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China and Congo : Friends in Need

A report by Global Witness on the Democratic Republic of Congo, March 2011

Global Witness investigates and campaigns to prevent natural resource-related conflict and corruption and associated environmental and human rights abuses. Our investigations and lobbying have played a key role in the establishment of the major international initiatives addressing these issues, including the Kimberley Process and the Extractive Industries Transparency Initiative.

Global Witness has had a campaign for better governance in the Democratic Republic of Congo since 2001. We have published numerous reports on the problems surrounding the natural resource sectors including, for example, the artisanal mining sector in Katanga province and the links between the mineral trade and conflict in North and South Kivu, including the role of Western-based companies.

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1. Summary

In September 2007, a massive resources-for-infrastructure deal was signed between two Chinese state construction companies and the Democratic Republic of Congo's state copper company. The deal, worth more than the Congolese state budget, was the largest of its kind at the time and has the potential to transform the country.

The Chinese partners to the deal promised to provide \$9 billion finance for nationwide construction of roads, railways, hospitals, schools and dams, as well as for mine development. In exchange, the Congolese government pledged to provide the companies with up to ten million tonnes of copper and hundreds of thousands of tonnes of cobalt from mines in the southeastern province of Katanga. Total revenues from the mines could come to at least \$40 billion, even reaching as high a figure as \$120 billion. This amounts to roughly four to eleven times Congo's GDP.

The Congo-China deal has been praised by the governments involved as being "win-win" and reflecting the Chinese principle of "mutual benefit".



A man pushes a vegetable-laden bike down a street in Goma, eastern Congo. Fresh produce will be able to reach markets quicker with the 3,600km of asphalt roads set to be built under the Congo-China agreement.

This potential mutual benefit should not be squandered; indeed, few people deserve to "win" more than the people of Congo who are among the poorest and most vulnerable on Earth. While the deal is no less transparent than many other mining deals signed by the Congolese government, a lack of information makes it impossible for the Congolese to judge how beneficial it will be for their country. There is a famous Chinese proverb, referring to risk-taking and gambling. Roughly translated into English, it reads: *"If you must play, decide upon three things at the start: the rules of the game, the stakes, and the quitting time"*. In Global Witness' view neither the rules nor the stakes have been made clear.

A December 2010 report published by the State Council, China's cabinet, states that "As sunshine is the best antiseptic, transparency represents the best supervision of power". This is a welcome commitment to the openness of information and accountability – the Congo-China deal presents an opportunity for China to put these principles into practice.

The deal is likely to form a central part in President Joseph Kabila's push for re-election at the end of this year. Furthermore, with similar resources-for-infrastructure deals being signed throughout sub-Saharan Africa, now is a good time to reflect on how the Congo-China deal is doing, how to make sure that this promise of a "win" for Congo is delivered and in so doing provide some lessons that can help strengthen other deals to make sure they benefit the countries concerned as well as their investors.

Global Witness wrote to companies involved in the Congo-China deal (China Railway Group Limited, Sinohydro Corp, China Exim Bank and Gécamines) seeking comment regarding our concerns about the agreement's terms and lack of transparent and accountable oversight. Only one of these companies, China Exim Bank (Exim), responded, claiming that because it was not a party to the April 2008 agreement it had "no authority to answer [Global Witness'] agreement-related questions on behalf of the two parties involved" (presumably meaning China Railways and Sinohydro).¹

Concerns over the China deal and how to address them

Very little information is publicly available about fundamental financial aspects of the deal. There is no information about the sales price of minerals and a lack of information on what infrastructure is to be built and at what cost. It is unclear how the promised 19 per cent “internal rate of return” will be calculated

- The most critical aspects of the deal are: how the minerals will be priced; what infrastructure is to be built and at what cost; and how profits will be calculated and then taxed. In documents seen by Global Witness, there is no information on how the minerals will be priced. The April 2008 version of the agreement promises the Chinese parties an internal rate of return – a measure of profitability – of 19 per cent but does not say how this is to be calculated. Nor does the contract say what accountancy rules are to be followed (a detail of central importance). Regarding the infrastructure, although a list of the planned projects and the costs was drawn up in 2007, this has not been updated in any public form despite subsequent changes to the agreement’s scope.

- Without this important information, it is difficult to work out the deal’s likely consequences. Moreover, there is a clear potential conflict of interest for the Chinese state-owned companies since the Chinese state will likely be both buyer and principal seller of the minerals. While Congo would benefit from the maximum price for the minerals, it would be in the Chinese state’s interest to purchase the minerals at the lowest possible price.
- The original Memorandum of Understanding (September 2007), the more detailed Collaborative Agreement (April 2008) and the renegotiated supplementary agreement (October 2009) have never been publicly released. However, leaked copies of the first two agreements are available on Congolese internet news sites and on the Global Witness website.
- Global Witness has made several requests in person and in writing to Congolese government officials involved in the Congo-China project to be given a copy of the October 2009 renegotiated deal, without success. As a result, our information on the contents of the agreement comes principally from the leaked April 2008 version as well as an International Monetary Fund report and an interview with a senior official from the government’s coordination office for the agreement.²

The deal was negotiated behind closed doors without any prior international bidding process

▲ Congo has pledged to provide the companies with up to ten million tonnes of copper and hundreds of thousands of tonnes of cobalt from mines in Katanga. Revenues from the mines could come to at least \$40 billion, even reaching as high a figure as \$120 billion. This amounts to roughly four to eleven times Congo's GDP. ▼

- Negotiations took place behind closed doors, without any open bidding and were led by a small cluster of Congolese government representatives. They include Katumba Mwanke – a powerful politician close to President Kabila without an official government position. Global Witness has been unable to ascertain a formal role for the Finance, Economy and Budget ministries in the negotiations, despite their key oversight roles and the enormous implications of the deal for the country. Global Witness wrote to Hon. Mwanke as well as official members of the Congolese negotiating team including the Minister of Mines, the former head of Congo’s copper parastatal and the former Minister for Infrastructure, seeking clarification on their roles but received no response.



© Goran Tomasevic/Reuters

Standing room only for passengers crammed into a commuter train in Kinshasa. Over 1,800km of railway track is due to be built under the Congo-China deal.

While the Chinese parties are guaranteed their 19 per cent return, major risks of the deal appear to rest with Congo, notably that of fluctuating mineral prices

- The level of the internal rate of return, 19 per cent, is extremely high and substantially removes the commercial risk for the Chinese investors. The fixed internal rate of return may result in the Congolese government being obliged to put forward further mineral reserves should the level not be met, or having to lower taxes.

The costs and allocation of infrastructure deals are unclear. There is no apparent incentive for efficiency or value for money in operations run by Chinese companies

- How the infrastructure will be developed and at what cost are unclear. Care needs to be taken that these projects do not end up as white elephants with little set aside for their upkeep in the years ahead. In the same way, Congo could do more to lay out the credible processes it is following to assess and project manage the follow-up to the agreement.

- Without a proper and open bidding process among Chinese companies for each item of infrastructure, it is uncertain whether Congo is getting good value for money. Similarly, without a clear infrastructure management process there may be very little to encourage private sector efficiency and prevent cost inflation in any infrastructure contracts. These potential problems are reminiscent of the controversial use of 'cost plus' deals based on all expenses being paid with an additional profit-making payment, negotiated with contractors, which have resulted in billions of dollars worth of over-charging and cost inflation at the international level.

There is potential conflict of interest for the Chinese state-owned companies since the Chinese state will likely be both buyer and principal seller of the minerals.

▀ Negotiations took place behind closed doors, without any open bidding and were led by a small cluster of Congolese government representatives. Global Witness has been unable to ascertain a formal role for the Congolese Finance, Economy and Budget ministries in the negotiations. ▸

There are allegations by a Congolese parliamentary commission that \$24 million of the signature bonus was controversially paid out by Gécamines, involving the collusion of Gécamines staff and justice officials

- A Congolese parliamentary commission pointed to the “withdrawal” of nearly \$24 million of the Chinese government’s “signature bonus” payment, alleging that it was diverted into an offshore company by Congolese partners. Further investigation of this case is needed to clarify the background to this payment. Congolese court documents seen by Global Witness show that Gécamines – the state copper mining company and the main Congolese partner in the deal – was ordered to pay out nearly \$24 million to Caprice Enterprises Ltd, a British Virgin Islands-registered company, shortly before receiving part-payment of the \$350 million signature bonus.
- A positive development is that the Chinese Ambassador, his Excellency Wu Zexian, called for the payment of the signature bonus to be transparent, saying that it would be “scandalous” for money from the agreement to end up in people’s pockets; moreover, the government officially listed the June 2009 receipt of part payment of the signature bonus to the central bank. Given that Congo is involved in the Extractive Industries Transparency Initiative, the anti-corruption scheme, all financial and in-kind payments made to the government, as well as to parastatal operations, should also be disclosed.

The deal includes an uncompromising ‘stabilisation clause’ which, if applied as written in the agreement, would appear to create an exemption for the joint venture to any new laws that Congo passes

- A “stabilisation clause” is included in the April 2008 agreement that effectively ties Congo to legislation from which it will not be able to diverge without paying compensation for any resulting loss. It runs the risk of undermining Congo’s ability to reform its policies in areas including taxation, customs, human rights and environmental protection. Indeed, such a clause verges close to interference in the Congolese legislative process and consequently to the country’s sovereignty. The Chinese state currently promises to respect nations’ sovereignty as one of its Five Principles of Peaceful Coexistence.

No consideration is given to issues of social and environmental protection

- The April 2008 agreement is silent on environmental and social issues, despite the inevitable impact of the mining and infrastructure activities on local communities. Congolese and international law, as well as guidelines by Chinese state bodies, oblige Chinese companies to respect environmental and labour rights.
- There are concerns that members of civil society could be prevented from monitoring the Congo-China deal due to the surrounding political sensitivity.

There is little or no scrutiny of the agreement by Congo’s parliament

- A series of sensible and progressive recommendations were made by the Congolese National Assembly to address both the issue of valuation of minerals and infrastructure planned, as well as legal considerations. However there was little meaningful follow-up to the debate. If implemented, these recommendations could go a long way to making the deal a clearer “win-win” for both Congo and China.

2. Recommendations

Many of the recommendations listed below reflect those made by the Congolese parliament following the May 2008 debate on the Congo-China deal (for further details see section 6).

To the Congolese government and its Chinese state partners

- Publish all the contracts related to the Congo-China deal, including supplementary agreements.
- Publish the feasibility studies of mine sites, together with summaries of their key findings.
- Ensure the agreement specifies how the minerals will be priced.
- State precisely what infrastructure is to be built, when and at what cost.
- Agree on how the “internal rate of return” will be calculated and monitored.

To the Congolese government and Congolese state companies

- Remove tax loopholes in the agreement. Set out which taxes and royalties will be applicable once the investment repayment period finishes.
- Ensure that all payments received relating to mining and infrastructure works, as well as statistics on mineral production and export, are accurately recorded and published, and verified by independent third party audits. In particular, ensure transparency of the payment of the signature bonus including where the money has gone to and what it is being used for.
- Redraft the scope of the stabilisation clause to ensure that it respects the Congolese government’s responsibility to regulate key areas such as human rights and social and environmental policy.
- Assist in the setting up of an independent oversight body, composed of Congolese parliamentarians and civil society groups with the support of technical experts, to oversee the deal and make regular public reports.



A labourer working on the rebuilding of Kinshasa’s main road, *Boulevard du 30 juin*, one of the first infrastructure projects under the Congo-China deal. From the information publicly available about the deal, it is unclear exactly how much infrastructure will be built and at what cost.

- Ensure that social and environmental impact assessment reports are made public and are made available to the communities to be affected by the operations.

To the Chinese government

- Declare all payments made to the Congolese government and to individuals in or close to the government in relation to the agreement.

To the Group of Chinese Enterprises

- Declare all funds received from China Exim Bank for the mining and infrastructure projects, and how these funds are allocated.
- Declare all payments made to the Congolese government and to individuals in or close to the government.
- Fully comply with all relevant Congolese and international laws, notably those regarding fiscal reporting and mining, labour and environmental activities. Publicly demonstrate this compliance through regular reporting and verification.

3. Introduction

In July of last year, the Democratic Republic of Congo (Congo) celebrated not only its 50th anniversary of independence but also the forgiveness of most of its foreign debt by the World Bank and International Monetary Fund (IMF). The multibillion-dollar debt burden which has long towered over Congo has now been mostly wiped out. Congo, a country of over 60 million people, can look forward to a fresh start – providing it can break free of a legacy of decades of corruption.

Managing its mining revenues will be key to this challenge – and no deal is more important for Congo than its mammoth resources-for-infrastructure agreement with a consortium of Chinese companies, signed in September 2007. As Congo prepares for national elections, it is timely to reflect on how activities under the Congo-China deal are shaping up, especially as the furore and the hype about the deal has died down and enough time has elapsed to see whether the initial promises of development and investment have been fulfilled. Both the Chinese and the Congolese government have described the deal as “win-win”. Quite how likely it is that such promises will be fulfilled is the topic of this report.

Under the deal, the Chinese consortium is to get up to 10 million tonnes of copper and 600,000 tonnes of cobalt, in return building a long list of infrastructure projects for Congo, including thousands of kilometres of railway lines and roads. Such infrastructure would be a godsend to a country two-thirds the size of western Europe which is struggling to recover from two full-scale wars that lasted for most of the period from 1996 to 2003. Its recovery has been hampered all the more by continued fighting in the east.

The Congo-China megadeal was the latest of several such arrangements between Africa and China, which is hungry for natural resources to fuel its booming economy and has a mountain of foreign exchange reserves to invest. Congo is the world’s largest cobalt producer, with a third of total reserves, and has huge copper reserves, making it one of China’s main development partners on the continent.³

Congo’s promised benefits from the deal with China were not only railways and roads. The country was also set to get two new universities from the deal, 176 health centres and hospitals and two hydroelectric dams. The list goes on. The first projects are being built, the most visible of which is the resurfacing and widening of the main road in Congo’s capital, the *Boulevard du 30 juin*. The construction comes as other private investors put forward still more ambitious plans. In a later stage of work on the *Boulevard*, an overpass will sprout upwards from the tarmac to take drivers two kilometres to the up-and-coming neighbourhood of Kintambo. Elsewhere in Kinshasa an improbable *Cité du Fleuve* (River City) is planned – an island enclave for the city’s elite in the middle of the Congo river.

There is a concern that a large proportion of the money seems to be going to the places where most of the elite live and work. Now Congo is finally seeing debt forgiveness and an influx of investment after many years of war, it would be a great pity if that wealth was squandered on any ‘white elephants’.

The Congo-China project is of huge importance to Congo’s economy. The mining side of the deal was originally expected to produce 400,000 tons of copper in its third year of production according to the April 2008 agreement⁴ – almost four times the 2007 national output of the metal⁵ and more than the 2009 output of 310,000 tons.⁶ More recently, Moïse Ekanga, head of the government’s Office for Coordination and Oversight of the Congo-China Programme, forecast production to start in 2014, with 50,000 tonnes of copper being mined in the first two years followed by 200,000 tonnes per year afterwards. Delays are due to some of the mines being flooded and requiring gradual rehabilitation over several months.⁷

Although the size of the overall deal has shrunk by a third to \$6 billion, after complaints from the IMF and World Bank, this is still \$1 billion more than the 2009 national budget.⁸

Congo’s parliament and its citizens need to be able to monitor the deal but, despite a glitzy publicity campaign, little has been publicly revealed. To start with, it is

impossible to judge whether the deal is fair, given that it is not certain how the infrastructure is being valued or how the price of the minerals is to be set. It has not even been stated which infrastructure projects are to be carried out under the deal, beyond the first wave.

