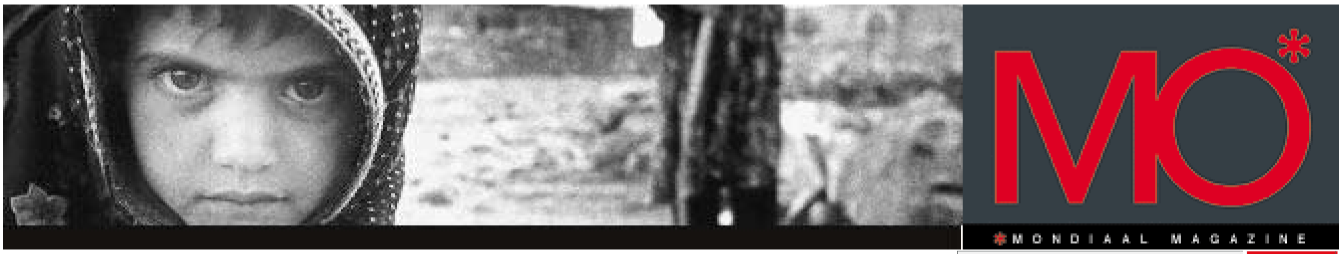

Congo squanders its crown jewels
By John Vandaele

KABILA AND FORREST IN A TANGO MORTALE

CONGO SQUANDERS ITS CROWN JEWELS

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Although Congo is poverty-stricken, its underground is overflowing with wealth. But who profits from the Congolese copper, cobalt or uranium? MO* got hold of two mining exploitation contracts and had them analyzed by a specialized law firm. Conclusion: Congo is being plundered. A Congolese parliamentary investigation warned for this, but it was not released for publication. MO* however got hold of it. Belgian authorities are observing while the Belgian entrepreneur George Forrest plays the leading part.

If all goes well the first elections in forty years will take place in Congo. Almost 26 million people have registered the last couple of months for the elections, a major effort in a country with hardly any roads. The voting computers annex-generator-annex-gasoline were brought to the most remote areas by prawn, terrain vehicle or helicopter in order to allow a waterproof registration with a picture and two fingerprints. 'A nightmare was turned into a miracle', says Ross Mountain, deputy chief of the VN operation in Congo - with 23.000 people, of which 17.000 military. The international community contributed 450 million Euro for the organisation of the elections. Belgium put 16 million Euro on the table. One hopes that these elections will lead to a better government. The needs are high: parents are still paying the major part of the teachers' salaries, health care is very weak, the Congolese belong to the poorest people on earth. There is not even any money any more to paint the taxi's yellow. The international community now already takes care of sixty percent of the government's budget and is proposing to pay more if the elections turn out well. Minister of Foreign Affairs Karel de Gucht promised beginning of February in Congo to almost double Belgian aid. But Congo cannot continue to import goods with money it received. It must also export itself.

Being internationally competitive is not easy for a county with a flaw infrastructure and a population that has very little schooling. Congo's trump card is its underground, filled with raw materials the rest of the world needs. It is scandalous that up till now the Congolese could hardly profit from this wealth. During the colonial times it were mainly the Belgians who profited from it and during the Mobutu era it was le president-fondateur who stole the money from the treasury. Will the rich underground finally provide a sound basis for rebuilding the country? The answer to this question primarily depends on what will happen in the province of Katanga, which is overflowing with raw materials and has always contributed the biggest part of the treasury. The external conditions have not been as good since a long time: the hunger for raw materials of growing giants like China and India is increasing the prices of raw materials. But what about Congo itself?

Plundering defined

According to the IMF about one fifth of the Congolese population depends on old-fashioned or informal mining. 800.000 people are working in the diamond sector, 60.000 in the so-called copper belt of Katanga. A visit to the open mine of Ruashi, at 20 km of the centre of the Katangese capital Lubumbashi, shows how primitive the old-fashioned mining is. Young men are digging and chopping away the dirt in the heath with simple shovels, looking for ore-bearing pieces of underground. Children as of 8 years old are aiding and abetting them for a couple of eurocents. Ore-bearing lumps are being transported in bags to the road where middlemen -negociants - are loading up the bags to transport them to so-called comptoirs. The work is dangerous and unhealthy, and this wild exploitation does not help Congo a lot. In 2004 creseurs got about 1.000 dollar per ton of cobalt, whereas it was worth 55.000 dollars on the global market. This is not the way to use the raw materials wealth and lay a sound basis for sustainable development in Congo. No roads are being built or teachers being paid. The Belgian senate investigation commission on the plundering of raw materials in Congo (2003) defined plundering as 'exploitation of the Congolese wealth in a way the Congolese or the government do not benefit (enough) from it'. This definition can be perfectly applied here.
A lot of ore is leaving the country without any form of treatment or taxes: by train or truck to Zambia, South-Africa and the global market. China has become the most important customer, but also the suppliers of Umicore, like the Indian company

Chemaf, get their raw materials out of this circuit. 'Senior Management of Umicore is embarrassed with the child labour linked to it and tries to mend it via contractual clauses', says Marc-Olivier Herman of Broederlijk Delen. 'It is a first step. But the road is still long'.

Belgium is very critical about the role the Chinese play in this trade. 'The Forrest group also buys from the creseurs, but Belgium remains silent on this issue', says Herman. Our country wants to set up a system which makes the Congolese ore traceable, in order to isolate the illegal circuits. Belgium also supports projects that want to reduce child labour in the long run and wants to gradually incorporate the creseurs in the formal mining circuit.

