructures and service by participating in the current national reconstruction in the DRC;
- Help the mining JointVenture to start commercial production within the time set by the feasibility study that the mining JointVenture will conduct in order to reach the objective of the first year for commercial production set at 200,000 tons of copper the first year and 400,000 tons of copper the third year of commercial production;
- Mobilize and set up the financing for the construction of the infrastructures in the Democratic Republic of Congo;
- Mobilize and set up the financing for developing the deposits listedin Annex A (Mining Project);
- Determine by mutual consensus the list of the infrastructures selected for effective construction (Annex C);
- Appeal only to Congolese companies for all furniture and services that they can supply.

It should be noted that the non-fulfilment of these obligations can delay not only the repayment of the 'mines and infrastructures' loan but also the construction of the infrastructures which are the key-objectives of the Agreement and the reason why the parties signed.

On the side of the Congolese party:

- Propose and submit the list of infrastructure works to be done and classified in order of priority, immediately after the signature of the Agreement;

According to the detailed evaluation by project in the second chart, only 5 of the 9 obligations for the Chinese Companies Group in the mining sector have been completely implemented, 3 have been partially implemented and, to date, only one has not been completely implemented by the Chinese party. In other words, only almost 55,5% has been done, that is to say 33,3% partially done and 11,1% is to be done. On the side of the Congolese State, 5 of the 6 obligationsin the mines component in the Collaboration Agreement have been implemented. Only one has not been implemented. If it has ever been implemented, there no public information to prove it. That is to say, almost 83,3% has been implemented by the Congolese party, whereas 16,6% is still to be implemented. The two parties-the Chinese Companies Group and the Congolese State-have jointly implemented 1 of the two interdependent obligations.

As for the infrastructure project, the Chinese Companies Group has implemented only two of the 3 obligations within the framework of the Collaboration Convention. So, one is still waiting. The implementation rate is almost 75%. The only obligation for the Congolese party on the infrastructure componenthas not been completely implemented. That is the same case for the only obligation for the two parties that has not been implemented to date.

As stated in the introduction to this section the assessment was based on the information available in the published EITI-DRC reports. The EITI happens to be almost the only source of information that discloses information in the public on the implementation of the 'mine' and 'infrastructure' projects within the framework of the Collaboration Agreement under examination.

However, we notice that the EITI website and reports has also limits. They do not contain or publish complete information that could help us have a good understanding of the project, its achievements and the mechanism for the repayment of the loan. Roughly all the'partially implemented' or the 'unimplemented'obligations are considered such by lack of information related to them in the EITI reports and/or theEITI website.

For instance, when it comes down to verifying the obligation of the payment of fund by the Chinese Companies Group via Exim Bank and allocating them by SICOMINES, the EITI reports for 2010 through 2017 did not help us to understand how much money has been repaid so far for the infrastructures out of the 3 billion dollars of loans for the infrastructure component and how much has really been paid so far for the 'mines' component. Considering that the information supplied was partial, we had to mark it 'partially achieved'.

The second case is about verifying the obligation for the DRC to give a list of the projects chosen by the two parties for implementation at the beginning of each year as planned the Amendment 3 of the Agreement. The EITI reports or the information available on the EITI websitein relation to the project do not provide these documents, which did not make it easy for the research team to proceed. 12 years after the implementation of the Agreement, it is still not possible to answer this question:

How many infrastructures should be achieved in total and how many annually?
The third case is about the obligation by the Chinese party to turn exclusively to Congolese companies for all furniture and servicesthat they can satisfactorily supply according to Article 11.2 of the April 2008 Collaboration Agreement. It is difficult to verify this obligationin view of the fact that the EITI report, which happens to be the only source for information on the project, does not collect it.

Besides, other cases were marked 'partially implemented or unimplemented' simply because the information is in the EITI reports. But this information shows clearly whether the obligation has not been implemented completely, or is being implemented or has not been or never implemented. That is the case, for instance, of the obligation to reach 200,000 tons of copperat the kick-off of the production and 400,000 tons the third year. The outcomes of the research demonstrate that the project did not reach 200,000 tons of copper in 2015, which was the first year for the launching of production by SICOMINES.

The company did not either reach 400,000 tons of copper in the third year of production as stated in both the Collaboration Agreement and the Amendments. And five years later, the combination of the production did not reach even 400,000 tons of copper cathodes. Moreover, instead of copper cathodes with 99, 9%, SICOMINES also produces matte copper with percentages between 60 et 70%. Matte copper was not planned in the Agreement. So, it is an infringement to the obligations of the two parties when they signed the Agreement in 2008.

II. TRANSPARENCY IN DISCLOSING SICOMINES DATA IN THE 2008-2020 EITI REPORTS

1. HOW THE 'INFRASTRUCTURES AND MINES' PROJECTS WERE FINANCED

a. How the 'infrastructures' component was financed according to the 2008-2020 EITI reports

According to Article 1.2.1 of the April 2008 Collaboration Agreement and Article 4 ofAmendment 3 to the Agreement, the Chinese Companies Group was committed to raise fund and set it up for the construction of the infrastructures for the Democratic Republic of Congo. Here is how the data from the EITI reports related to how the'infrastructures'component was financed are presented according to the signature of the Agreement until 2020:

Chart 4: Evolution of how the 'infrastructures' component was financed according to the 2008-2020 EITI data