The contract, as revised in October 2009, has not been made public. The deal itself was negotiated under the heavy influence of an unelected presidential adviser with no official portfolio, with little involvement from the Ministries of Budget, Finance or Economy. Allegations of graft surround the part-payment of the \$350 million signature bonus paid by the Chinese companies to Gécamines last year. In a 2010 trip by Global Witness to Kinshasa to conduct a series of interviews on the deal, Congolese officials declined to provide researchers any requested documentation outlining the deal's terms. Global Witness has followed up in writing and on the phone without success.

There is a danger that much of the money could be mismanaged or wasted. Such potential for corruption would be a concern for both the Congolese population and, in turn, for the Chinese partners since it would undermine the creation of a “friendly environment for public opinion” and the preservation of their “good image and a good corporate reputation” as set out in the Chinese State Council’s “Nine Principles on Encouraging and Standardising Foreign Investment”.⁹

Corruption festered in Congo during the 37-year-rule of former dictator Mobutu Sese Seko, who laid the country to waste and created the conditions for conflict that has caused millions of deaths since 1996. Today, Congo rates as 15th from bottom on Transparency International’s corruption perception index.¹⁰

As Congo begins to sign more huge resources-for-infrastructure deals, including a deal of up to \$2.7 billion with South Korea, extra care needs to be taken that funds are managed well and that ordinary Congolese begin to have faith in the state. With the Congo-China project in its initial stages, there is still time to improve oversight and accountability and ensure that this is a good news story for Congo.

The following section sets out the Congolese context under which the deal was signed as well as the history of Congo-China relations. Section 5 describes the agreement in detail, how the deal was done and subsequent renegotiations. Sections 6 to 9 outline various areas for maximising the benefits stemming from the deal, related to how it is overseen and managed. Section 10 highlights areas of particular concern regarding social, security and environmental issues.

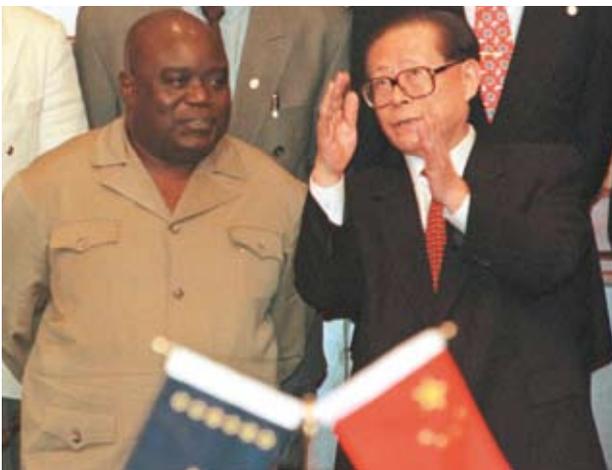


Congolese President Joseph Kabila oversees the national parade in Kinshasa for the country’s 50th anniversary of independence. The President set the delivery of ‘five pillars’ of development – including infrastructure – as the test by which he will be judged in elections set for November this year.

4. Background to Congo's 'deal of the century'

Joseph Kabila was voted in as Congo's president by a fragile majority in 2006 – its first head of state to be legitimately elected since Patrice Lumumba won a nationwide poll at independence. Kabila won 45 per cent of the votes in the first round of the presidential election, beating his nearest rival Jean-Pierre Bemba, the former rebel leader, who had 20 per cent.¹¹ The election saw considerable violence, with the capital the scene of bloody shoot-outs between Kabila's presidential guard and bodyguards of Bemba.

The election over, Kabila was faced with the task of building on his mandate to bring about peace, reunify the country and turn the nation's economy and society around through the "five pillars of development", or *cinq chantiers*. The *cinq chantiers* are: infrastructure – constructing major roads, railways, ports and airports; employment – aiming for growth in the agriculture and tourism industries; housing – promising to build thousands of homes in each of Congo's provinces; water and electricity – notably boosting the very low level of national energy production; and improving healthcare and education.¹² He has set these elements as the test by which he will be judged in presidential elections set for November this year.



Former Chinese President Jiang Zemin and former Congolese President Laurent Kabila, the father of the current President, during a trade agreement signing ceremony in Beijing, 1997. The countries have been on friendly terms since the 1970s.

© AP Photo/Anat Givon

▲ The election over, President Kabila was faced with the task of building on his mandate to bring about peace, reunify the country and turn the nation's economy and society around through the "five pillars of development".!

Western international donors pledged \$4 billion over three years in 2007.¹³ This aid, however, was slow to materialise.¹⁴ President Kabila expressed his frustration over a perceived lack of international support, publicly rejoicing in the new relationship with the Chinese and the potential it offered for greater independence from Western donors.¹⁵

The barter aspect of the deal with the Chinese consortium of companies was another very attractive factor to Congo. The intention was to bring investment into Congo without increasing its foreign debt, at a time when the country was trying to satisfy IMF and World Bank conditions to have this debt – mostly inherited from the Mobutu era – written off.¹⁶ Foreign debt totalled approximately \$11.5 billion at the time of the deal's negotiation in 2007¹⁷ but had risen to \$13.1 billion by the end of 2008.¹⁸ Under the deal, Congo's copper and cobalt would simply be swapped for infrastructure, and it was hoped that such an arrangement would avoid any objections from the Bretton Woods institutions.

At the time of signing, the agreement with Congo was the largest resources-for-infrastructure deal with China in Africa. A similar arrangement had been struck in Angola where a \$2 billion financing package

for public investment projects was approved in March 2004.¹⁹ In 2006, a Chinese parastatal, supported by Exim Bank, signed a \$3 billion deal with the Gabonese government to access untapped iron ore reserves and construct railways, ports and dams.²⁰ Since early 2009, Chinese companies have also concluded a \$7 billion deal in Guinea, and an \$8 billion deal with Zimbabwe.²¹ All of these countries are resource-rich but cash-poor, and have poor creditworthiness. As a result, natural resources are often used as backing for loans.

Congo and China: from Enmity to Amity

Relations with China got off to a rocky start at independence in 1960 when the newly established Republic of the Congo-Leopoldville established relations with Taiwan. Angry at this recognition of its rival, China suspended diplomatic contact the following year.²² China simultaneously worked against Mobutu. Between 1962 and 1963, China provided extensive training in guerrilla warfare to former Lumumba representative Pierre Mulele who went on to launch a failed insurgency in what is now Bandundu province.²³

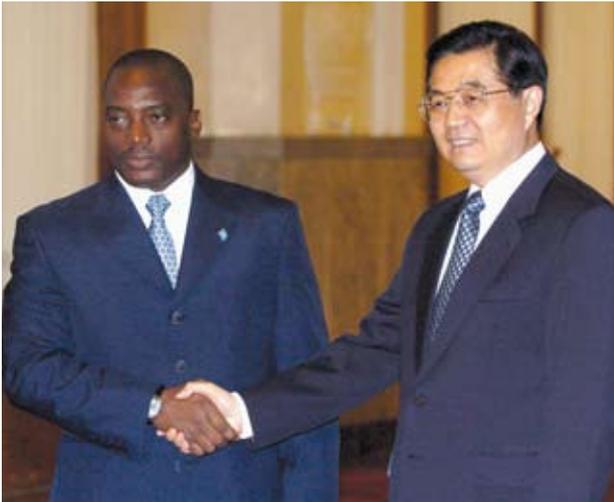
By 1972, President Mobutu had begun to see the Chinese as a balance against both the Soviet Union and his close ally the United States. Mobutu went on to visit China five times during his presidency.²⁴ In turn, the Chinese government made several donations to Congo including two high-profile buildings in the capital: the National Assembly building and the Martyrs' Stadium.²⁵ The Chinese government also provided military training to Congo, including to Joseph Kabila himself.²⁶ As with its investments elsewhere in Africa, China's generosity to Congo was to a large extent aimed at rewarding it for ceasing to recognise Taiwan. Congo has reiterated its support of the "One-China" policy, with a deputy Minister reportedly saying that Taiwan is a province of China.²⁷

Since Congo's elections in 2006, relations with China have developed at a rapid pace, in tandem with the booming Chinese economy and its expanded commercial investments in sub-Saharan Africa and elsewhere. In 2008, China overtook the US as Africa's largest trading partner, with its investment reaching \$107 billion compared to America's \$104 billion.²⁸

The Congo-China deal is one of several initiatives supported by the Chinese state to invest in Congo over the past five years. Other projects involving the Chinese state and private companies include:



Chinese UN peacekeepers stand at attention at an army base north of Beijing, before heading for Congo. China has provided troops and military observers to the UN peacekeeping force in Congo since 2003.



Congolese President Joseph Kabila with Chinese President Hu Jintao in Beijing in 2005. Chinese interests in Congo extend to the telecommunications, defence and mining sectors.

Telecommunications:

- Chinese companies Huawei and China International Telecommunication Construction Corporation are building telecommunication networks in Kinshasa and at the national level, funded by Exim Bank.²⁹

Defence:

- China has provided military equipment through aid and commercial agreements with Congo for several years. China's arms industry is shrouded in secrecy, making analysis of its trade with Congo difficult. However, recent reports by the United Nations Group of Experts on the Congo, tasked with monitoring the trade in arms to the country, tell of shipments of Chinese-manufactured military trucks, protective clothing, AK-47 magazines and other military equipment being delivered.³⁰
- At the end of 2009, the two countries announced a \$1.5 million military aid deal.³¹
- In March 2010, President Kabila met the Deputy Chief of the General Staff of the Chinese People's Liberation Army. He was later quoted in the Chinese press describing the meeting as a "new starting point for military cooperation between the two countries"³². However, details of any agreement made are unclear. Previous agreements have included the provision of training for Congolese military forces. There are currently several military attachés based in Kinshasa.³³

Mining:

- Several small- and medium-sized Chinese companies hold mining joint ventures in Katanga and North and South Kivu provinces, though many are in exploration phases.³⁴ Chinese companies are the most significant operators in the mineral sector in Katanga, the heart of Congo's globally important copper and cobalt industry. According to Moise Katumbi, the Governor of the province, more than 60 out of Katanga's 75 processing plants were Chinese-owned in 2008 and over 90 per cent of the region's minerals were exported to China.³⁵
- Chinese mineral trading houses are increasingly active in the eastern provinces of North and South Kivu. For example, Chinese "TTT mining" was the largest exporter of cassiterite in North Kivu in the first two months of 2010.³⁶

China has also had troops and military observers within the UN peacekeeping force in Congo since 2003.³⁷ Typically, Chinese staff within the peacekeeping force have included engineers and medical professionals.



Chinese doctors examine a young prisoner in a United Nations-run hospital in eastern Congo. Since Congo's elections in 2006, engagement between China and Congo has developed at a rapid pace.

5. The agreement in detail

In September 2007, the first of the Congo-China agreements was signed in Beijing, in the form of a Memorandum of Understanding outlining the deal's terms and scope. After further negotiations, a more detailed agreement was signed on April 22, 2008, between Congo and two Chinese companies: China Railway Group Ltd (China Railways) and Sinohydro Corporation.³⁸ⁱ Supported by China's Exim Bank, the Chinese companies promised to mobilise the funds for both the development of the mines and the construction of infrastructure – including railways, roads, power stations and health centres.

The investments are to be reimbursed with copper and cobalt deposits located in the Kolwezi region of the southeastern province of Katanga.³⁹ The province,

i Both the September 2007 Memorandum of Understanding and the follow-up April 22, 2008 agreement are published on the Global Witness website.

from which Kabila's family hails, is one of the world's richest copper- and cobalt-producing areas and was largely spared the worst of the Congolese war, having never fallen out of government control.

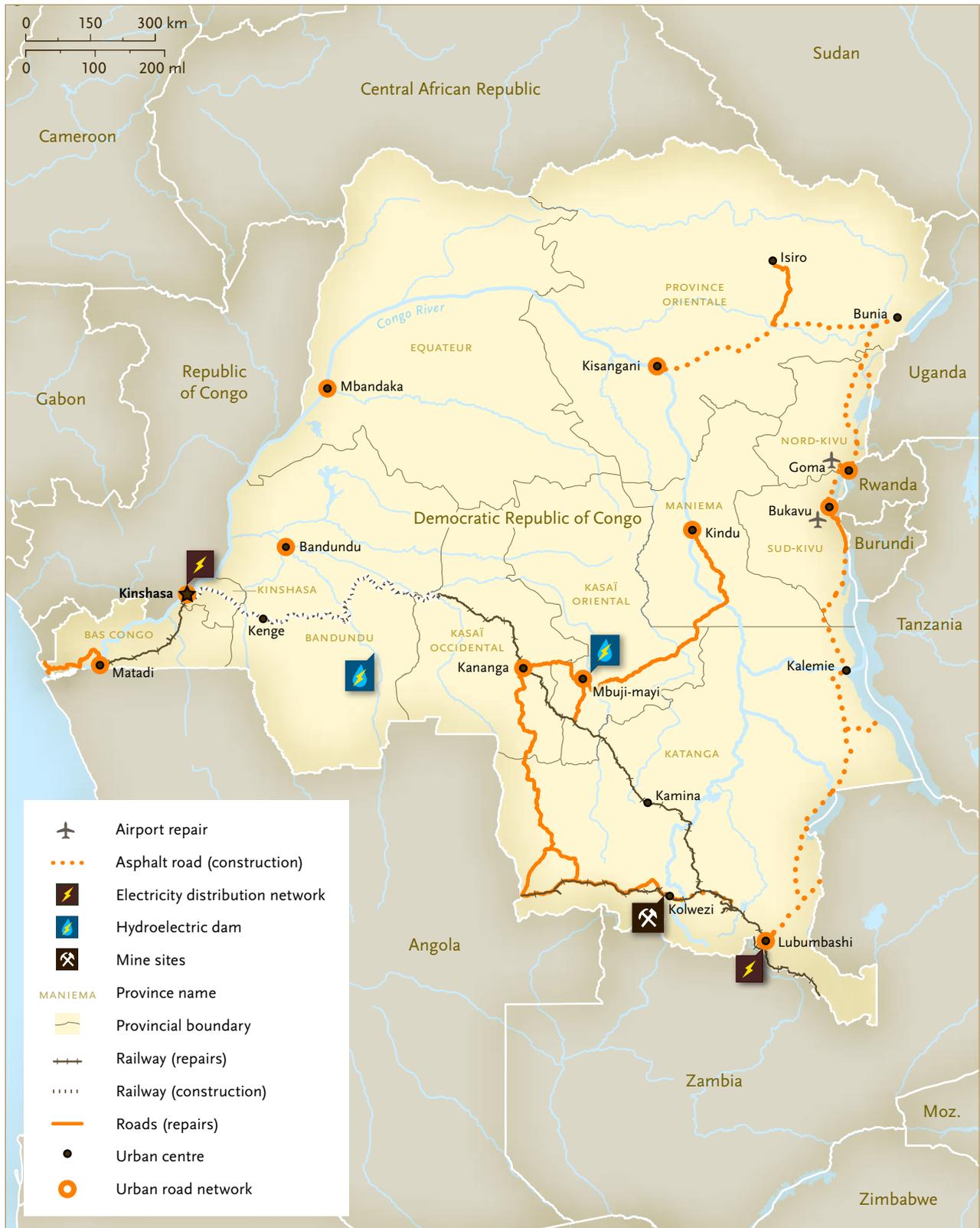
According to the deal, the state copper company Gécamines would concede a number of deposits containing up to 10.6 million tonnes of copper of which approximately 6.8 million tonnes were confirmed.⁴⁰ In addition, the deal specifies that between 425,000 and 625,000 tonnes of cobalt and "all other mineral substances capable of being developed" were promised. Investment in the mine sites near Kolwezi is set at \$3 billion.