N°	YEAR	AMOUNT PAID in US dollars by SICOMINES	AMOUNT RECEIVED in US dollars by SICOMINES	GAP in US dollars
1	2008	N/A	N/A	N/A
2	2009	N/A[7]	N/A	N/A
3	2010	468 000 000[8]	118 000 000[9]	350 000 000
4	2011	8 987 918, 83 [10]	8 721 613,90 [11]	266 304,93
5	2012	0[12]	54 993 933 [13]	(54 993 933)*
6	2013	563 062 821[14]	327 146 763[15]	235 916 058
7	2014	123 000 000[16]	47 257 143[17]	75 742 857
8	2015	0[18]	62 011 141[19]	(62 011 141)*
9	2016	16 456 922[20]	66 272 246[21]	49 815 324
10	2017	0[22]	68 944 998,65[23]	708 245 061,7

11	2018	0[24]	49 526 244,08[25]	0
12	2019	0[26]	0[27]	0
13	2020	N/A	N/A	N/A
TOTAL		**1 179 507 661, 83**	**802 874 082.63**	**376633579.2USD**

Source : 2010 to 2020 EITI Reports

*** The brackets mean that the gap is or the gaps are negative. In other words, the amount(s) paid is or are inferior to those received.**

In analyzing the EITI data, we can find out the fact that as of 2008, when the Collaboration Agreement was signed, through 2016, the Chinese Companies Group paid 1,179,507,661.83 US dollars, whereas in the implementation it is the consumption of 802,874,082.6US$ with a 376633579.2US$ gap that is mentioned. In other words, the total fund paid by Exim Bank for the 'infrastructure' component mentions a big gap of nearly half a billion US dollars that has not been really received and spent yet. Several hypotheses can explain this situation. Whether Exim Bank did not really release the fund or the fund was really released but was not received by SICOMINES and was later on redirected. Some unreleased amounts might have been counted by the parties so to speak and might have produced interests. Consequently, the interests of the debt were overburdened for sums not really received by the Congolese party, that is 6,1% for the 70 % of the 'mines' investments, and Libor 6 months + 100 bp- for the 100 % of the 'infrastructures' component .

These different amounts cover none of

[7]Read the 2010 EITI-DRC report, page 110. [8] Read the 2010 EITI-DRC report, page 110.[9] Idem [10] Read the 2011 EITI-DRC Report, page 9.
[11] Idem [12] Read the 2012 EITI-DRC Report, page 130. [13]Idem [14] Read the 2013 EITI-DRC Report, page 106.
[15] Idem [16] Read the 2014 EITI-DRC Report, page 99.[17] Idem [18]Read the 2015 EITI-DRC Report, page 50.
[19] Idem [20]Read the 2016 EITI-DRC Report, page 5. [21] Idem [22]Read the 2017 EITI-DRC Report, page 75.
[23] Read the declaration form of the company available on http://itierdc-data.masiavuvu.fr/donnees-itie/
[24] Read the project of the loosened EITI-DRC report for 2018- 2019 and first half of 2020 [25] Read the declaration form of the company available on http://itierdc-data.masiavuvu.fr/donnees-itie/
[26] Read the project of the loosened EITI-DRC report for 2018- 2019 and first half of 2020 [27] [28]Read the project of the loosened EITI-DRC report for 2018- 2019 and first half of 2020

these years: 2008-2009, 2018-2019-2020 since the SICOMINES project had not yet included the EITI perimeter for the first two years. Whereas, for the years 2016 up to the first half of 2020, the ITIE reports of these 5 years did not disclose these data and no explanation was given about this omission if that was the case.

Also, for 2012 and 2015 the ITIE data related to the specific chapter on SICOMINES tell of paymentsas important as 54,993,933 US$ for the first year and 62,011,141 US$ for the second despite the fact that no money was paid by the Chinese party. Unfortunately, the two EITI reports did not point out the origin of these amounts.

The lack of complete information on how much was paid or received for the infrastructure component does not help us to systematically and rigorously follow up the mechanism of financing this component.

b. Financing the « mines » component

Looking at Article 1.2.2. of the April 22, 2008 Collaboration Convention, we can see that- the Chinese Companies Group had to mobilize and set up the fund for the development of the deposits listed in Annex A.

To date, here is how the data appear on the financing of the mines component in 2008 through 2020 according to the EITI reports:

Chart 5: Evolution of how the 'mines'component is financed according to the 2008-2020 EITI data

N°	YEAR	AMOUNT RECEIVED BY SICOMINES IN US$	AMOUNT PAIDBY SICOMINES IN US$	GAP
1	2008	N/A	N/A	N/A
2	2009	0[29]	225 000 000 [30]*	(225 000 000)
3	2010	0[31]	315 000 000[32]	(315 000 000)
4	2011	0[33]	28 419 200,00[34]	(28 419 200,00)
5	2012	501 637 330[35]	274 286 181[36]	227 351 149
6	2013	846 937 179[37]	423 889 454[38]	423 047 725
7	2014	177 000 000 [39]	522 565 430 [40]	(345 565 430)
8	2015	117 240 000[41]	374 978 775[42]	(257 738 775)
9	2016	0[43]	0[44]	0
10	2017	0[45]	0[46]	0
11	2018	0[47]	0[48]	0
12	2019	0[49]	0[50]	0
13	2020	0[51]	0[52]	0
TOTAL		**1702814509**	**2 164 139 0 40**	**(461 324 531)**

Source : 2010-2018 EITI reports

* 175,000,000 US$ is the first part paid as key money by the Chinese Companies Group and 50,000,000 US$ of loan that the Group gave GCM for the modernization of the equipment according to the Agreement.

Until 2016, the Chinese Companies Group paid 1,702,814,509 US$. But the Congolese party received only 2,164,139,040 US$ for the 'mines' component. The gap is (461,324, 531) US$ that Exim Bank disbursed, but that has not been received by the Congolese party yet. Like the previous section, either the

[29] [30] Article of Amendment n° 3 to the April 22, 2008 Collaboration Agreement: http://congomines.org/system/attachments/assets/000/000/277/original/B6bis-Sicomines-Avenant-3-2009-Consortium-Entreprises-Chinoises-RDC.pdf?1430928311 [31] Read the 2010 EITI-DRC Report, page 110. [32] Idem [33] Read the 2010 EITI-DRC Report, page 110. [34] Idem [35] Read the 2011 EITI-DRC Report, page 9. [36] Idem [37] Read the 2012 EITI-DRC Report, page 130. [38] Idem [39] Read the 2013 EITI-DRC Report, page 107. [40] Idem [41] Read the 2014 EITI-DRC Report, page 99. [42] Idem [43] Read the 2015 EITI-DRC Report, page 50. [44] Idem [45] Read the EITI-DRC Report, page 59. [46] Idem [47] Read the EITI-DRC Report, page 75. [48] Idem [49] Read the loosened 2018-2019 EITI-DRC Report project andfirst half of 2020 [50] Idem [51] Read the loosened 2018-2019 EITI-DRC Report project andfirst half of 2020 [52] Idem [53] Read the loosened 2018-2019 EITI-DRC Report project andfirst half of 2020 [54] Idem

amount was disbursed but was counted as a debt for the DRC and is supposed to make interests, or the amount was disbursed and might have been embezzled.

The amounts that are said to have been disbursed by Exim Bank and to have been beneficial to the Congolese party are only for 2010 through 2015.

Thus, this research has not been able to find out the data for 2008 and 2009 because SI-COMINES had not integrated the EITI perimeter. As for 2016 up to the first half of 2020, the EITI reports of these 5 years did not disclose data on the amounts disbursed by the Chinese party for the works in favor of the development of the mine,and no explanation was given on these omissions.

NOTICE :

In putting together the rates of the 'mines' component and the 'infrastructures' component, we can see that the total debt for both is 2,882,322,170 US$, that is 1,179,507,661,83 US$ plus 1,702,814,509 US$. It means that the total debt of the DRC towards the Chinese Companies Group was 2,882,322,170 US$. Surprisingly, the information in the forms filled out by SICOMINES for the 2017 and 2018 EITI reports indicates 2,610,000,000 US$ as «the total amount planned by the protocol to the agreement on the loan», with no precision whether it's about the loan destined to the mining investment or to the achievement of the infrastructures. The total of the repayments by SICOMINES in 2017 is 83,731,293,52 US$, whereas the remaining loan that was to be paid on December 31, 2017 is 1,878,696,921,85 US$. The relaxed project of report for 2018, 2019 and the first half of 2020 takes this amount for 2018, but without precising whether it is the loan destined to the mining investment or to the achievement of the infrastructures. The Chinese Companies Group declares that the total of the repayments (Principal + Interests) by SICOMINES is in 2018 as high as 261,428,542.23 US$, whereas the remaining loan that was to be paid on December 31, 2018 is 170,869,692.19 USD.

2. MINING PRODUCTION AND EXPECTED BENEFITS

Under the terms of Article 7 of the Collaboration Agreement as stated in the Mining Agreement, the capacity of average productionby SICOMINES should have been as much as 200,000 tons for copper in the first year of production and 400,000 tons as of the third year. It must be noticed that,like the fiscal exemptions, in achieving the capacity the aim was to facilitate a rapid repayment of the loan. However, SICOMINES is far from reaching the initial forecasts like shown in the chart below.

Chart 6: Statistical data on production of SICOMINES

N°	YEAR	Matte Copperin Tons	Copper Cathodes in Tons	Cobalt and Nickel Alloyin Tons
1	2015	18 533,64	11 058,03	0
2	2016	114 567,07	51 362,02	0
3	2017	100 478,54	35 969,63	266,38
4	2018	0	0	0
5	2019	N/A	N/A	N/A
6	2020	N/A	N/A	N/A
Total		233579,54	95353, 68	266,38

Source: 2009-2020 EITI-DRCreports and Debit Notes for 2018-2020 by the Mines Provincial Officein Lualaba

These amounts show well the fact that SICOMINES did not reach 200,000 tons of copper and cobalt forecast for the first year of production by the Agreement.[55] After five years of production, SICOMINES did not reach half the production forecast for the first year, whereas the conventional commitment was to put the production up to

[55]Read Article 7.1 of the 22 April 2008 Collaboration Agreement: http://congomines.org/system/attachments/assets/000/000/276/original/B5bis-Sicomines-Convention-Incl-Anx-2008-Consortium-Entreprises-Chinoises-RDC.pdf?1430928308

400,000 tons of copper in the third year of production.[56] Moreover, much of the declared production by SICOMINES is composed of matte copper and not cathodes. In other words, SICOMINES mainly exports raw minerals, which is a capital loss for the Congolese party since the repayment of the loans depends upon the benefits generated by the mine. Unlike copper cathodes whose content is high than 90 %, matte copper is lower than 60%.

Failure for the Chinese party to respect this commitment exposes the Congolese party. The less SICOMINES produces, the less they make profits, so the Congolese party slows down the repayments to the Chinese loans and their interests. In other words, the delay in repaying increases the Congolese debt towards the Chinese party. In contrast, the interests of the Chinese loans increase too, which would be a risk of public debt in the Congolese party.