In parallel, the April 2008 deal sets out a long list of railways, roads, bridges and airports to be built or refurbished. Furthermore, in line with Kabila's vision of the *cinq chantiers*, hospitals, clinics, hydroelectric dams, electricity distribution networks, housing and



Chinese contractors walk past Congolese workers before welcoming a delegation from China Railway Group in Kinshasa, March 2010.

Map showing mine sites and infrastructure planned under the Congo-China deal, April 2008



The map excludes hospital, housing and university projects planned under the agreement

universities are set to be built. Out of the original \$9 billion deal covering both infrastructure and mining investments, the infrastructure component was originally put at \$6 billion and later revised down to \$3 billion in late 2009 after pressure from the IMF.

Mining operations are to be carried out by Sicomines, a joint venture between the Congolese and Chinese partners. Since the April 2008 deal was agreed, there have been changes to the make-up of the 68-per-cent Chinese shareholding of the mining joint venture. At first China Railway and Sinohydro held 43 per cent and 25 per cent respectively. The breakdown in ownership, according to the latest information available, can be seen in the diagram below:⁴¹

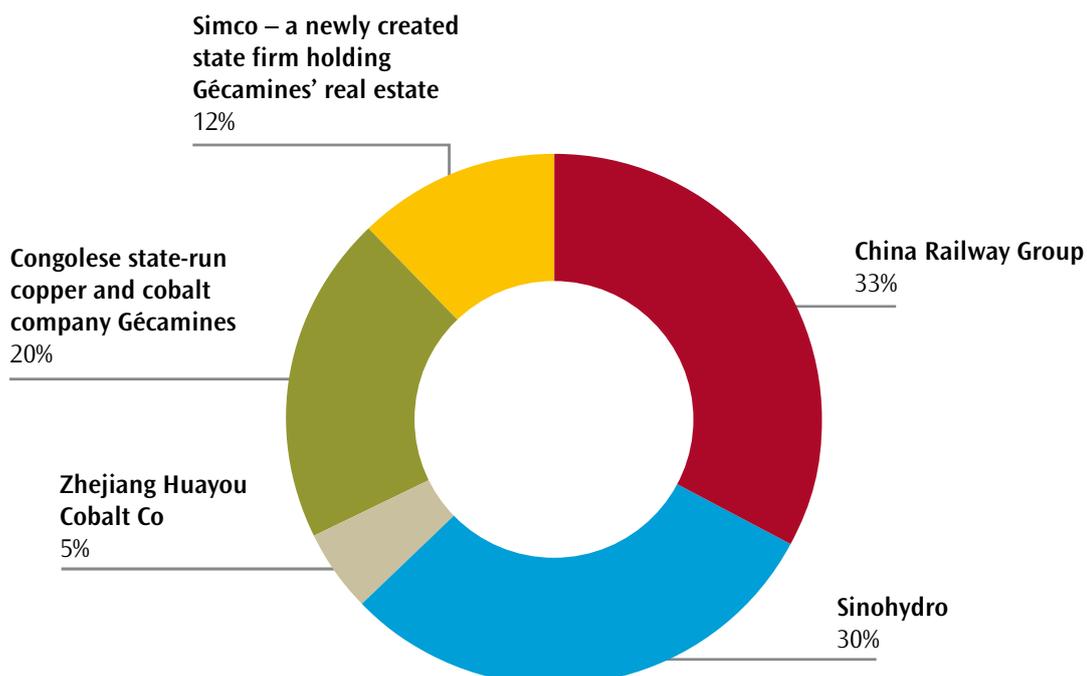
Revenues would go to Sicomines, rather than the Congolese government, and the joint venture would in turn be responsible for repaying the billions of dollars of investments by the Chinese consortium.⁴² The agreement does not state who the buyers of the minerals will be or where the minerals will be transported to on leaving Congo. Profits generated by the joint venture and not allocated for repayment would be distributed to shareholders according to their proportion of ownership.⁴³ Taxes would be paid by Sicomines only after the majority of loans are paid off.⁴⁴

The April 2008 agreement states that “if the Mining [joint venture] has not repaid the investments and interest for the Mining and Infrastructure Projects within 25 years of its creation, the DRC agrees to reimburse the remaining balance by all other means”.⁴⁵ This guarantee later became a subject of contention with Congo’s other donors and creditors.

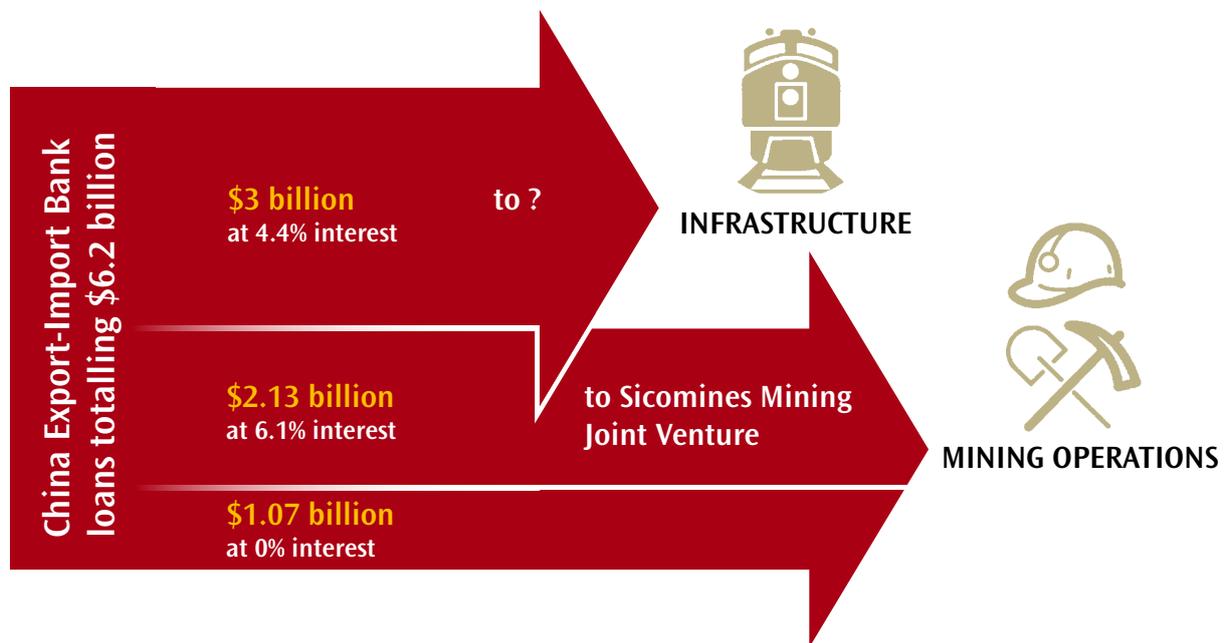
The most recent version of the agreement, finalised in October 2009, has not been published. However, details of the agreement are summarised below based on an IMF report and a Global Witness interview with a senior government official from the coordination office for the agreement:⁴⁶

- Sicomines, the joint venture between Congolese state-controlled firms and the Chinese partners, will invest a \$3.2 billion Exim Bank loan in mining operations. Two thirds of this loan will have an interest rate of 6.1 per cent while the remaining third will be provided interest-free;
- A series of further Exim Bank loans, totalling \$3 billion, will be invested in infrastructure projects. These loans are to be repaid with a fixed interest rate of 4.4 per cent;

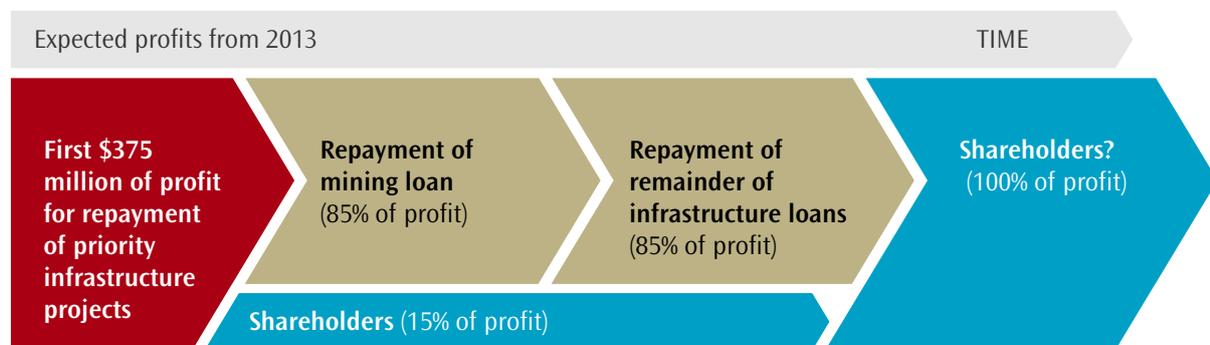
Shareholding of mining joint venture



Investment of the China Export-Import Bank Loans



Destination of expected profit from Sicomines Mining Joint Venture



- Profits from mining operations are expected from 2013;
- The first \$375 million profit will go towards the repayment of priority infrastructure projects;
- 85 per cent of Sicomines' profits will be used to pay off the mining loan followed by the rest of the infrastructure loan;
- The balance of 15 per cent profit above the \$375 million threshold from Sicomines will be divided up between the shareholders of the joint venture.

Following the deal's renegotiation, and given that renegotiated elements have not been published, it is impossible to know in what ways the list of infrastructure projects to be built through the deal has changed, i.e. if the list of proposed infrastructure projects according to the April 2008 agreement has been reduced because of a halving in infrastructure investment.

The negotiations

Officially the Congolese side of the negotiations for the agreement which took place in Beijing was led

by Pierre Lumbi (then Minister of Infrastructure and now National Security Advisor⁴⁷), Martin Kabwelulu (Minister of Mines), Gécamines representatives, including the Canadian then-CEO Paul Fortin, and a representative from the Office of the President⁴⁸, Moise Ekanga who is now the head of the government's Office for Coordination and Oversight of the Congo-China Programme.⁴⁹ Lumbi is the sole Congolese government signatory of the September 2007 and April 2008 agreements.

However, business and diplomatic sources told Global Witness that Augustin Katumba Mwanke, an *éminence grise* with no official government position, was key to initiating and directing negotiations.⁵⁰ Sources familiar with the deal told Global Witness that Mr Mwanke, widely regarded as wielding enormous power in the country,⁵¹ played a central role in the negotiations, despite remaining behind-the-scenes. It is unclear to what extent he operated during that time with an official position.

Global Witness sent a detailed list of questions to Mr Mwanke regarding reports of his behind-the-scenes role in negotiations of the Congo-China deal as well as the allegations documented by the UN Panel (see box below). However, no response has yet been received.

What is perhaps more concerning is that it has not been possible to confirm the formal involvement



© REUTERS/David Lewis

The 'Big Hill' towers over Lubumbashi, composed of millions of tons of copper and cobalt slag, accumulated from decades of mineral processing. To the left stand rundown buildings belonging to the Congolese state-owned copper company Gécamines and, in the foreground, one of its joint-ventures processing the slag. Gécamines and another state-owned company hold a third of the Sicominex joint mining venture under the Congo-China deal.

of certain key ministries, including the Finance, Economy or Budget ministries, despite the enormous economic implications of the deal for the country.⁵² Global Witness wrote to official members of the Congolese negotiating team including the former head of Gécamines, the former Minister for Infrastructure and the Minister of Mines, seeking clarification on the process of negotiation for the Congo-China deal and their respective roles. However Global Witness received no response to the questions.

Box: Katumba Mwanke – political kingpin

A former governor of Katanga province who later became a minister, Katumba Mwanke was described in the 2002 Final report of the United Nations Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the DRC as one of the chief figures in an 'elite network of Congolese and Zimbabwean political, military and commercial interests [which] seeks to maintain its grip on the main mineral resources...of the Government-controlled area [of the Congo].' The report said, 'This network has transferred ownership of at least US\$5 billion of assets from the State mining sector to private companies under its control in the past three years with no compensation or benefit for the State treasury.' The United Nations Panel report described Mwanke as 'a key power broker in mining and diplomatic deals'.⁵³ On the basis of these findings, the Panel put Mwanke on a list of people that it recommended should be barred from travel outside Congo, have their personal assets frozen and be prevented from accessing the banking system.⁵⁴

Following this report, President Kabila suspended Mwanke from the government but less than a year later, he came back into office as General Secretary of Kabila's political party.⁵⁵ He later became a roving ambassador for Kabila,⁵⁶ participating in the Sun City peace accords which led to the official end of the conflict in Congo and the formation of a transitional government led by Kabila. In 2006, he was elected as a member of Congo's National Assembly.⁵⁷

Box: How much is at stake⁵⁸

Based on long-term global price forecasts for copper and cobalt and the expected production rates as specified in the April 2008 agreement, total revenues over the duration of the mining programme could come to anywhere between \$40-120 billion. These figures do not take into consideration the costs of operations, nor the interest and capital repayment which will together amount to tens of billions of dollars.

Accurately calculating future levels of revenue, profit and taxation from the mining operation is complicated – if not impossible – given the lack of information surrounding the deal. Scant information is available from the pre-feasibility and feasibility studies, which would include the amount of copper and cobalt reserves which could be extracted at a profit, as well as the grades and accessibility of the ore.⁵⁹

Global Witness commissioned a mining expert to calculate estimate revenues for the Congo-China agreement. The total revenues are calculated on an undiscounted basis, i.e. they do not allow for the lower value of future revenues in real terms owing to inflation or interest foregone. Annual production levels used in the calculations are based on the rough ‘reserve’ estimates in the April 2008 collaborative agreement. The calculations were done on a ‘co-product’ basis whereby both cobalt and copper revenues are included. (This compares with a ‘by-product’ basis whereby cobalt revenues, as the less dominant material, would be offset against costs.) The lower prices of copper and cobalt used in the calculations are \$3,500 per metric ton and \$6.30 per pound respectively. The upper level prices of copper and cobalt used in the calculations are \$9,000 per metric ton and \$25.20 per pound respectively. These figures are based on a comparative feasibility study and 10-year price extremes up to August 2010.

The deal was negotiated behind closed doors, with no bidding process, and only publicised once the initial September 2007 agreement had already been signed. One advisor in the Ministry of Finance said that the country was in a very weak bargaining position, likening Congo to a “sick man”. He argued that Congo was only offering the Chinese consortium the equivalent of “one cup of coffee” – that is, simply a tiny proportion of the country’s wealth of natural resources.⁶⁰ According to the Chinese ambassador to Congo, the risks of operating in the country are such that it would have been “lucky” to find China Railways and Sinohydro in the past to work in such an environment. He claimed that given the high-risk context, opening up the process to tender would have been unrealistic.⁶¹

The IMF push for renegotiation

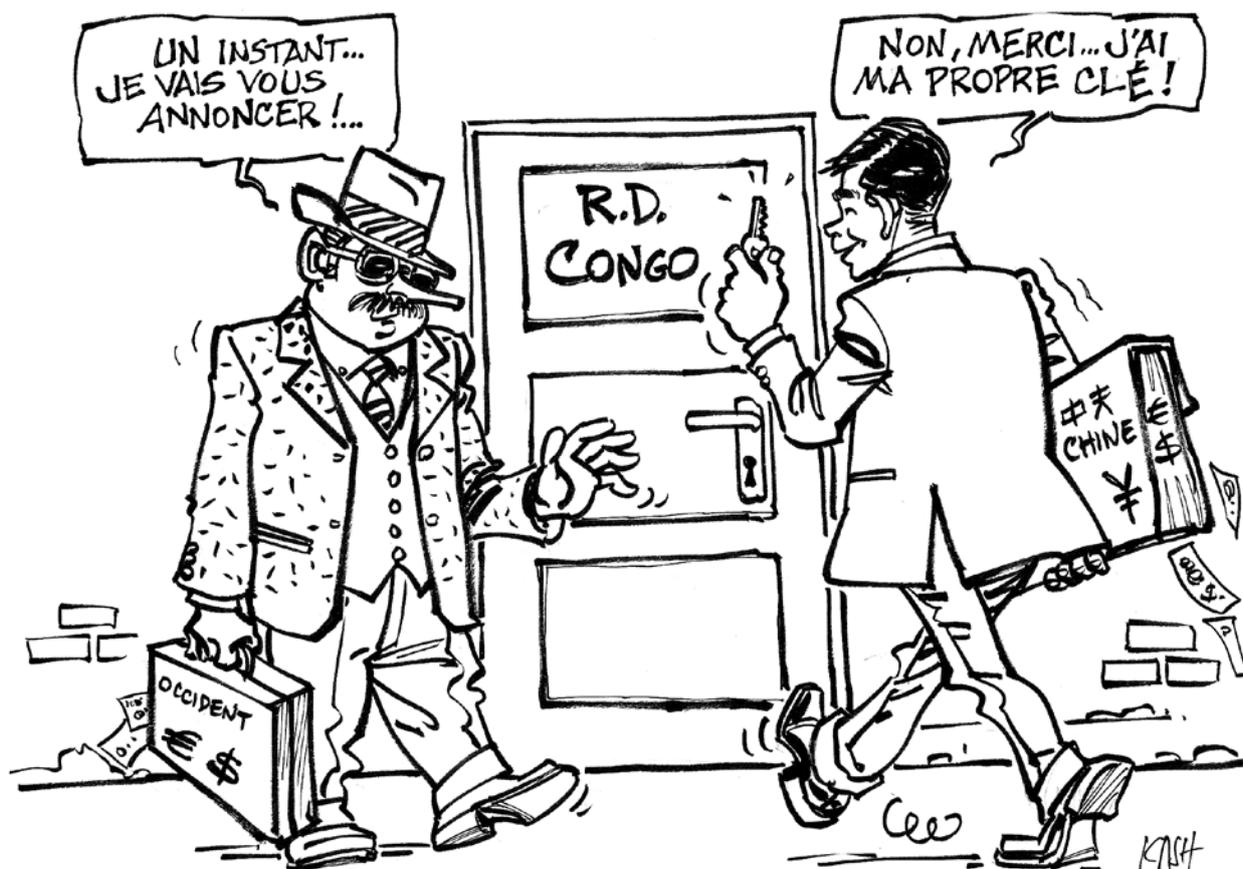
The International Monetary Fund (IMF), together with the World Bank and some bilateral donors, became worried by aspects of the deal and pushed for its renegotiation. The IMF appears to have decided that, under the terms of the deal as signed in April 2008, Congo’s debt to the Chinese consortium of state-owned companies would not be sustainable.

Furthermore, Congo appeared to be giving China a guarantee that its debts would be repaid as a priority above other nations. Providing debt relief to Congo without these key concerns being addressed would have amounted to donor nations subsidising Congo’s debt repayments to China, a senior IMF official told Global Witness.

The IMF’s complaints met with public indignation from Chinese and Congolese officials, including the



International Monetary Fund head, Dominique Strauss-Kahn, meets with Congolese President Joseph Kabila in Kinshasa, May 2009, to discuss the Fund’s concerns about debt sustainability under the Congo-China deal. After further negotiations, the deal was shrunk from \$9 billion to \$6 billion and a guarantee by the Congolese government for a portion of the investment was removed.



© Thembo Kash

View from Congo: "One moment," says the West, waiting outside the door to Congo, "I will announce you!"
 "No thanks. I have my own key!", says China.

then-head of Gécamines, Paul Fortin, and Moïse Ekanga, head of President Kabila's office for the contract. The Chinese ambassador claimed that the IMF was mistaken, and that the debt was to be owed by the joint venture rather than by the Congolese state. However, in November 2009, a renegotiated deal was announced. The IMF then concluded that the agreement had become "consistent with debt sustainability".⁶²

Congo was finally granted debt relief worth up to \$12.3 billion on July 1, 2010, through the Heavily Indebted Poor Countries Debt Initiative and Multilateral Debt Relief Initiative under the International Monetary Fund and the World Bank.⁶³

In the renegotiated deal, the government guarantee on the mining component of the Chinese loans – \$3 billion – was removed and the infrastructure part of the deal was cut in half from \$6 billion to \$3 billion. The Congolese government's guarantee on the \$3 billion in infrastructure loans remains in place.

Global Witness has made several requests in person, by telephone and in writing to Congolese government officials involved in the Congo-China project to be given a copy of the renegotiated deal, without success.⁶⁴ Consequently, much of the analysis below relates to the April 2008 agreement since this is the most recent text available. From numerous sources, Global Witness understands that the principle changes between the April 2008 and late 2009 agreements relate to the removal of the government guarantee on the mining component and the halving of the infrastructure investment, as stated above. Until the 2009 agreement is published, it is not possible to be certain that other elements remain unchanged, such as the inclusion of the stabilisation clause, the level of guaranteed internal rate of return and the specification of mineral prices.

6. How to make sure it's 'win-win'

Provide basic information on the deal's terms and pricing to build 'friendly public support'

Essential information that would indicate the fairness of the April 2008 deal is missing. Without a clear process to determine the value of Congo's minerals, the deal cannot function properly. The issue should be addressed formally in the contract for all to see. While an IMF official and a Congolese mining official have told Global Witness the copper and cobalt mined by the Chinese-Congolese joint venture would be sold at world market prices, such as determined by the London Metal Exchange, there is nothing on pricing in the contracts made public.⁶⁵

There is a potential conflict between Chinese state-owned companies acting as members of the consortium and as sellers to the Chinese state which owns them. In effect, the Chinese state is likely to

be the buyer as well as the principal seller of the copper and cobalt being mined. It would seem to be in the Chinese state's interest to arrange to obtain the minerals as cheaply as possible, although it would be in Congo's interest to maximise prices.

For a fuller understanding of the deal, additional information would be necessary which is not stated in the contract: who the major buyers of the minerals will be; whether pricing will be based on "spot" contracts or long-term contracts; how costs for transportation and processing will be integrated into the pricing; whether the minerals will be processed on-site or outside Congo; who will do the various stages of processing; and what infrastructure will be necessary before mining operations can commence.

Of particular concern is the risk of transfer pricing which is widely-practised by multinational companies to keep money from a country's tax authority. It is



An open pit mine in the copper belt of Katanga province. In documents seen by Global Witness regarding the Congo-China resources-for-infrastructure agreement, there is no information on how minerals will be priced.

common practice for international companies to vary invoices and alter costs as needed to shift profits and capital across borders between their own subsidiaries and minimise their tax burden.⁶⁶

In addition, previous research by Global Witness highlighted the risk of transfer pricing in Liberia by one of the world's largest steel companies, Mittal Steel. An original contract signed with the Liberian government left open the potential for intra-company pricing arrangements and, as a result, created a strong incentive for the company to sell the mineral ore in a way that reduced profit in Liberia and increased profit for an affiliate company.⁶⁷ The contract was later renegotiated.⁶⁸

Transfer pricing is rife in China according to some analysts. From 2002 to 2006 for example, a study by the organisation Global Financial Integrity showed that illicit annual outflows from China due to trade mispricing were estimated at \$233.5 billion on average – by far the largest amount of any country.⁶⁹ This represents a huge loss to the Chinese state, mostly from abusive practices from companies investing in China. Similarly, it is possible that by over-declaring costs related to production and transportation of the minerals within Congo, Chinese partners could minimise the available profit for repayment. In such a case, Congo might be obliged to stump up further mineral reserves to meet the terms of the deal. It is reasonable to assume that this is a risk to Congo which should ideally have been catered for in the agreement.

Global Witness is not suggesting that the Chinese parties deliberately negotiated the agreement with the intention of inflating their costs. However, as a reasonable safeguard, mining and infrastructure activities must be accounted for to international standards and audited by an independent third party, with audits being made public.

Further information is also needed on the size of the mineral reserves covered by the deal. The April 2008 agreement states that the mining zones contain up to 10.6 million tonnes of copper and hundreds of thousands of tonnes of cobalt. Feasibility studies of the mineral reserves were to be concluded by the end of March 2010. Such feasibility studies were to determine the likely rate at which the copper and cobalt are mined, the volume of reserves and the starting date of production.⁷⁰ The results of the feasibility studies, even in summary form, have not been made public.

Clarity is also lacking regarding the other side of the deal – the infrastructure. It appears not to have been decided yet exactly what infrastructure projects are to be built. And for the few that have been announced, it has not been made clear how much they are each expected to cost. The failure to be clear from the outset about costs and prices risks seriously undermining the deal (see section 8).

Contrary to the confidentiality surrounding the series of Congo-China agreements, Chinese regulations state that Chinese “government information, other than that related to state secrets, business secrets and personal privacy, should be made public in a timely and accurate manner, with the requirement of making public as the principle and holding back as the exception, to guarantee the people’s right to know, participate, express and supervise.”⁷¹ In the same way, without information on the two most fundamental elements of the Congo-China agreement – the price at which the minerals are to be sold and the cost of the infrastructure (see section 8) –, it is impossible for any observer to even begin to make an assessment of the fairness of the deal.

Provide for clear safeguards to prevent corruption and theft

“The pervasive culture of corruption exists at every echelon of Congolese politics and government administrative services,” said a 2009 World Bank report.⁷² It states:

“Rent seeking takes many forms, including offers or solicitations of bribes and illicit payments to or by government officials; fraudulent declarations to the tax authorities; embezzlement of state funds; conflicts of interest of officials who have an ownership stake in companies doing business with the government; inappropriate use of position to influence government decisions; and others.”

Corruption has been one of the fundamental causes of Congo’s disastrous economic situation over recent decades. It is particularly prevalent in the formal and informal mining sectors where the financial stakes are so high. A Congolese Senate commission concluded in 2009 that the country had missed out on at least \$361 million in revenues from the mining sector in 2008 due to mismanagement and fraud. In total only \$92 million of mining revenues were received the same year.⁷³

The Chinese authorities acknowledge that they face a challenge with corruption too. In a recent report on anti-corruption measures, the Chinese State Council says that the government and the Communist Party of China “have been resolutely combating corruption and building a clean government since the founding of the People’s Republic of China on October 1, 1949”.⁷⁴ However, the report adds that “the situation in combating corruption is still very serious, and the tasks are still abundant”. Indeed, since the late 1990s, tens of thousands of government officials in China have been found guilty of corruption and in March 2008 the Chinese Communist Party launched a five-year anti-corruption programme.⁷⁵ At the international level, China is a signatory to the United Nations Convention Against Corruption.⁷⁶

The Carnegie Endowment for International Peace stated in 2007 that corruption within China “poses one of the most lethal threats to China’s future economic development and political stability” and that “illicit activities such as bribery, kickbacks, theft, and misspending of public funds could cost at least 3 per cent of GDP”. Infrastructure projects are one of the main sectors highlighted, along with other sectors which have extensive state involvement.⁷⁷

In relation to this risk, the Chinese Ambassador to Congo has spoken out strongly against corruption. In an interview with Global Witness in June 2008, he explained that China’s struggle against corruption was “total” and that it would be “scandalous” for money from the Chinese agreement to end up in people’s pockets. In particular, he called for the

payment of the signature bonus to be transparent.⁷⁸ Such commitments are very welcome. It would be important for the parties to this deal to convert this sentiment into action.

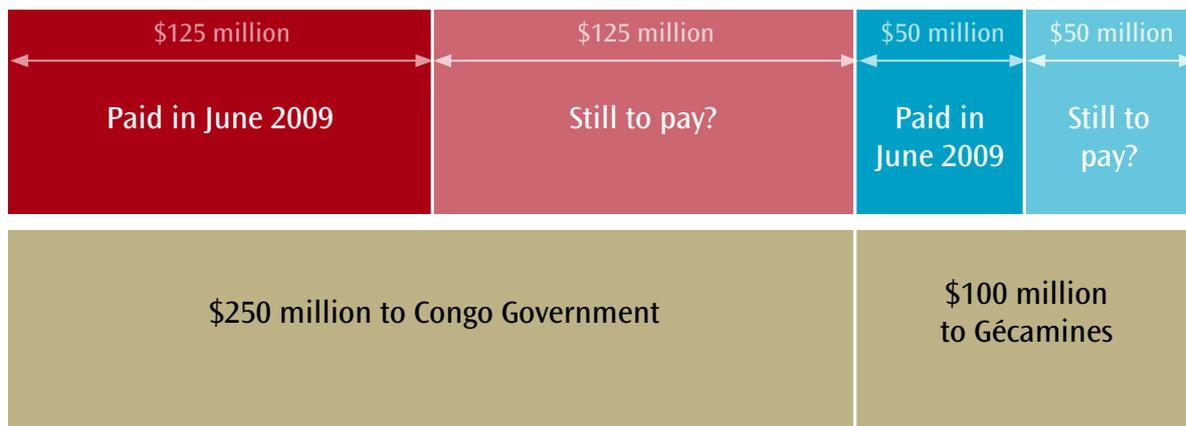
The Chinese government has instructed its state-owned enterprises to be “models for legal operations, honesty and credit” as well as to fight “against...corruption in business activities” through China’s “Guidelines on Fulfilling Social Responsibility by Central Enterprises”.⁷⁹ Respecting such principles would go far in fulfilling the State Council’s desire for Chinese foreign investment to “[preserve] a good image and a good corporate reputation” on the world stage.⁸⁰

Both Congolese and Chinese partners to the agreement should insist on integrating anti-corruption measures into the deal. Full public disclosure of all payments made in relation to the agreement – both to Sicominex and also to the Congolese government – should be a first step.

Disclose signature bonuses and ensure they make it to the treasury

In June 2009, the Chinese companies party to the deal paid half of an agreed \$350 million signature bonus, with the rest due at a later date.⁸¹ Of that money, \$250 million in total is due to be paid to the state through the central bank, and \$100 million is to be paid to Gécamines. So far, the central bank and Gécamines are meant to have been paid half of the amount due.

Payment of Congo-China signature bonus by Chinese Companies



One positive step is that the government listed the June 2009 receipt of part payment of the signature bonus to the central bank in the official *Note de conjuncture*.⁸²

However, the payment due to Gécamines became mired in controversy when a November 2009 report by the National Assembly's Economic and Finance Commission (ECOFIN) alleged collusion between Gécamines staff and local justice officials over the "withdrawal" of \$23.7 million from Gécamines.⁸³

Few additional details were provided by ECOFIN and the report does not provide any hard-and-fast evidence of corruption or illegality.