According to the EITI report, the signing of the first series of agreements on a 350 million US$ loan took place in December 2008,[57] The Technical Committee of Coordination of the Sino-Congolese Agreement confirms the fact that China paid 518 million US$ as of January 2009 as preliminary expenses,[58] which helps us understand the line of loans for infrastructures for the DRC was credited as of 2009.

Failure for the Chinese party to fulfill its commitment of sharing experience, expertise and technicality in order to make the project more profitableso that it can repay the loan rapidly contributes to the underperforming results of SICOMINES.[59]

In the meantime, the EITI reports are not yet available for 2018 to 2020. No other source officially provides production data besides EITI. The debit notes from the Mining Division in the ex-Katanga province as well as those from the new Lualaba province, which hosts this project and provides this potentially helpful information, are not

[56] LIdem. [57] 2010 ITIE-DRC Report, December 2012, p.110

[58] https://www.lephareonline.net/les-contrats-chinois-totalisent-deja-cinq-ans-bilan-et-perspectives/

[59] Read Article of the April 2008Collaboration Agreement.

[60] Article 25 sexies Mining Regulations of the DRC. Requirement 3 of the 2019 EITI Standard. https://eiti.org/files/documents/eiti_standard2019_a4_fr.pdf.

published by the Ministry of Mines. And the production/statistical data disclosed by the Ministry of Mines is not disaggregated and does not provide data by company or by separate mines according to the current Mining Code and the EITI Standard .[60]

3. JOBS AND THEIR IMPACT ON LOCAL ECONOMY

In addition to the financing of the infrastructure and because of its size, SICOMINES is supposed, like any mining project, to be a great opportunity for job creation mainly for the Congolese population. According to Article 47 of the Joint Venture Convention, the management and support staff should be recruited from 'GECAMINES Groupe Ouest'. And the consortium should provide training in new mining techniques to Congolese employees to enable them to occupy advanced and complex positions so that they can enhance their professional careers.[61] For the purposes of this analysis, we were more interested in the "mining" component. But after checking the EITI reports from 2009 to 2020, the jobs created by this project are as follows:

Chat 7: Statistical data of jobs created by SICOMINES and their impact on the economy

N°	YEARS	DIRECT JOBS	INDIRECT JOBS
1	2008	N/A	N/A
2	2009	N/A	N/A
3	2010	N/A	N/A
4	2011	N/A	N/A
5	2012	0	0
6	2013	0	0
7	2014	0	0
8	2015	877	0

[60] Article 25 sexies Mining Regulations of the DRC. Requirement 3 of the 2019 EITI Standard. https://eiti.org/files/documents/eiti_standard2019_a4_fr.pdf.

[61] Read Article 54 of the 2008 Joint Venture Agreement: http://congomines.org/system/attachments/assets/000/000/276/original/B5bis-Sicomines-Convention-Incl-Anx-2008-Consortium-Entreprises-Chinoises-RDC.pdf?1430928308

9	2016	1 080,00	0
10	2017	1 183,00	0
11	2018	0	0
12	2019	N/A	N/A
13	2020	N/A	N/A

Source: EITI-DRC Reports of 2009 to 2018

The data from the EITI reports from 2009 to 2020 on jobs created by SICOMINES clearly show that in addition to the fact that SICOMINES had not yet been included in the EITI perimeter, data on jobs created by extractive projects had not been subject to EITI requirements until 2014.

However, according to the 2015 EITI reports, the year of the kick-off of the first commercial production, SICOMINES created only 877 national jobs.[62] The EITI report did not specify the number of direct and indirect jobs. On balance, this number is inferior to those of other projects of the same size during the same phase.

For 2016 and 2017, the EITI reports inform that the SICOMINES project created 1,080 and 1,183 national jobs respectively.[63] Despite this slight increase in numbers, it should be noted that the number of jobs created by the project during 2016 and 2017 remains very low compared to other projects of the same size during the same period of operation such as Tenke Fungurume Mining (TFM), Mutanda Mining (MUMI), Kamoto Copper Company (KCC).[64]

The EITI-DRC report for 2015 indicates that the 3 companies recorded 3,363, 3,321 and 3,927 direct jobs and between 4,567, 3,112 and 7,789 indirect jobs respectively.[65] And this situation makes us wonder about the real impact of the project on local jobs and, of course, on the local economy; because employment is one of the important factors of the economy in general.

[62] Tele-declaration ITIE 2015: http://itierdc-data.masiavuvu.fr/donnees-itie/ [63] Tele-declaration ITIE 2017: http://itierdc-data.masiavuvu.fr/donnees-itie/
[64] Read the 2015 DRC-EITI report, page 141, available at: https://drive.google.com/file/d/1VMolHv8pzmrce6kMt8P0Jl81LU9Y_raw/view [65] Idem

Unfortunately, the Agreement did not specify how many jobs the project actually hopes to create over time.

The 2018 EITI report did not include data for fiscal year 2018. Therefore, a complementary report would be necessary to also provide data on jobs created in 2018. But for 2019 and 2020, we have not been able to verify the number of jobs created since the EITI reports for these two years have not yet been prepared.

Furthermore, the information provided by the EITI reports on SICOMINES project jobs does not help us to verify the fulfillment of other promises made by the consortium as stated at the beginning of this section, namely: the quality of jobs, wages, and the types and frequency of training organized by the project for the Congolese employees. Nor do they help us to know how many local workers, men and women, have benefited from the jobs created by SICOMINES. It should be remembered that employment is the responsibility of the Ministry of Labor and Social Security, as well as its technical services, notably the Divisions in the provinces and ONEM (Employment National Office), which have detailed information on the jobs that are created and the implementation of the employment policy in the DRC. Unfortunately, this office does not publish this information that could also provide details on the jobs created by mining companies in general and by SICOMINES in particular. That would be the way for us to assess, as required by the mining law and the EITI Standard, the contribution of companies to the local economy in general and to employment in particular.