Global Witness has tracked down a series of court documents that provide additional details on the matter. These documents show that Gécamines was ordered in April 2009 to pay out some \$23.7 million of debt it reportedly owed to Caprice Enterprises Ltd (Caprice), a previously unheard-of British Virgin Islands-registered company, incorporated in March 2007.⁸⁴ This order for payment was made only a few weeks before Gécamines received half of the \$100 million it was due as its share of the \$350 million signature bonus.⁸⁵

▲ Court documents show that Gécamines was ordered in April 2009 to pay out some \$23.7 million of debt it reportedly owed to Caprice Enterprises Ltd, a previously unheard-of British Virgin Islands-registered company. This order for payment was made only a few weeks before Gécamines received half of the \$100 million it was due as its share of the \$350 million signature bonus. ▼

An appeal was lodged by Gécamines to challenge the decision. However, the appeal was rejected since Gécamines did not provide the appropriate documentation at the appeal date.⁸⁶

When questioned on the report, Gécamines' Chief Executive Officer, Calixte Mukasa, told a Bloomberg journalist that the allegations were incorrect and that Gécamines had received the full amount, i.e. half of the \$100 million due.⁸⁷ The Managing Director of the Central Bank of Congo, Vincent Nzinga, also told Global Witness that the entire \$50 million received by Gécamines for the signature bonus was used to repay banks and pay salaries.⁸⁸

In light of the allegations by an official parliamentary body, the case needs to be further investigated to ascertain whether this payout was legitimate. Key facts need to be determined, including: whether Gécamines paid money to Caprice following the judgement (ECOFIN member Hon. Bahati Lukwebo says the Commission was told by the governor of Congo's central bank that the money was paid); what the original source of the \$23.7 million debt was (i.e. was it legitimate debt?)⁸⁹; the commercial activities and history of Caprice; and, the identities of the shareholders and directors of Caprice.

Global Witness wrote to both Caprice, via its British Virgin Islands-based administrator, and Gécamines, seeking a response to the allegations as documented above. However, Global Witness has not received a response from either company.

The Chinese Ambassador stated his desire for payments of the signature bonus to be transparent.⁹⁰ Shedding light on what happened to the \$23.7 million should be treated as a key test of Congo's government to this commitment.

The second half of the signature bonus was to have been paid in December 2009.⁹¹ However an unexpected court action brought against China Railways in Hong Kong, where it is registered, is believed to have caused a delay. The case was brought by a New York-based "vulture fund" – a company which buys up junk debt from poor countries at very low prices and then takes action through courts internationally to enforce payment of the debt. These highly controversial funds can make huge profits.

In 2004, FG Hemisphere bought debt originating from a 1980s loan of \$34 million from Yugoslavia to Mobutu's Zaire. It first took Congo to courts in the

United States and South Africa to force it to pay the debt. The company then went to court in Hong Kong, demanding that any payments from China Railways be diverted by law to pay the debt. FG Hemisphere is now looking to reclaim from Congo at least \$116 million including compound interest and fees – a sum three times the original value of the debt.⁹²

In February 2010, the Hong Kong High Court ruled in favour of the vulture fund, calling for an injunction on the remainder of the signature bonus due to be paid, based on the argument that Congo does not have full sovereign immunity. The case continues, leaving China in a difficult situation. It is unclear whether the Chinese state-owned partners to the deal will be able to pay the remainder of the signature bonus without violating the recent ruling.

Implement the recommendations from Congo's parliament to improve the deal and its oversight

A debate was held in the National Assembly in May 2008, two weeks after the agreement was published. Mr Lumbi, the infrastructure minister who was a central negotiator of the deal, gave account of it, with many members of the Cabinet in attendance.⁹³ The debate took place in the context of improved oversight in Parliament following the 2006 elections and the subsequent election of members for the upper and lower houses.

The debate which followed was heated, with opposition parties, notably the Movement for the Liberation of Congo, heavily criticising the deal and ultimately walking out of the chamber, complaining about “the tone of the minister”.⁹⁴ An observer argued that the debate was simply “a formality...a semblance of a debate, producing recommendations that have no force”.⁹⁵ There has been little follow-up as a result of the debate (see recommendations below).

Despite this, a series of sensible and progressive recommendations were made by the National Assembly to address both the issue of valuation of minerals and infrastructure planned, as well as legal considerations. If followed, these would go a long way to making the deal a clearer ‘win-win’ for Congo and China.

Recommendations made to government by the National Assembly at the debate's conclusion:

1. Clearly indicate the value of infrastructure to be built
2. Respect international valuation standards
3. Clearly calculate the value of Gécamines' mineral deposits conceded through the Agreement
4. Clearly define the advantages to Gécamines deriving from its share in the joint-venture
5. Review the projects for the town of Kolwezi, where most of the minerals will be mined
6. Remove from the shareholding the person of Mr Gilbert Kalamba in favour of the company Kisenge Manganèseⁱ [this refers to the arrangement of Gécamines' shareholding]
7. Ensure that the terms of the agreement respect the Constitution and Congolese laws, in particular the Mining Code
8. Define the timetable or roadmap for the works
9. Respect Congolese legislation regarding the awarding of contracts and sub-contracting as long as the Agreement in question is implemented in DRC
10. Have recourse to international arbitration courts instead of Chinese law⁹⁶

Members of Parliament told Global Witness that they have not been kept abreast of developments with the deal since the debate, and the only time that legislators have looked into the issue since then was during the National Assembly's Economic and Finance Commission which pointed to embezzlement of part of the signature bonus.⁹⁷ There are, however, permanent commissions within the National Assembly and Senate which should follow and be informed of progress with the deal, notably the Environment and Natural Resources Commissions and the Land Use Management and Infrastructure Commissions which could materially improve the management of the Congolese ‘risks’ attached to such a deal.

ii Gilbert Kalamba is mentioned in the April 2008 announcement for the Hong Kong Stock Exchange by China Railways alongside Congo Mining as a partner in lieu of Gécamines or the Congo government. He was later appointed deputy head to Sicominex, the mining joint venture between the Congo government and the Group of Chinese Enterprises.

Lessons from the Extractive Industries Transparency Initiative?

In 2008, Congo was formally accepted into the Extractive Industries Transparency Initiative (EITI), a global standard for transparency in oil, gas and mining, currently implemented by over 30 resource-rich countries to varying degrees. The EITI is an association of governments, companies and civil society groups. Global Witness has been involved with the EITI since its announcement in 2002 and serves as a member of its International Board, as a representative of civil society.

Countries which implement the EITI publish reports which detail all material payments to the state by companies and all receipts of these payments by government agencies. These reports are checked by an independent party and their production in each country is overseen by a “multistakeholder group” with representatives from the government, companies operating in the country and domestic civil society groups. Congo was an EITI Candidate Country as of the end of 2010, meaning that it was in the process of implementing the EITI (and had published one EITI report).

China is not a formal supporter of EITI, although Chinese state companies have participated in the initiative in implementing countries such as Nigeria and Iraq.⁹⁸ The Chinese government appears to be reluctant to fully endorse the scheme due to a fear of limiting the growth of Chinese companies operating overseas.⁹⁹ One source recounted being at a meeting with the Ministry of Commerce in China where a Western diplomatic representative urged the Chinese government to become officially involved with the EITI – only to receive a consistent “no” from the Chinese delegation.¹⁰⁰

EITI will become relevant to the Congo-China agreement, and similar agreements in other EITI-implementing countries, because the growing importance of barter-type deals means that some of these countries may increasingly be receiving payments from companies in the form of in-kind investments, as well as the taxes, royalties and bonuses on which the EITI’s reporting rules are currently based.

In the case of the April 2008 agreement, revenues from the mining operations do not go directly to the government, but are held instead by the Sicomines joint venture which, in turn, has responsibility for repaying the infrastructure and mining investments by the Chinese consortium.¹⁰¹ Taxes are to be paid by Sicomines only after most of the loans are paid off. The EITI already covers state-owned companies and it seemed likely, as of the end of 2010, that the initiative would encourage, if not require, that disclosures in EITI reports be extended to barter-type deals.



A mine worker holds lumps of copper in the mineral-rich province of Katanga. Under the Congo-China agreement, the consortium of Chinese companies is to get up to 10 million tonnes of copper and 600,000 tonnes of cobalt, in return for building a long list of infrastructure projects in Congo.

7. Addressing taxation and accounting uncertainties

Another major challenge for the viability of the deal is how to calculate the rate of profit to be generated by the mining joint venture over the project's lifespan – that is the internal rate of return (IRR). An analysis for Global Witness by Richard Murphy, an international taxation expert who reviewed the April 2008 deal, pointed to some fundamental challenges in calculating and monitoring this rate.

In the April 2008 agreement – which is the latest version publicly available – the IRR is set at a minimum level of 19 per cent.¹⁰² The guaranteed nature of the internal rate of return set by the agreement is commercially highly unusual in that it removes the investment risk from the arrangement for the Chinese parties and instead makes it the responsibility of the Congolese government.¹⁰³

It is unclear how the high internal rate of return figure of 19 per cent was arrived at. Measuring the IRR is dependent on a number of variables, including changing metal prices, the level of investment in the mine itself and the way in which income to the project is calculated.¹⁰⁴ Because of the set 19 per cent limit, the various ways in which it can be calculated and the priority given to rapid debt repayment, additional mineral concessions may be required to reach the promised level. Both parties to the contract should agree on the specific mechanism for calculating and monitoring the IRR and state it contractually.

Furthermore, no accounting rules for the mining and infrastructure elements are specified in the agreement. For example, the agreement does not state that the International Accounting Standards Board rules, or any similar body, will be used when determining what profit is generated by the project. According to Murphy, this lack of information is a “major weakness in the project” as it provides Congo with very little scope for negotiation when the Chinese parties are likely to prepare the accounts.¹⁰⁵

The April 2008 agreement states that there is a tax holiday during the repayment of the \$3 billion

mining investment and of the “first instalment” of the infrastructure (another \$3 billion).¹⁰⁶ There are no indications of:

- what corporate tax rate will be charged once the infrastructure investment has been fully repaid;
- what kind of royalty will be charged;
- the rate at which royalty will be charged;ⁱⁱⁱ and
- how the price of metal will be calculated for the purposes of determining the basis of the royalty charge.¹⁰⁷

After the repayment of the mining investments and infrastructure, conventional law appears to apply. However, according to Murphy, it is doubtful that this will happen, as the April 2008 agreement appears to indicate that the tax rules would be manipulated to ensure a high internal rate of return, i.e. the tax holiday may be extended or revised in some way after the investment's repayment.¹⁰⁸ Article 13.3.3 specifies that: “If the feasibility study shows that the [internal rate of return] of the Chinese Companies Group is less than 19 per cent, the DRC agrees to take all the steps that are likely to improve the cooperation conditions in order to reach a threshold of 19 per cent for the benefit of the Chinese Companies Group.”¹⁰⁹ Instead, the profit to be declared could be set at a level which is necessary to ensure that the Chinese earn the 19 per cent rate of return on their investment. It is possible that the lack of detail of tax on profits under the third phase of repayment is deliberate, to allow room for manoeuvre to ensure the IRR reaches 19 per cent.

Transparency on taxes, the IRR and accounting rules are necessary first steps towards addressing the problems regarding these matters and ensuring the deal is fair and transparent.

iii Royalties are payments made to the host government in relation to the extraction of minerals or oil. They may be calculated in a variety of ways including based on a percentage of the volume or value of the mineral extracted or as a percentage of the profit.

8. Improving infrastructure delivery

Congo's infrastructure needs are enormous and underpin the Congo-China deal. The vast distance between towns and cities along with the dense vegetation and tropical climate of the Congo Basin have meant that building roads and railways in the country has always been difficult. Deterioration of existing infrastructure and lack of investment in recent decades has only worsened the situation. Out of the list of infrastructure projects set out in the 2008 agreement, over 3,600km of asphalt roads are set to be built (the equivalent of travelling from Cairo to Nairobi) – far more than the total length of such roads which currently exist.¹¹⁰

Similarly, railways are in a terrible state of disrepair throughout the country. According to the Congo-China deal, over 2,000km of railway track will be modernised and repaired and a further 1,800km will

be built. The railway lines are intended to span the entire country.

Repaired lines will include the key export-import route from Kinshasa to Matadi port in the west, as well as the stretch from the tip of the copper belt in Katanga province to the highest navigable point of a major Congo tributary at Ilebo in Western Kasai province – a line for which the sole remaining weekly passenger train takes six days to cover.¹¹¹ From Ilebo, a new railway line is then to be built to the capital, replacing the use of boats for copperbelt freight.

Construction of schools and healthcare facilities, houses and electricity infrastructure – three of Kabila's *cinq chantiers* – are also included in the deal. Each province is set to benefit from the construction of a hospital, several health centres and 3,000



Passengers pack goods into a train in Katanga province. Railways throughout Congo are in a poor condition and many lines and engines have become unworkable.

homes. The deal as set out in April 2008 – prior to the reduction of the infrastructure element by \$3 billion – also provides for two hydroelectric power dams to be constructed (it does not say where) and for two energy distribution networks, in Kinshasa and Lubumbashi, to be rehabilitated. Such infrastructure is sorely needed in Congo, where only 7 per cent of the population has access to electricity, compared to an average of 20 per cent in sub-Saharan Africa. Installed electricity generation capacity in Congo is 2,400 MW but because of poor maintenance, the peak production level is only around 1,000 MW.¹¹²

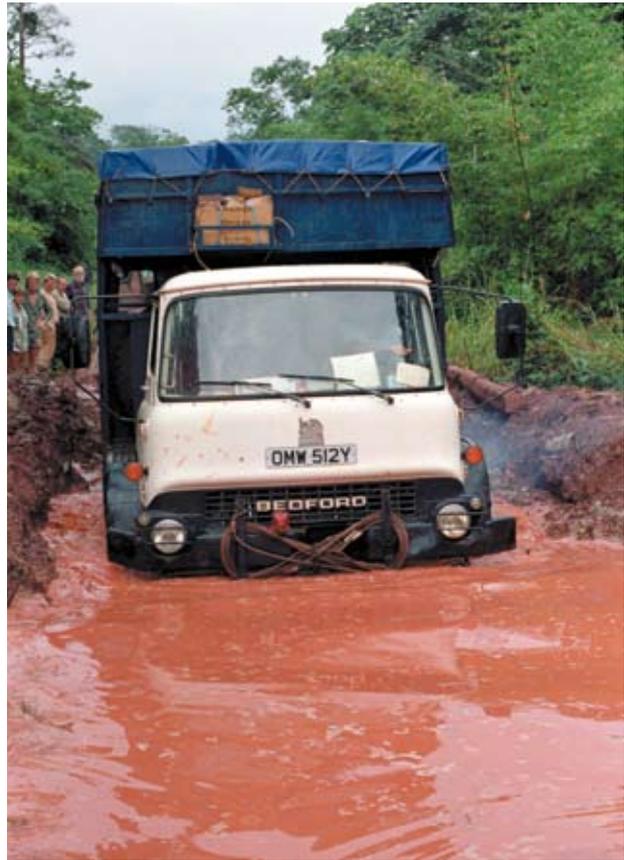
A key challenge for successful delivery of the Congo-China deal is to make sure the infrastructure delivery is properly managed.

Tendering and management process

The nature of the Congo-China agreement, combining the usually-separate mining and infrastructure elements, makes having an open tendering process very difficult. However, international bidding for infrastructure projects and auctions for mining concessions are normal prerequisites for ensuring good value for money.

Any contractor needs to be managed and overseen to make sure they deliver on the promises and that their natural inclination to boost profits by inflating costs is reigned in. It is not clear how this challenge will be managed in the Congo deal. Indeed, the contract risks being on a “cost-plus” basis whereby a contractor is paid all its allowed expenses, typically up to a set limit, as well as an additional payment allowing them to make a profit.¹¹³ However, cost-plus contracts have a poor reputation for value for money and for incentivising private sector partners to be efficient and economical. Moreover, it is in the financial interest of the Chinese construction partners to inflate costs. If the infrastructure costs were inflated, more of the mineral resources would be required to repay the debt. This, in turn, could lead to additional mineral resources being granted so that the joint venture meets the guaranteed internal rate of return.

At the moment, tenders are run for three elements within each infrastructure project – feasibility study, construction and final inspection. These tender processes are all launched by the *Agence Congolaise des Grands Travaux* (the Congolese Agency for Large-scale Works or ACGT) which was created in November 2008 specifically for the Congo-China deal and is



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A lorry struggles through a flooded road in Congo. Road conditions in the country have been appalling for decades because of a lack of investment and ongoing conflict.

overseen by the Ministry of Infrastructure. After the ACGT launches the tenders, the Public Roads and Drainage Office scrutinises the responses. An inter-departmental commission, including representatives from the Prime Minister’s Office, Presidency and Ministries, then makes the final decision on who should be awarded the contract. A clause in the April 2008 agreement states that only companies affiliated to the Chinese parties to the deal are able to tender for the construction projects.¹¹⁴ Confusingly, the ACGT denied operating according to this clause.¹¹⁵

The final stage, inspection of works, is vital for ensuring the quality of projects. However, inspections will only establish whether the initial specifications for a project are met – not whether the original specifications were of low quality or not. It is therefore imperative that the original project design includes sufficiently high benchmarks.

Inspectors contracted by ACGT must ensure that they investigate and make public any cases of corrupt behaviour such as artificial inflation of costs. This is particularly necessary in cases where the exaggerated costs for a project may come within international

pricing norms, such as specified by the World Bank, and, as a result, will be more difficult to detect.

Looking beyond the Congo-China deal, lessons should be learnt as to how resource-for-infrastructure deals – increasingly common in the context of Chinese operations in Africa – could be reorganised to introduce greater competition into the process. Paul Collier from Oxford University set out such a model promoting the use of an auction within which the resource-rich country government would put forward specific mineral rights available for allocation as well as a wish-list of infrastructure projects in order of priority. Consortia of resource extraction companies, construction companies and aid agencies would then put forward bids, each one setting out the infrastructure from the government’s list which they would be prepared to commit to, should they win the mining rights. He writes: “The way to generate transparency is not to resist [joining together mining and infrastructure elements within one deal] but to embrace it, and thereby introduce competition.”¹¹⁶ Global Witness and the evidence from this report would concur with this approach.

The projects so far

President Kabila officially launched the deal’s programme of works in Kinshasa on June 27, 2008, giving the green light for various road-building projects in the city to be carried out by China Railways.¹¹⁷ As part of the Chinese companies’ commitment to pre-finance the infrastructure works, by September 2008 around \$400 million had been put forward by China Railways for materials, alongside a staff of 200-300 from China to develop the project plans, according to a China Railways representative interviewed by Global Witness.¹¹⁸ The timetable for Exim to release its \$3 billion financing as part of the Congo-China deal is as follows, according to a spokesman of the *Agence Congolaise des Grands Travaux*, although there is little public verification of this schedule, nor clarity on what it will be spent on.

2009	January – June	US\$ 350 million
	July – December	US\$ 400 million
2010	January – June	US\$ 500 million
	July – December	US\$ 500 million
2011	January – June	US\$ 350 million
	July – December	US\$ 400 million
2012		US\$ 500 million



A Congolese driver peers down from his China Railways Group construction truck on Kinshasa’s main road, being redeveloped in 2010.

According to the spokesman, the five projects paid for by the money released in the first half of 2009 include the construction of the “fiftieth anniversary” hospital in Kinshasa.¹¹⁹ The work on the hospital began in May 2009 with Kabila laying the first stone.¹²⁰

The further four projects are all refurbishments of major roads. They include: Kinshasa’s major thoroughfare, the Boulevard du 30 juin (earlier financing for the road’s refurbishment came from Kinshasa’s municipal authority, the “Hotel de ville”); the Avenue du Tourisme, again in the capital, which stretches along the banks of the Congo river; a several-hundred-kilometre road from Beni in North Kivu province to the town of Nia-Nia in Province Orientale; and a road from Lubumbashi in the heart of the Katangan copper belt towards the Zambian border to the north east.

Coordination of infrastructure investment

Donors including the World Bank, the European Union, the African Development Bank and the British Department for International Development (DFID) are already active in supporting road construction. It will be important to think carefully about how the infrastructure projects of other donors can best complement the projects of the Congo-China deal. Greater collaboration, for example, will be needed on roads. Global Witness understands that there has been a debate within the donor community regarding different approaches towards road construction projects. Mud roads may be preferred over tarmac roads because of their cheaper cost and their ability to remain functional for longer despite a certain level of deterioration, whereas tarmac roads tend to develop dangerous pot holes in the event of heavy rain.¹²¹

The infrastructure thematic group of donors, recently reinvigorated by the World Bank and DFID-led PROROUTES programme, is important for communication and coordination between international donors and companies involved in infrastructure development. Currently the presence of Chinese representation is intermittent, according to one Western diplomat.¹²²

Maintenance of infrastructure

There is no indication in the agreement that the staffing and other maintenance costs of the planned-for universities, hospitals and other infrastructures have been budgeted for by the Congo government. Such potential lack of foresight is ill-advised in Congo, with its history of starting large-scale projects without sustained investment and maintenance – resulting in discarded buildings and run-down facilities. A local civil society activist expressed his concern to Global Witness that the infrastructure may become “new white elephants that the country won’t be able to sustain”.¹²³

Clarification will be needed on how the planned infrastructure projects are going to be maintained over the long term.

There is a similar lack of clarity about who will benefit from the proceeds from tolls on roads or other facilities.¹²⁴ Such income is lucrative, totalling thousands of dollars per day in certain high-use locations such as the principal freight exit route from the Congolese copper-belt, the Kasumbalesa-Lubumbashi road.¹²⁵



A Chinese worker sits on newly-laid railway tracks in Angola. There is no indication in the Congo-China deal how new railways and roads in Congo will be maintained.

9. The stabilisation clause

A stabilisation clause is a clause which ties a country to legislation at a certain time from which it will not be able to diverge without paying compensation for resulting higher costs or lower revenues. The aim is to create a protective investment environment for a company. Stabilisation clauses are sometimes drafted in order to give investors the permission to opt out from new environmental and social laws, or to provide investors with an opportunity to be compensated for compliance with such laws.¹²⁶ In the case of the April 2008 Congo-China agreement, Article 14.4 states that “all new legal and regulatory requirements which put [the mining joint venture and the contractor in charge of infrastructure] at a disadvantage will not be applied”¹²⁷.

While the inclusion of a stabilisation clause is not unusual in such a large project, the specific and inflexible nature of the wording is of concern.¹²⁸ Legal experts – Professor Sheldon Leader, Judith Schönsteiner and Rasmiya Kazimova, from the University of Essex Business and Human Rights Project – told Global Witness that Article 14.4 is “one of the *most comprehensive and uncompromising stabilization clauses* that the authors have encountered”¹²⁹ [italics in original]. Because of the stabilisation clause, it is possible that over the lifetime of the project, anyone damaged from its operation will receive less legal protection than will others working on projects not so restricted from changes in environmental or social legislation. These limitations would go against the Chinese State Council’s principle on foreign investment to create a “friendly environment for public opinion” and “a good corporate reputation”.¹³⁰

The stabilisation clause language could make it much harder for Congo to improve any regulation or oversight of the Congo-China projects’ implementation. Such a stabilisation clause runs the risk of undermining the country’s sovereign right to regulate key areas such as taxation, or social or environmental regulation despite “mutual respect for sovereignty and territorial integrity” being one of the Chinese government’s five principles of peaceful coexistence which guide the country’s diplomatic relations with more than 160 countries.¹³¹

Moreover, given the several decades over which the Congo-China operations are due to extend, the gap between international standards for various regulatory areas and those of Congo are set to widen.

▲ **Such a clause runs the risk of undermining the country’s sovereign right to regulate key areas such as taxation, or social or environmental regulation despite “mutual respect for sovereignty and territorial integrity” being one of the Chinese government’s five principles of peaceful coexistence. ▼**

10. Social and environmental management challenges

The Chinese state parties are obliged by the guidelines of China's State-owned Assets Supervision and Administration Commission (SASAC) to "be responsible to stakeholders and the environment, so as to achieve the harmony between enterprises' growth, society and environment".¹³² Congolese and international law also oblige companies to respect human rights and the environment.

Maintaining security of project sites

There is a lack of detail within the agreement regarding security of the project's property and employees. The 2008 agreement sets out that Congo will maintain security on all project sites, and agrees to resolve "...all problems relating to...riots, acts of public violence, strikes etc."¹³³ However, abuses by the

Congolese security forces themselves are widespread in Congo, including in the context of mining operations.¹³⁴ Nothing could be worse for the Chinese image in Congo than to have its companies associated with abuses against civilians, as has already happened with other foreign investors in the country.¹³⁵

Respecting Congolese law

The Chinese body overseeing state-owned enterprises sets out in its guidelines that: "Central enterprises shall sign contracts with employees and execute them according to law, stick to the principle of distribution according to work and equal pay for equal work, establish a system for salary increments, and pay social insurance in time and in full...They shall also enhance vocational education and training,



Congolese army soldiers at a military base north of Goma, North Kivu. Abuses by members of the army are widespread in Congo, including in the context of mining operations.



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A barge packed with passengers waits at Kinshasa port before leaving for a 1,730-kilometre journey along the Congo River to Kisangani.

create equal development opportunities, strengthen the construction of the system of employees' representative congress, promote the openness of company affairs and democratic management, care about employees' life and effectively solve their problems."¹³⁶

Both the Chinese and Congolese governments have ratified international human rights standards including the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child – the provisions of which should be respected by all companies operating under the Congo-China deal.¹³⁷ In addition, the Chinese government has ratified four of the eight core International Labour Organisation labour Conventions including those that deal with equal pay, discrimination and the worst forms of child labour.¹³⁸ However, fundamental problems for workers remain in China, where such provisions are not enforced and where the government resists ratifying other Conventions which deal with freedom of association, collective bargaining and forced labour, among other issues.¹³⁹

However, non-governmental organisations have recently highlighted several breaches of Congolese labour law by Chinese mining companies in Katanga, including the use of child labour, pay below the minimum wage and insufficient sickness and injury benefits.¹⁴⁰ Within the formal and informal Congolese mining sector, labour conditions are frequently harsh

and dangerous. Congolese law and international obligations are rarely respected. As a result, scores of miners die in preventable accidents every year. Miners continue to take such risks because the options for work are so few.¹⁴¹

Following interviews with labourers, government officials and trade union representatives, the Congolese human rights organisation, *Association africaine de défense des droits de l'homme* (ASADHO) criticised the road-building operations of China Railway Engineering Corporation (CREC) in Kinshasa, citing among other issues: the absence of written contracts; salaries paid at a lower rate of exchange than the official rate; and the absence of trade unions within CREC.¹⁴² Government inspection officials do not feel free to properly monitor the work of CREC for fear of being accused of being opposed to the *cinq chantiers*, according to a Katanga-based human rights activist.¹⁴³

Chinese government policy states that Chinese companies should respect the laws and regulations of the countries where they operate.¹⁴⁴ However, as the Katangan provincial Minister of Mines, Barthelemy Mumba, admitted to international journalists in 2008, the provincial government struggles to enforce its own labour and environmental regulations.¹⁴⁵ In Katanga, the mines inspection service (part of the Directorate of Mines) is limited in having only 30 staff with no laboratories or vehicles at their disposal.¹⁴⁶ The situation is worsened by the low level

of resources and training in the Congolese judicial system, making prosecution for breaches of the labour law extremely difficult.

The participation of civil society is fundamental to the monitoring of individual and corporate respect for Congolese law as well as broader guidelines and best practice. As set out by the Chinese State Council in their December 2010 white paper on combating corruption:

“Public support and participation is an important foundation for the success of combating corruption and building a clean government. Social organizations, news media and the broad masses of the people play a significant role in making suggestions and offering advice, participating in supervision, and uncovering corruption.”¹⁴⁷

However, in the course of monitoring labour conditions for Congolese workers and other human rights aspects, Congolese lawyers, journalists and other members of civil society have been repeatedly intimidated, threatened and arrested. Serious charges carrying heavy sentences have been used in the past to silence criticism.¹⁴⁸ Congolese civil society may undertake investigations and research into various aspects of the Chinese operations or comment on their impact. However there are concerns that officials will prevent such investigations into the Congo-China deal from being carried out due to the politically sensitive nature of the deal.

Environmental concerns

There is no mention of environmental and social impact assessments for either the mining or infrastructure parts of the agreement – the inclusion of which has become standard in investment contracts.¹⁴⁹ Any failure to include an environmental and social impact assessment would result in Congo breaching its own national and international obligations.¹⁵⁰ Given the wide importance of the issues covered in impact assessments, should such studies be done, Global Witness strongly recommends that the reports be made public and be made available to the communities to be affected by the operations.

The Chinese State-owned Assets Supervision and Administration Commission’s 2008 Guidelines state that Chinese state-owned enterprises should improve their environmental protection efforts.¹⁵¹

Exim Bank published environmental guidelines in 2007 for projects it backs, including measures for environmental and social impact assessments for overseas projects.¹⁵² Revised rules on environmental protection are also being drafted by the Chinese Ministry for Environmental Protection.¹⁵³

Further action needs to be taken by the Chinese government to promote such guidelines for overseas operations and to make them enforceable. In Katanga, Chinese facilities managers stated that they would like to receive better guidance and support from their government and embassy based in Kinshasa, according to recent research undertaken by the Oxford-based non-governmental organisation Rights and Accountability in Development.¹⁵⁴ Measures could include translation of relevant Congolese laws and regulations into Chinese and their distribution.

▲ The participation of civil society is fundamental to the monitoring of individual and corporate respect for Congolese law and best practice. There are concerns that officials will prevent civil society investigations into the Congo-China deal from being carried out due to the politically sensitive nature of the deal.▲

11. Conclusion

At the scale of several billions of dollars the stakes are enormously high for the Congo-China deal.¹⁵⁵ With eighty per cent of Congo's 66 million people living on less than two dollars a day, the investment of Chinese state companies into infrastructure development could make an enormous difference to their lives.

As outlined in this paper, the terms of the deal and the process through which it came about are causes for concern in Congo - a country renowned for its poor judicial record and widespread corruption. To minimise the risk of corruption and to ensure Congo gets the best deal it can, clarification is sorely needed over issues including:

- the price of minerals;
- the cost of infrastructure;
- and the "internal rate of return".