4. Repayment of the loan and its interests by SICOMINES

The sustainability of the SICOMINES project, including the repayment of funding, is one of the critical issues of the Collaboration Agreement for the Congolese party. SICOMINES, the JointVenture, must repay all the Chinese financing for the infrastructure and mining projects and their interest by 2034 .[66] After this period, the DRC will have to pay

[61] Article 8 of the No 3 Amendment to the April 22, 2008 Collaboration Agreement. http://congomines.org/system/attachments/assets/000/000/277/original/B6bis-Sicomines-Avenant-3-2009-Consortium-Entreprises-Chinoises-RDC.pdf?1430928311

the Chinese financing and their accrued interests by any other means. In other words, the Chinese loans will become part of the DRC's external public debt.

In order to guarantee the repayment of the Chinese loans (financing) related to the development of infrastructures for the DRC, the parties agreed to create a joint mining company. According to the Agreement, the financing of the infrastructures and its interest will be repaid from the revenues of the mining operation.[67] However, the guarantee of repayment is ensured by the DRC, which has undertaken to grant other mining concessions, other resources and satisfactory means in the event that the expected revenues of the joint venture company SICOMINES prove insufficient to repay the mining and infrastructure investments.[68]

The concrete modalities defined for the repayment of this financing have been modified by the Amendment 3 to the Collaboration Agreement which reduced the amount of the 'infrastructures' investments by half. This amount was initially 6 billion US dollars. So, the repayment phases are spread over three periods:

- **First period:** the mining Joint Venture will allocate all of its profits to the full repayment of the most urgent infrastructure works.
- **Second period:** the mining JointVenture will allocate 85% of its profits to the repayment of the mining investments and the payment of their annual interest at LIBOR (six months) + 100 BP. The remaining 15% will be distributed to the shareholders in proportion to their shares in the share capital.
- **Third period:** During this so-called 'commercial' period, taxes will be calculated as follows: 30% on the taxable profit and 5% consisting of various taxes on turnover.

The financing of the mining project by the Chinese Companies Group will be made up of 30% in the form of a shareholder loan repaid without interest. The remaining 70%

[67] Article 10.2 of the Collaboration Agreement between the Democratic Republic of Congo and the Chinese Companies Group, China Railway Group Limited andSonahydro Corporation Limited, related to the development of a mining project and an infrastructurebuilding project in the Democratic Republic of Congo on April 22, 2008.

[68] Article 5 of Amendment No 3 to the April 22, 2008 Collaboration Agreement. http://congomines.org/system/attachments/assets/000/000/277/original/B6bis-Sicomines-Avenant-3-2009-Consortium-Entreprises-Chinoises-RDC.pdf?1430928311

will be repaid with an annual interest rate of 6.1. The 100% of the infrastructure project financing will be repaid with an annual interest rate of LIBOR (six months) +100 BP (LIBOR on April 22, 2008).[69]

The latest EITI report covering 2017 and 2018 indicates 83,731,293.52 US$[70] as a total repayment made by SICOMINES at the end of 2017. The same report notes that the outstanding loan as of December 31, 2017 for the two components of the project (mines and Infrastructures) is 1,878,696,921.85 US$ while, according to data from the EITI-DRC reports included in the second chapter of this report, this debt is close to 4,897,660,232.13 US$ in 2017.

During the same period, SIMCO (Congo Building Company), one of the shareholders in SICOMINES (12%), declared to the EITI that in May 2018 they received 13,226,340.22 US$ from SICOMINES as dividends for the 2016 and 2017. This information causes a lot of confusion in the application of the provisions of the Agreement, and further, in the monitoring of the repayment. According to the above mentioned provisions, in particular Amendment 3 to the Collaboration Agreement, the shareholders could only receive dividends after the so-called 'most urgent infrastructure works'have been fully repaid. However, they received the dividends in 2016 as shown in the 2017 EITI report.[71] This would mean that the financing intended for achieving the most urgent infrastructure works and their interests have already been fully repaid by SICOMINES. Unfortunately, there is no source to confirm this hypothesis.

This declaration by SIMCO, a subsidiary of GECAMINES, makes the demand for transparency and controlsstrong in the operations of SICOMINES, in particular the repayments of the Chinese financing forthe infrastructure projects as well as the mining project investments. The precision on the dates of repayments and the triggering of the related interests is essential for the

[69] AArticle in Amendment N° 3 to the April 22, 2008 Collaboration Agreement: http://congomines.org/system/attachments/assets/000/000/277/original/B6bis-Sicomines-Avenant-3-2009-Consortium-Entreprises-Chinoises-RDC.pdf?1430928311

[70] Read the contextualized 2017-2018 EITI-DRC report, page 94. [71] Read the contextualized EITI report-DRC 2017-2018, pages 94-95 :

control of the importance or the evolution of the debt and for the calculation of the interests related to the Chinese financing in this project.

Reconsidering the sustainability of the project, and the low profits made by SICOMINES, we can wonder how useful tax and parafiscal exemptions granted to the company are. These exemptions were meant to help SICOMINES increase profits and accelerate the repayment of the Chinese loans and their interest. 12 years after the creation of SICOMINES, because of lack of a repayment timetable for the Chinese financing by 2034 at the latest, the risk of a public debt for the DRC becomes obvious despite the tax and parafiscal exemptions granted to the SICOMINES project.