Global Witness wrote to companies and key negotiators involved in the deal, seeking comment about the concerns documented in this report and allegations of poor accountability. Only China Exim Bank responded, simply suggesting that Global Witness contact the main Chinese signatories to the April 2008 agreement – something which had previously been done.



President Joseph Kabila in the driving seat of a construction vehicle in Kinshasa, July 2009. With 80% of Congo's 66 million people living on less than two dollars a day, the investment of Chinese state companies into infrastructure development could make an enormous difference to their lives.

Until Congolese citizens have basic information about the main elements of the deal they will remain in the dark about whether they are getting a programme of infrastructure investment at a quality, cost and scale they should expect!

Anti-corruption safeguards, as suggested in this report, will be key to ensuring that Congo benefits as much as it should from the Chinese investment. Until Congolese citizens have basic information about the main elements of the deal, and on what happens to signature bonus payments, they will remain in the dark about whether they are getting a programme of infrastructure investment at a quality, cost and scale they should expect.

Congo and the Chinese investors should pay more attention to issues of security, environmental protection and labour conditions. In all these areas, there are significant risks for local communities near project sites, for workers and also for the Chinese and Congolese companies involved. Respect for Congolese law, Chinese state guidelines and international standards is vital if serious problems are to be avoided as mining and infrastructure projects are developed.

Congo is seeing growing interest from mining and construction companies keen to invest in the resource-rich country. It looks like the Congo-China resources-for-infrastructure deal could indicate the shape of things to come – in March 2010, for instance, President Kabila visited South Korea, where a protocol was signed for a \$2.7 billion resources-for-infrastructure deal¹⁵⁶. Without proper safeguards, such new agreements risk providing only a portion of the potential benefits. But with improved oversight and accountability, the deals could truly deserve the epithet "win-win".

12. References

- 1 Letter from China Exim Bank to Global Witness, 10 September 2010.
- 2 Global Witness interview with Barnabé Milinganyo, Chargé des missions, ACGT, Kinshasa, 11 March 2010; Global Witness interview with Jean-Marie Kassamba, JMK Consulting, Kinshasa, 12 March 2010; Global Witness interview with Moïse Ekanga, Head of Bureau de Coordination et de Suivi du Programme Sino-Congolais, Kinshasa, 15 March 2010.
- 3 Bloomberg, "International Barytex Says Congo Copper Mine Held Up Over Title", 16 October 2008; Bloomberg, "Freeport Congo Mine Says Output Unaffected by Strike", 8 December 2009.
- 4 "Collaborative Agreement between the Democratic Republic of Congo and the Chinese Companies Group: China Railway Group Limited, Sinohydro Corporation regarding the development of a mining project and an infrastructure project in the Democratic Republic of Congo 2008", April 2008.
- 5 Banque central du Congo, "Rapport annuel 2007", May 2009.
- 6 Reuters, Katrina Manson, "Congo says mining to make up half its GDP by 2015", 25 October 2010.
- 7 Africa-Asia Confidential, Vol. 4 No. 1, "Congo-Kinshasa/China: The price of debt forgiveness", November 2010.
- 8 Reuters, Joe Bavier, "Crisis-hit Congo set to revise 2009 budget: minister", 6 May 2009.
- 9 Chinese State Council, "Nine Principles on Encouraging and Standardizing Foreign investment", 25 October 2007. Unofficial translation from International Rivers, "The New Great Walls: A Guide to China's Overseas Dam Industry", July 2008, available at www.internationalrivers.org.
- 10 Transparency International, "Corruption Perceptions Index 2010", 26 October 2010, available at http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results, accessed 3 November 2010.
- 11 IRIN News, "DRC: Frontrunners need alliances for 2nd round of presidential polls", 22 August 2006.
- 12 Cinq Chantiers website, www.cinqchantiers-rdc.com, accessed 20 April 2010; Le Soir, Colette Braeckman, "Le Congo va surprendre", 16 November 2006.
- 13 Consultative Group press release, "Consultative Group Meeting on Democratic Republic of Congo", 30 November 2007.
- 14 Global Witness interview with World Bank staff, Kinshasa, 18 June 2008; Global Witness interview with civil society activist, Kinshasa, 24 June 2008; Global Witness interview with International Monetary Fund official, Kinshasa, 17 June 2008.
- 15 Le Soir, Colette Braeckman, "Joseph Kabila, en père de la reconstruction", 9 May 2009.
- 16 The Financial Times, "China in the Congo", 9 February 2009; Reuters, "FACTBOX-Congo seeking cancellation of foreign debt", 18 March 2010.
- 17 Figure taken from IMF, "Request for the Rapid-Access Component of the Exogenous Shocks Facility and Report on the 2008 Staff-Monitored Program", 4 March 2009, p.15.
- 18 Figure taken from IMF, "Democratic Republic of Congo. Staff Report for the 2009 Article IV Consultation, Request for a Three-Year Arrangement Under the Poverty Reduction and Growth Facility, and Request for Additional Interim Assistance Under the Enhanced Initiative for Heavily Indebted Poor Countries", 30 November 2009, p.6.
- 19 Center for Strategic and International Studies, Indira Campos and Alex Vines, "Angola and China: A Pragmatic Partnership", March 2008.
- 20 International Herald Tribune, Antoine Lawson, "Gabonese hope for windfall as Chinese develop iron ore deposit", 26 February 2007; China Daily, Yu Tianyu, "Chinese firm to develop iron ore project in Africa", 9 July 2008; Africa Confidential, "Digging Belinga", Vol 48 No 22, 2 November 2007.
- 21 Africa Asia Confidential, Vol. 3 No. 1, "China Sonangol targets Harare's gold and oil", November 2009.
- 22 Chinese Foreign Ministry, "Congo (DRC)", <http://www.china.org.cn/english/features/focac/183553.htm>, accessed 28 April 2010.
- 23 Nzongola-Ntalaja, G., "The Congo from Leopold to Kabila: A People's History", Zed Books, 2002, p.128.
- 24 Chinese Foreign Ministry, "Congo (DRC)", <http://www.china.org.cn/english/features/focac/183553.htm>, accessed 28 April 2010.
- 25 University of Stellenbosch Centre for Chinese Studies, "Evaluating China's FOCAC commitments to Africa and mapping the way ahead", March 2010.
- 26 Brussels Institute of Contemporary China Studies, "Asia Briefing: China's true intentions in Congo", 22 December 2009, no.51; BBC website, "Democratic Republic of Congo country profile", 10 February 2010; Nzongola-Ntalaja, G., "The Congo from Leopold to Kabila: A People's History", Zed Books, 2002.
- 27 Embassy of the People's Republic of China to the United States, "More countries voice support for Anti-Secession Law", 18 March 2005, <http://www.china-embassy.org/eng/xw/t188031.htm>, accessed 23 July 2010.
- 28 Reuters, Ed Cropley, "China, others shove U.S. in scramble for Africa", 6 August 2009.
- 29 University of Stellenbosch Centre for Chinese Studies, "Evaluating China's FOCAC commitments to Africa and mapping the way ahead", March 2010.
- 30 United Nations Security Council (UNSC), "Interim report of the Group of Experts on the Democratic Republic of the Congo, pursuant to Security Council resolution 1698 (2006)", S/2007/40, 26 January 2007; UNSC, "Final report of the Group of Experts on the Democratic Republic of the Congo", S/2008/43, 13 February 2008; UNSC, "Final report of the Group of Experts on the Democratic Republic of the Congo", S/2008/773, 12 December 2008; UNSC, "Final report of the Group of Experts on the Democratic Republic of the Congo", S/2009/603, 23 November 2009.
- 31 Brussels Institute of Contemporary China Studies, "Asia Briefing: China's true intentions in Congo", 22 December 2009, no.51.

- 32** Xinhua, “President of DR Congo meets Chinese army official”, 13 March 2010.
- 33** Brussels Institute of Contemporary China Studies, “Asia Briefing: China’s true intentions in Congo”, 22 December 2009, no.51.
- 34** University of Stellenbosch Centre for Chinese Studies, “Evaluating China’s FOCAC commitments to Africa and mapping the way ahead”, March 2010.
- 35** Bloomberg, S. Clark, M. Smith & F. Wild, “China Lets Child Workers Die Digging in Congo Mines for Copper”, 23 July 2008.
- 36** “Statistiques des exportations de la cassitérite des comptoirs et sociétés agréées à partir de Goma des mois de janvier et février 2010”, Provincial Division of Mines and Geology, Goma, North Kivu.
- 37** Xinhua, “Chinese peacekeepers return home from DR Congo”, 13 March 2008.
- 38** On the same day, an announcement of the deal was made on the Hong Kong stock exchange due to the public listing of China Railway Group Limited.
- 39** Collaborative Agreement, April 2008, p.5.
- 40** The mineral deposits are listed as: Dikuluwe, Mashamba West, Jonction D, Cuvette Dima, Cuvette Mashamba and Synclinal Dikuluwe Colline D. Collaborative Agreement, April 2008, p.8.
- 41** Bloomberg, “China Railway Group Raises Investment in Congo Mining Project”, 11 September 2008. Zhejiang Huayou Cobalt Co has a tainted record in the country, being accused in 2008 of breaking the country’s ban on exporting raw ore and a subsidiary of the company was alleged to be buying minerals sourced by child labour, Reuters, J. Bavier, “Congo’s Katanga lifts ban on 9 cobalt exporters”, 6 June 2008; Bloomberg, S. Clark, M. Smith & F. Wild, “China Lets Child Workers Die Digging in Congo Mines for Copper”, 23 July 2008.
- 42** Collaborative Agreement, April 2008, Article 12.
- 43** Collaborative Agreement, April 2008, Article 12.
- 44** Collaborative Agreement, April 2008, Article 14.2.
- 45** Collaborative Agreement, April 2008, Article 13.3.4.
- 46** IMF, “Democratic Republic of Congo. Staff Report for the 2009 Article IV Consultation”, 30 November 2009; Global Witness interview with Moise Ekanga, Head of Bureau de Coordination et de Suivi du Programme Sino-Congolais, Kinshasa, 15 March 2010.
- 47** Le Potentiel, “J.Kabila remanie le gouvernement et son cabinet”, 20 February 2010.
- 48** Global Witness interview with World Bank representatives, Kinshasa, 18 June 2008; Global Witness interview with former official within the Presidency, Kinshasa, 16 June 2008; Global Witness interview with Faustine Kuediasala, Le Potentiel, 16 June 2008;
- 49** Global Witness interview with CREC representative, Kinshasa, 25 September 2008; Global Witness interview with Congolese Central Bank staff, Kinshasa, 25 September 2008; Global Witness interview with Congolese parliamentarian & aide, Kinshasa, 10 March 2010; Global Witness interview with senior banking official, 14 March 2010.
- 50** Global Witness interview with CREC representative, Kinshasa, 25 September 2008; Global Witness interview with World Bank official, Kinshasa, 21 June 2008.
- 51** Global Witness interview with Congolese human rights activist, Lubumbashi, 10 June 2008; Global Witness interview with French diplomat, Kinshasa, 24 September 2008; Global Witness interview with Parliamentarian and aide, Kinshasa, 10 March 2010; Global Witness interview with Hon. Bahati Lukwebo, Kinshasa, 15 March 2010.
- 52** Global Witness interview with former Congolese governmental advisor, Kinshasa, 16 June 2008; Global Witness interview with senior Congolese parliamentarian, Kinshasa, 17 June 2008; Global Witness interview with official from international financial institution, Kinshasa, 17 June 2008.
- 53** United Nations Security Council (UNSC), “Final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo”, S/2002/1146, 16 October 2002, p.7.
- 54** UNSC, “Final report of the Panel of Experts”, S/2002/1146, 16 October 2002, Annex 2.
- 55** Le Phare, “AMP – Katumba Mwanke nouveau patron”, 12 November 2007.
- 56** Decret no 04/07, 11 January 2004, accessed at www.societecivile.cd/node/1204 on 5 August 2010.
- 57** Le Potentiel, « Investi président de la République le 6 décembre 2006 », 8 March 2010.
- 58** Global Witness email correspondence from mining expert, 16 August 2010; Global Witness email correspondence from mining expert, 25 August 2010; Global Witness phone conversation with mining expert, 15 October 2010.
- 59** For available information on the volumes of definite reserves see: Collaborative Agreement, April 2008, Appendix A; Bloomberg, Franz Wild, “Congo’s Sicomines Confirms Extent of Copper Find”, 27 August 2010.
- 60** Global Witness interview with Ministry of Finance official, Kinshasa, 16 June 2008.
- 61** Global Witness interview with Chinese ambassador to Congo, Kinshasa, 17 June 2008.
- 62** IMF, “Statement at the Conclusion of an IMF Staff Visit to the Democratic Republic of the Congo”, 10 November 2009.
- 63** International Monetary Fund, “IMF and World Bank Announce US\$12.3 billion in Debt Relief for the Democratic Republic of the Congo”, Press Release No. 10/274, 1 July 2010.
- 64** Global Witness interview with Barnabé Milinganyo, Chargé des missions, ACGT, Kinshasa, 11 March 2010; Global Witness interview with Jean-Marie Kassamba, JMK Consulting, Kinshasa, 12 March 2010; Global Witness interview with Moise Ekanga, Head of Bureau de Coordination et de Suivi du Programme Sino-Congolais, Kinshasa, 15 March 2010.
- 65** Global Witness interview with Ministry of Mines representative, Kinshasa, 15 March 2010; Global Witness interview with IMF representative, Kinshasa, 14 March 2010.
- 66** Global Financial Integrity, Kar, D. and D. Cartwright-Smith, “Illicit Financial Flows from Developing Countries: 2002-2006”, 2009.
- 67** Global Witness, “Heavy Mittal? A State within a state: The inequitable Mineral Development Agreement between the Government of Liberia and Mittal Steel Holdings NV”, October 2006.
- 68** Arcelor Mittal, “Arcelor Mittal and the Government of Liberia conclude mining review”, 11 December 2006.
- 69** Global Financial Integrity, Kar, D. and D. Cartwright-Smith, “Illicit Financial Flows from Developing Countries: 2002-2006”, 2009, p.24.
- 70** Global Witness interview with Alexis Mikanji, Congolese Ministry of Mines, Kinshasa, 15 March 2010.
- 71** Information Office of the State Council, The People’s Republic of China, “China’s Efforts to Combat Corruption and Build a Clean Government”, December 2010, available at http://news.xinhuanet.com/english2010/china/2010-12/29/c_13669383.htm, accessed 12 January 2011.

- 72** World Bank, “Democratic Republic of Congo: Growth with Governance in the Mining Sector”, Report No. 43402-ZR, May 2008, p.2-3.
- 73** Bloomberg, “Congo Missed Out on \$361 Million of Mining Revenue, Senate Says”, 30 September 2009.
- 74** Information Office of the State Council, The People’s Republic of China, “China’s Efforts to Combat Corruption and Build a Clean Government”, December 2010, available at http://news.xinhuanet.com/english2010/china/2010-12/29/c_13669383.htm, accessed 12 January 2011.
- 75** Carnegie Endowment for International Peace, Minxin Pei, Policy Brief 55, “Corruption Threatens China’s Future”, October 2007.
- 76** Global Witness press release, “Will UNCAC wind up toothless?”, 6 November 2009; Global Witness joint press release, “UN anti-corruption convention rendered toothless”, 13 November 2009.
- 77** See Carnegie Endowment for International Peace, Minxin Pei, Policy Brief 55, “Corruption Threatens China’s Future”, October 2007.
- 78** Global Witness interview with Chinese ambassador to Congo, Kinshasa, 17 June 2008.
- 79** State-owned Assets Supervision and Administration Commission of the State Council, “Guidelines on Fulfilling Social Responsibility by Central Enterprises”, 4 January 2008 (unofficial translation).
- 80** Chinese State Council, “Nine Principles on Encouraging and Standardizing Foreign investment”, 25 October 2007. Unofficial translation from International Rivers, “The New Great Walls: A Guide to China’s Overseas Dam Industry”, July 2008, available at www.internationalrivers.org.
- 81** Collaborative Agreement, April 2008, p.8; China Railway Group Limited, “Announcement Discloseable Transaction Adjustment in the Shareholding Structure of Societe par Actions a Responsabilité Limitée”, 11 September 2008, p.5, http://www.crec.cn/c_admin/images/200891118726.pdf accessed 27 July 2010; Banque centrale du Congo, Direction des Etudes, “Note de conjuncture”, mid-August to mid-September 2009, p.13.
- 82** Banque centrale du Congo, Direction des Etudes, “Note de conjuncture”, mid-August to mid-September 2009, p.13.
- 83** Economic and Finance Commission of the Congolese National Assembly, “Autres dossiers”, 15 November 2009.
- 84** Caprice Enterprises Limited, BVI Company Number 1395358, incorporated on 28 March 2007. Source: Territory of the British Virgin Islands BVI Business Companies Act, 2004, Certificate of Incorporation (Section 7), Caprice Enterprises Limited, 28 March 2007.
- 85** Lubumbashi Commercial Court, Public Audience of 15 April 2009, R.A.C. 55/v, Case between Caprice Enterprises Limited and Gecamines; Banque centrale du Congo, Direction des Etudes, “Note de conjuncture”, mid-August to mid-September 2009, p.13.
- 86** Lubumbashi Appeal Court, Public Audience of 29 April 2009, RACA 019, Case between Gecamines and Caprice Enterprises Limited.
- 87** Bloomberg, Michael Kavanagh, “Congolese Commission Says Copper Bonus Goes Missing”, 16 February 2010.
- 88** Global Witness interview with Vincent Nzinga, Managing Director of the Banque Centrale du Congo, Kinshasa, 12 March 2010.
- 89** Court documentation shows that the debt was transferred from a Congolese-registered company called Swanepoel to Caprice in February 2009. No further details were given on the transfer of the debt or why Gecamines owed the money.
- 90** Global Witness interview with Chinese ambassador to Congo, Kinshasa, 17 June 2008.
- 91** Global Witness interview with Vincent Nzinga, Managing Director of the Banque Centrale du Congo, Kinshasa, 12 March 2010.
- 92** Bloomberg, “Congo, Gecamines Challenge Vulture Fund Claim to \$116 million Unpaid Debt”, 9 June 2010; Judgment in the High Court of the Hong Kong Special Administrative Region, Court of Appeal, Civil Appeal no. 373 of 2008 & AMP no. 43 of CACV 43/2009 (on Appeal from HCMP no. 928 of 2008), between FG Hemisphere Associates LLC and Democratic Republic of the Congo, China Railway Group (Hong Kong) Ltd, China Railway Resources Development Ltd, China Railway Sino-Congo Mining Ltd, China Railway Group Ltd and Secretary for Justice, Date of handing down judgment 10 February 2009; The Observer, “Vulture fund swoops on Congo over \$100m debt”, 9 August 2009; The Financial Times, “Court ruling hits Beijing’s Congo hopes”, 23 February 2009.
- 93** Bell Pottinger – Democratic Republic of Congo press release, “DRC unveils its \$9 billion minerals-for-jobs deal with China”, 9 May 2008.
- 94** Le Potentiel, “Contrats chinois: rendez-vous dans une année”, 14 May 2008.
- 95** Global Witness interview with human rights activist, Lubumbashi, 10 June 2008; Global Witness interview with Parliamentarian, Kinshasa, 17 June 2008.
- 96** Le Phare, “Contrats chinois: Voici les recommandations faites au gouvernement”, 14 May 2008.
- 97** Global Witness interview with Hon. Medard Mulangala, National Assembly’s Economic and Finance Commission Rapporteur, Kinshasa, 10 March 2010; Global Witness interview with Parliamentarian and aide, Kinshasa, 10 March 2010.
- 98** As part of a joint statement by G8 Energy Ministers in June 2008, China stated that it welcomes “the efforts of countries exporting oil and gas as well as minerals that are implementing the Extractive Industries Transparency Initiative (EITI) on a voluntary basis to strengthen governance by improving transparency and accountability in the extractives sector.” “Joint Statement by Energy Ministers of G8, The People’s Republic of China, India and The Republic of Korea. Aomori, Japan on 8 June 2008”, http://www.enecho.meti.go.jp/topics/g8/g8_3sta_eng.pdf, accessed 26 July 2010.
- 99** Jonathan Holslag, Panel discussion at University of Antwerp conference, “China, Africa and the European Union: an uneasy relationship?”, 22 April 2010.
- 100** Jonathan Holslag, Panel discussion at University of Antwerp conference, “China, Africa and the European Union: an uneasy relationship?”, 22 April 2010.
- 101** Collaborative Agreement, April 2008, Article 12.
- 102** Collaborative Agreement, April 2008, Article 6.3 and Article 13.3.3.
- 103** Global Witness email correspondence from Fellow of Chartered Institute of Management Accountants, 5 July 2010; Global Witness phone conversation with mining expert, 24 June 2010; Global Witness email correspondence from Rasmiya Kazimova, legal expert, 29 October 2010.
- 104** Elizabeth Bastida & Anita Yipari analysis for Global Witness, 14 October 2008, unpublished.
- 105** Richard Murphy analysis for Global Witness, 24 September 2008, unpublished.

- 106** Collaborative Agreement, April 2008, Article 14; Global Witness interview with Moise Ekanga, Head of Bureau de Coordination et de Suivi du Programme Sino-Congolais, Kinshasa, 15 March 2010.
- 107** Richard Murphy analysis for Global Witness, 24 September 2008, unpublished.
- 108** Richard Murphy analysis for Global Witness, 24 September 2008, unpublished.
- 109** Unofficial translation.
- 110** UN Logistics Cluster, “Logistics Capacity Assessment: Democratic Republic of Congo”, 2009, http://www.logcluster.org/tools/lca/logistics-capacity-assessment-lca-cod/cod_lca_2009.pdf, accessed 26 July 2010.
- 111** Railway Gazette International, “Chinese to plug Ilebo – Kinshasa gap in DR Congo”, 7 October 2007.
- 112** Consultative Group, “Working Session on the Energy Sector – Medium Term Priorities for the Energy Sector”, November 29-30, 2007, http://siteresources.worldbank.org/CONGODEMOCRATICEXTN/Resources/CG_Working_Session_Energy.pdf, accessed 26 July 2010.
- 113** For more information, see: Center for Strategic and International Studies, “Defense Industrial Initiatives Current Issues: Cost-Plus Contracts”, 16 October 2008; NPR, John Burnett, “Examining Halliburton’s ‘Sweetheart’ Deal in Iraq, Experts Say Lucrative Contracts Yield Razor-Thin Profit Margins”, 22 December 2003.
- 114** Collaborative Agreement, April 2008, Article 10.6.
- 115** Global Witness interview with Barnabé Milinganyo, Chargé des missions, ACGT, Kinshasa, 11 March 2010.
- 116** Collier, P., Extractive Industries Transparency Initiative Board Paper 6-9, “Implications of Changed International Conditions for EITI”, October 2008.
- 117** Le Potentiel, “Kabila lance les travaux de construction et de modernisation de la voirie à Kinshasa”, 28 June 2008.
- 118** Global Witness interview with Xu Yueliang, CREC-DRC, Kinshasa, 25 September 2008.
- 119** Global Witness interview with Barnabé Milinganyo, Chargé des missions, ACGT, Kinshasa, 11 March 2010.
- 120** “Cinq chantiers : construction de l’hôpital du Cinquantenaire”, <http://www.cinqchantiers-rdc.com/dossiers/hopital-cinquantenaire/index.htm>, accessed 18 June 2010.
- 121** Global Witness interview with World Bank official, Kinshasa, 11 March 2010.
- 122** Global Witness interview with Economic advisor, US Embassy, Kinshasa, 9 March 2010.
- 123** Global Witness interview with Congolese civil society member, 20 September 2008.
- 124** Global Witness interview with Barnabé Milinganyo, Chargé des missions, ACGT, Kinshasa, 11 March 2010.
- 125** Global Witness interview with Xavier Maret, IMF, Kinshasa, 17 June 2008.
- 126** Shemberg, A., “Stabilization Clauses and Human Rights, a study commissioned by IFC and UN Special Representative on Business and Human Rights”, March 2008.
- 127** Collaborative Agreement, April 2008, Article 14.4, unofficial translation.
- 128** Companies based in OECD countries most of the time opt for ‘limited economic equilibrium’ clauses. Shemberg, A., “Stabilization Clauses and Human Rights, a study commissioned by IFC and UN Special Representative on Business and Human Rights”, March 2008, states that “Contracts with limited economic equilibrium clauses often contain one or more features that aim to ensure fairness in the application of the clause, such as a threshold loss requirement before compensation is to be awarded, requirement on the investor to mitigate cost implications of new laws, stabilization for costs or windfalls, recourse to an independent expert to determine compensation amounts, and other.”
- 129** Schönsteiner, J., R. Kazimova & S. Leader, Analysis for Global Witness, 24 October 2008, unpublished.
- 130** Chinese State Council, “Nine Principles on Encouraging and Standardizing Foreign Investment”, 25 October 2007.
- 131** Xinhuanet, “Backgrounder: Five principles of peaceful coexistence”, 14 June 2004.
- 132** State-owned Assets Supervision and Administration Commission of the State Council, “Guidelines on Fulfilling Social Responsibility by Central Enterprises”, 4 January 2008.
- 133** Collaborative Agreement, April 2008, Article 14.3.2.
- 134** Global Witness, “Digging in Corruption: Fraud, abuse and exploitation of Katanga’s copper and cobalt mines”, July 2006, p.38-39; ACIDH, ASADHO/Katanga, Global Witness and RAID, “Kilwa Trial: a Denial of Justice, A Chronology, October 2004 – July 2007”, 17 July 2007; Global Witness, “‘Faced with a gun, what can you do?’ War and the militarisation of mining in eastern Congo”, chapter 5, July 2009; AFP, “One dead as DR.Congo troops fire on demonstration: official”, 11 May 2010.
- 135** The Red Flags initiative, led by International Alert and Fafo, highlights liability risks for companies operating in high-risk zones See: www.redflags.info, accessed 26 July 2010.
- 136** State-owned Assets Supervision and Administration Commission of the State Council, “Guidelines on Fulfilling Social Responsibility by Central Enterprises”, 4 January 2008.
- 137** United Nations Treaty Collection, accessed <http://treaties.un.org/>, 5 August 2010.
- 138** International Trade Union Confederation (ITUC), “Internationally Recognised Core Labour Standards in the People’s Republic of China”, 10 May 2010; Rights and Accountability in Development, “Chinese mining operations in Katanga, Democratic Republic of Congo”, September 2009, available at: <http://raid-uk.org>
- 139** International Trade Union Confederation (ITUC), “Internationally Recognised Core Labour Standards in the People’s Republic of China”, 10 May 2010.
- 140** Rights and Accountability in Development, RAID, “Chinese mining operations in Katanga, Democratic Republic of Congo”, September 2009, available at: <http://raid-uk.org>; Action contre l’impunité pour les droits humains, ACIDH, “Les investissements privés et public chinois dans le secteur minier au Katanga : Bonne gouvernance et droits de l’homme”, May 2010.
- 141** See Global Witness, “Digging in Corruption: Fraud, abuse and exploitation in Katanga’s copper and cobalt mines”, July 2006, p.26.
- 142** ASADHO, “Les conditions de travail des congolais au sein de l’entreprise chinoise CREC sont inacceptables!”, January 2010.
- 143** Global Witness email correspondence from Katangan human rights activist, 8 April 2010.
- 144** Chinese State Council, “Nine Principles on Encouraging and Standardizing Foreign Investment”, 25 October 2007.

- 145** Bloomberg, S. Clark, M. Smith & F. Wild, “China Lets Child Workers Die Digging in Congo Mines for Copper”, 23 July 2008.
- 146** Rights and Accountability in Development, “Chinese mining operations in Katanga, Democratic Republic of Congo”, September 2009, available at: <http://raid-uk.org>
- 147** Information Office of the State Council, The People’s Republic of China, “China’s Efforts to Combat Corruption and Build a Clean Government”, December 2010, available at http://news.xinhuanet.com/english2010/china/2010-12/29/c_13669383.htm, accessed 12 January 2011.
- 148** For further information please see, Global Witness press releases, “Global Witness calls for immediate release of Congo human rights activist”, 17 August 2009 and “Global Witness dismayed at clampdown on activists in Katanga”, 25 September 2009.
- 149** Schönsteiner, J., R. Kazimova & S. Leader, Analysis for Global Witness, 24 October 2008, unpublished.
- 150** The Congolese Mining Code (2002) requires mining companies to submit environmental impact assessments (*Etude d’Impact Environnemental*) and environmental management plans (*Plan de Gestion Environnementale du Projet, PGEP*). Congolese Law No.007/2002 of 11 July 2002 relating to the Mining Code, Article 204; Article 14 of the Convention of Biological Diversity, which Congo ratified on 3 December 1994, obliges state parties to carry out environmental impact assessments where proposed projects are likely to have significant adverse effects on biological diversity; African Commission on Human and People’s Rights emphasises the obligation under the African Charter to carry out impact studies before the investment project is approved, Comm. No. 155/96, (2001). Schönsteiner, J., R. Kazimova & S. Leader, Analysis for Global Witness, 24 October 2008, unpublished.
- 151** State-owned Assets Supervision and Administration Commission of the State Council, “Guidelines on Fulfilling Social Responsibility by Central Enterprises”, 4 January 2008.
- 152** South African Institute of International Affairs, P. Bosshard, “China’s Environmental Footprint in Africa”, China in Africa Policy Briefing, No. 3, April 2008; China Exim Bank, “Guidelines for Environmental and Social Impact Assessments of Loan Projects”, August 2007.
- 153** China Daily, “Green norms for overseas investment soon”, 9 July 2010.
- 154** Rights and Accountability in Development, “Chinese mining operations in Katanga, Democratic Republic of Congo”, September 2009, p.vi, available at: <http://raid-uk.org>
- 155** Global Witness interview with Chinese ambassador to Congo, Kinshasa, 17 June 2008; Journal La Prospérité, “Allocution du Ministre des Infrastructures, Travaux Publics et Reconstruction à l’occasion de la présentation à L’Assemblée nationale des accords signés entre le Gouvernement de la République Démocratique du Congo et la République Populaire de Chine”, 10 May 2008.
- 156** “More Multibillion Mining Contracts for Kinshasa”, Africa-Asia Confidential, April 2010.



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A Chinese worker stands among African co-workers on a dam construction site in Central Africa. Multi-million dollar construction deals have been struck throughout sub-Saharan Africa by Chinese state construction companies. China, hungry for natural resources to fuel its booming economy, has a mountain of foreign exchange reserves to invest.

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