The unconvincing results of SICOMINES raise the issue of the project sustainability in relation to the achievement of its objectives that are the development of the DRC and the rapid repayment of the loans, and the risk of indebtedness that the country faces. It seems that most of the public opinion and institutions were right when they expressed doubts about the sustainabilityof this financial arrangement and they stigmatized the exemptions granted to SICOMINES ever since the Agreement was signed.[72]

[72] http://acidhcd.org/sites/default/files/ACIDH-2010-InvestissementsChinoisSecteurMinierKatanga.pdf, page 42.

III. COMPARATIVE ANALYSISOF THE PAYMENTS BY SICOMINES AND TENKE FUNGURUME MINING (TFM) TO THE GOVERNMENT

In this section, we try to figure out how many payments the DRC renounced in favor of the Joint Venture depending on whether SICOMINES is in the case of the tax, customs and exchange regime of common law.

The TFM project is almost similar to the SICOMINES project in terms of size of deposits, production ambitions and investments. Another aspect, and not the least, is that both companies are subject to the conventional regime until 2018. However, the comparison is not absolute, because TFM produces more than SICOMINES DRC. Either project is based on different financial arrangements, and therefore it takes to different levels of risk. The comparison made hereis about the payments received by the government from TFM in taxes, duties, royalties and various taxes, as opposed to the profits generated by SICOMINES, which were used to repay the Chinese investments forcarrying outthe infrastructure projects for the DRC. In other words, the DRC has collected in advance its taxes, royalties and rights or any other profit that it allocates to the achievement of the infrastructures planned in the project.

In addition to the comparison, we present in the chart below data for the payments of the first six years of production of the two companies since SICOMINES is only in its sixth year of production. The chart compares the profits generated by SICOMINES with the payments by TFM to the Congolese State.

[70] http://acidhcd.org/sites/default/files/ACIDH-2010-InvestissementsChinoisSecteurMinierKatanga.pdf, page 42.

Chart 8: Payments compared between SICOMINES and TFM

N°	YEAR	PROFITS GENERATEDBY SICOMINES IN US$	YEAR	PAYMENTS BY TFMIN US$
1	2015	0	2009	16 893 378
2	2016	0	2010	102 389 096
3	2017	83 731 293,52 USD	2011	149 086 114
4	2018	0	2012	105 898 571
5	2019	N/A	2013	206 574 620
6	2020	N/A	2014	205 036 892
Total		**83 731 293,52 USD**		**785 878 671**

Source: EITI Reports as of 2009 to 2015 for TFM and 2015 to 2018 for SICOMINES

The comparison is unequivocal between the contribution of TFM, which is not totally exempt from the payment of all taxes, and that of SICOMINES, which is entirely exempt. It is clear from the amounts in this chart that, from the first six years of production of TFM, the DRC collected USD 785,878,671 in taxes, royalties, rights and fees, whereas SICOMINES 83,731,293.52 US$ in revenues for SICOMINES. This means that the latter project, although benefiting from total exemption from all taxes, did not generate enough revenue to the Chinese party as repayment for the infrastructure financing.

The payments by the TFM project to the government during the first six years of production, apart from the repayments by SICOMINES in 2018, 2019 and 2020, show us that the Congolese State has not previously modeled the project in order to have a real idea how much it has given upin favor of the Chinese party in the event that the project would be subject to the tax regime of the Mining Code.

In all likelihood, the SICOMINES project causes huge losses for the Congolese party, at least according to the available data. Moreover, in addition to the total exemption from taxes, SICOMINES benefit from other advantages, including the depreciation regime, which is another important element that can influence the net result, and therefore, accelerate the repayment of the investment.

IV. CONCLUSION

Created on the basis of the Collaboration Agreement signed in 2008 between the Democratic Republic of Congo and the Chinese Companies Group to finance infrastructure construction projects and the SICOMINES mine construction project, which had to repay the loans contracted for this purpose, the SICOMINES project is to date at the heart of a great debate on the profits that the DRC is to receive from it.

11 years after the Agreement came into force, there are still unanswered questions on the SICOMINES project. They are mainly about to the level of execution of the commitments of the parties, including the profitability for the repayment of investments and their interest.

AFREWATCH conducted a research that highlights the state of implementation of the obligations by the stakeholders, the level of transparency of the SICOMINES project in disclosing the data on the project and its profitability. In this research we compare the repayments by SICOMINES, a project fully exempt from all taxes and duties paid by the Tenke Fungurume Mining (TFM) project, which is not fully exempted by the government. According to the findings of this research, the execution of the parties' commitments is too low, i.e., less than 50% of the total agreed upon. Only 11 obligations of the 23 obligations selected as samples for analysis have been fully implemented by the parties, which represents an implementation rate of 47.8%, 8 have been partially implemented, that is 34.7%, and 4 have not yet been implemented, representing 17.3%. Individually, the Chinese party has implemented only 55.5% of the obligations, compared to 83.3% for the Congolese party.

This score is due to failure for not only the Chinese party to keep certain key commitments of the Agreement, but also for SICOMINES to not produce the quality of minerals provided for in the Agreement and its Annexes. Consequently, the Congolese party is exposed to a risk of indebtedness, if not over-indebtedness, since it will not be able to repay the Chinese loans and their large accrued interests.

Given the fact that SICOMINES keeps on benefitting from a special regime, that of full tax exemptions, despite the revision of the DRC Mining Code in 2018. It is therefore difficult to say that this project is profitable to the DRC.

So, at the end of its research, AFREWATCH states recommendations to the stakeholders of the Agreement to provide all the information necessary to understand how project is managed. May the judiciary institutions look into it in order to take the necessary measures.

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ANNEX 1: EVALUATION MATRIX OF THE IMPLEMENTATION OF THE OBLIGATIONS OF THE PARTIES INVOLVED IN THE SICOMINES PROJECT.

N°	PARTY (red= the Chinese party, blue= the DRC and Gecamines, orange= the Joint Venture, and white= China and the DRC at the same time.	OBLIGATION	SOURCE	LEVELOF IMPLEMENTATION AND REFERENCE (vgreen= completely implemented, jyellow= partially implemented and red= unimplemented)	COMMENT
1	The ChineseCompanies Group	Mobilize and set up the financing for the constructionof infrastructures of the Democratic Republic of Congo (Infrastructure project).	Collaboration Agreement of January 2008 (see Article1.2.1), Amendment 3 (seeArticle 4).	Partially implemented (see 2010-2017 EITI reports)	The 2010 to 2017 EITI reports indicate that the infrastructure component has already been financedwith 2,477,655,900.32 US$on the 3 billion US$.
2	The ChineseCompanies Group	Mobilize and set up the financing for the development of deposits listedin Annex A ('Mines'Project).	Collaboration Agreement of January 2008 (seeArticle 1.2.2)	Partially implemented (see2010-2017 EITI Reports)	The EITI reports for 2010 to 2017 indicate that the SICOMINES project has already been financed with 2,770,004,569.14 US$ out of the 3.2 billion USD loan for this component.
3	Congolese State, GECAMINES and the Chinese Companies Group	Setting up a mining JointVenture ('Mines' Project)	Collaboration Agreement of January 2008 (see Article 3.3.2)	Implemented (see JV Agreement or SICOMINES statutes	Nothing to report
4	The Congolese State and GECAMINES	Transfer to the Mining JV the mining rights and titles of the copper-cobalt deposits (Dikuluwe, Mashamba Ouest, Jonction D, Cuvette Dima, Cuvette Mashamba	Collaboration Agreement of January 2008 (see Article 4)	Implemented (seeSICOMINES Statutes)	Nothing to report
5	The ChineseCompaniesGroup	To pay a down payment of three hundred and fifty million U.S. dollars (350,000,000 USD) to the Congolese Party after adoption of the feasibility study ('Mines' Projects).	Collaboration Agreement of January 2008 (see article 5.1)	Implemented (see 2010 EITI Report)	Nothing to report
6	The ChineseCompaniesGroup	Seek and set up assistance with (50,000,000 USD), in the form of a loan, for the purchase of equipment supplies to GECAMINES for the rehabilitation of its West (AO), Center (ACP) and Lubumbashi (LC) workshops. ('Mines' Projects)	Collaboration Agreement of Janvier 2008 (see article 5.2)	Implemented (see 2010 EITI Report)	Nothing to report

7	The ChineseCompa-niesGroup	Conduct a Pre-Feasibility Study on the Mining Project on behalf of and at the expense of the Mining JV ('Mines' Project)	Collaboration Agreement ofJanu-ary 2008 (Cfr article 6.1)	Implementedaccording to the Agreementof JVA of April 2008	Nothing to report
8	The ChineseCompa-niesGroup	Conduct a Feasibility Study the conclusions of which will be submitted to the Board of Directors and the General Assembly of the Mining SJV ('Mines' Projects)	CollaborationAgree-ment ofJanuary 2008 (seeArticle 6.1)	Implementedaccording to the Agreement of JVAApril 2008	Nothing to report
9	The ChineseCompa-niesGroup	Help the Mining JV to start commercial production within the time frame set by the Feasibility Study to be carried out by the Mining JV to reach the target of 200,000 tons of Copper in the first year of commercial production and 400,000 tons of copper in the third year of commercial produc-tion ('Mines' Project)	Collaboration Agreement ofJanu-ary 2008 (seeArti-cle 7.1)	Partially Implemented. Seethe 2015-2018 EITI re-ports and the feasibility study that unfortunately remains unavailable.	SICOMINES was not able to produce 200,000 tons of copper in the first year and 400,000 tons in the third year as stipulated in the Convention. Also, the ores produced have a low added value.
10	The ChineseCompa-niesGroup	Determine by mutual consensus the list of the infrastructures chosen to be carried out actually listed in Annex C. (Infrastructure Project)	Collaboration Agreement of January 2008 (see Article8) and Amendment 3 Article 4.	Partially implemented. Seethe2009-2017 EITI reports.	The lists of projects to be imple-mented agreed by the parties are not published. This means that the public is not informed about which infrastructure should be built, when and where.
11	The Congolese State and GECAMINES	Propose and submit the list of infrastructure works to be carried out, in order of priority, immediately after the signing of the Agreement ('Infrastructures' Projects).	Collaboration Agreement of January 2008 (see Article 9.1) and Amendment 3 to the JV Agreement.	Partially implemented. See the 2009-2017 EITI reports.	The worksare done, but there is no list of the most urgent infrastructures and the infra-structures agreed upon by the parties according to Amend-ment 3. If the list exists, it is not known because it has not been published.
12	SICOMINES JV	To reimburse the financing of the infrastructure works in accordance with the provisions of Title IV of this Collaboration Agreement ('Infrastructures'Projects)	Collaboration Agreement ofJanu-ary 2008 (seeArti-cle 10.1)	Partially Implemented. See the EITI reports.	The implementation of this obligation is spread over the du-ration until the total repayment of the project related to the Agreement as well as the inter-ests derived from it. It began in 2017 and will continue until the loan is repaid in full.

13	The ChineseCompaniesGroup	To resort exclusively to Congolese companies for all supplies and services that they are able to provide ('Mines' Project)	Collaboration Agreement ofJanuary 2008 (seeArticle 11.2)	N/A	This obligation, though essential, is difficult to verify in the EITI reports, which are the main source of information on the project but do not collect it. However, the ACGTP website and its administrative reports list the names of the contractors that carried out the work.
14	The Congolese State	To grant to the Mining JV, the benefit of all customs, fiscal and exchange rate advantages provided for by the laws and regulations of the Democratic Republic of Congo as well as the particular provisions applicable to public contracts with external financing ('Mines'Project).	Collaboration Agreementof January 2008 (seeArticle 14.1)	Implemented. See the 2010-2017 EITI reports, the Joint Venture Agreement and its Amendments 1 and 2, the 2007 Agreement Protocol and the Collaboration Agreement ofJanuary 2008.	The SICOMINES project benefits from a total exemption from taxes, fees and other administrative charges to facilitate the rapid repayment of the loan. The DRC adopted a specific law granting total fiscal and parafiscal exemptions.
15	The Congolese State	To guarantee the free transfer of funds, the free opening of bank accounts in foreign currencies and local currencies inside and outside the country and the security of the operations concerned as well as the exemption from duties, taxes and bank charges related to administrative taxation ('Mines' Project).	Convention de Collaboration de janvier 2008 (Cfr article 14.1.3)	We could not verifyit because there was no report on how the project was managed.	The officials in charge and the resource persons must be contacted.
16	The Congolese State	Total exemption from all taxes, rights, fees, customs, royalties, direct or indirect, domestic or import-export, payable in the Democratic Republic of Congo and those related to mining activities and infrastructure development	Convention de Collaboration de janvier 2008 (Cfr article 14.2.1)	Implemented. See the Joint Venture Agreement and Amendment 3 to the CollaborationAgreement.	Law on the fiscal, customs and parafiscal regime of non-tax and foreign exchange revenues applicable to Collaboration Agreements and cooperation projects.
17	The Congolese State	Exemption from fees and payments related to the application, granting, transfer and and assignment of mining rights and titles, exploration and exploitation permits ('Mines'Project);	Convention de collaboration de janvier 2008 (Cfr article 14.2.2)	N/A	Nothing to report

18	The Congolese State	To exempt the costs of mining royalties ('Mines' Project).	Collaboration Agreement of January 2008 (see-Article 14.2.3)	Implemented. Seethe 2010-2017 EITI reports.	SICOMINES does not pay royalties because it is exempt from all taxes and duties according to the Collaboration Agreement and the 2010-2017 EITI reports. The only fees or payments it makes are the lease payments and service provision to GECAMINES, the contribution for local development since 2015 and the import and export duties and taxes.
19	The Congolese State	Obtain from the National Assembly to adopt a law to secure the tax, customs and exchange regime applicable to the cooperation project. If the National Parliament of the Democratic Republic of Congo does not adopt the said law within the time limit, SINOHYDRO will have the right to decide to carry out or terminate the present Agreement ('Mines'Project).	Collaboration Agreement ofJanuary 2008 (seeArticle 14.2.3)	Completely Implemented (seeLaw n°13/005 of February 2014 on the tax and customs regime applicable to Collaboration Agreements)	Law No. 13/005 of February 2014 on the Tax and Customs Regime applicable to Collaboration Agreements is a response to this obligation. It should be noted, however, that this law only concerns the tax, parafiscal and exchange regime.
20	The Chinese Companies Group	Lend to GECAMINES the necessary funds for its participation in the social capital of the mining JV and the possible increases of it ('Mines'Project)	Collaboration AgreementofJanuary 2008 (seeArticle 17.2)	Implemented. Seethe 2010 et 2017 EITI reports)	The 2010 and 2017 EITI reports indicate that the Consortium, through the SICOMINES JV, had granted a 32,000,000 US$ loan as a repayable partner loan.
21	The ChineseCompanies Group	In particular, ensure that the JV is able to meet the rapid repayment of mining investments and Government Infrastructure Works ('Mines' Project).	Collaboration Agreement ofJanuary 2008 (seeArticle 17.4)	Partially implemented. Seethe 2015-2017 EITI reports.	In addition to the fact that this commitment was poorly worded, it should be noted that to date, there has only been a repayment in 2017. And this amount represents only about 1.5% of the loan. Therefore, the rate of fulfillment is very low and it cannot be concluded that this obligation has been fulfilled.
22	The ChineseCompaniesGroup	To make every effort to reduce the cost of construction, save financial resources, ensure modern design, quality, high performance, reliability and durability of infrastructure works and services through its participation in the ongoing national reconstruction in DRC ('Infrastructures' Project).	Convention de Collaboration de janvier 2008 (Cfr article 17.5)	It is difficult to verify this obligation from the 2010-2017 EITI reports.	The implementation of this commitment is underway and the Chinese party has almost disbursed over 70% of the budget line for infrastructure. Many NGO reports and media articles stigmatize the overpricing and poor quality of infrastructure. ASADHO published a report on this. Clearly, the impact of the project's involvement in building the DRC is questionable. This is probably where we can point to the issue of lack of independent auditing on the quality, costs and performance of the infrastructure, most of which is

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