The sell out years

It used to be different. Until 1990 the government enterprise Gécamines, which owns all the mining rights in Katanga, and was the government's money-spinner, provided for one third of the government's income. The secret of this high profitability was that the extracted ore was refined on a large scale in Congo itself. This can only be dreamt off now. Gécamines hardly produces 20.000 ton of copper anymore; in 1985 it was still 470.000 ton. Bad management, the plundering by Mobutu, governmental chaos during the war... all lead to the collapsing of the government enterprise, with all possible consequences for the more than 30.000 employees. Today it still counts 12.000 employees and the new manager stated that this number should be reduced by half. In 2004 Gécamines paid taxes for an amount of 450.000 dollar. Which was peanuts compared to the hundreds of millions of profit the company gained.

The last 10 years parts of Gécamines have been privatized step by step through joint ventures in which Gécamines contributed its mining right and the private partners the money. These joint ventures produced 12.000 ton of copper in 2004 and the refining is rarely more than 20%. With 9.000 ton the cobalt revenue of that year was almost at the level of the eighties. The mining exploitation in Katanga strongly focuses on cobalt the last couple of years since its profits on the short term are higher.
The joint ventures were started up in an extremely obscure and chaotic way. During the war years 1996-1998 Laurent-Désiré Kabila, father of the current president Joseph Kabila, financed his armies by selling parts of the mining rights of Gécamines to private players abroad. Also after the war the path of privatisation was continued, also due to the pressure of the World Bank and the IMF. The population however can only benefit from privatisation when it is guided by a strong and competent government, as experience in other countries during the last twenty years has proven. The IMF found that all private mining corporations together, mainly joint ventures of Gécamines, only paid 400.000 dollar in taxes during 2004. The government income from the mining sector equalled 0,18 percent of the national income, compared to 22 percent in Botswana, which is also rich in raw materials. 'There is a lot of room for improvement', according to the IMF in 2004. Read: the Congolese should be able to profit much more from the mining sector. The question is: why is this not the case now, and what should be done to increase earnings.

The hidden report

Several extremely interesting reports have been written on these questions. An investigation commission within the transitional Congolese government was charged with the investigation of the validity of the contracts that were concluded during the war years 1996-1998.

This commission, under supervision of Christophe Lutundula, finished its report on June 25, 2005, but the parliamentary office in which all major parties take place have refused to publish it for the last seven months. Those in high places - lead by Kabila - fear that it might cost them votes when the conclusions are known. MO* was able to get hold of the report. The contracts that were signed with regard to the Katangese soil wealth are severely criticised.

To summarize:
* No estimation is made in the contracts of the natural wealth the government contributes to the partnerships, which makes it difficult to determine a fair compensation. No feasibility study was made either.
* Hardly any demands are made towards the private partners to contribute capital. The private partners do not contribute any more than their access to credit, an access Gécamines with all its debts lost. This means that possible profits will serve in the first place to pay off debts, and Gécamines will get no money.
* Management of the joint venture is controlled by the private partner, without any control over costs (transport, chemical products, management fees) which will reduce profits and as such the dividends of Gécamines
* The minimal mining regulations as determined by the government itself, are being neglected by the ministers and even by the president (Kabila senior at that moment)
* It is allowed that private partners have off shore addresses. Result: in case of bankruptcy Gécamines is left with the debts
* No partner has a mining experience in relation to the size of the projects

Therefore neither Gécamines, nor Congo benefit a lot from these joint ventures. This turns the employees angry. They watch how Gécamines is being ripped off, while they have to wait for their overdue salaries. Gécamines momentarily has a labour cost of 3 million dollar, whereas the earnings are only 1,5 million dollar.

Forrest: viceroy of Katanga

The findings of the Lutundula commission perfectly match the report the International Mining Consultants (IMC) made on Gécamines in 2003 for the World Bank. The IMC report, which was not published either, found the same pattern where private partners contribute hardly anything, but get a lot more out of the joint ventures then Gécamines.
According to the IMC it is crucial that the contracts allow that profit is made outside Congo. Since the private partner has control over management in all those contracts, and supplies a lot of services, he can play at will with the costs of these services. The same criticism applies for the joint ventures of Gécamines with the group of the Belgian George Forrest, since this group can supply a lot of services itself as contractor of projects.

The IMC indicated for example that the Forrest group was allowed to build the STL factory in Lubumbashi (joint venture with Gécamines and the American OMG) without any price control through a tender.
Luiswhishi, which is another partnership between Gécamines and the Forrest Group is mentioned in the Lutundula report as one of the few partnerships that actually gets the government some money. Questioned on this Christophe Lutundula said 'A lot can be said about the contracts from Forrest, but he seems to me the least bad of those that are active in Katanga. He is also the only one who is known.' Marc-Olivier Herman of Broederlijk Delen counters this argument: 'Forrest takes care of it that he is the only serious contractor in Katanga. Through his network which he has built up during the last thirty years he has no need for clear rules, on the contrary. His competitive advantage is that he can function in an environment without clear legal directives.'

The joint ventures do not generate a lot of profit but they do generate employment. And one has to admit that Forrest pays his employees the best salaries and fringe benefits of the region. Recently he also allowed unions, which cannot be said from the Indian companies like Chemaf. Jean-Pierre Muteba of Nouvelle Dynamique Sociale, a union which represents a large number of employees from Gécamines and who is very critical towards Forrest, also recognizes this. 'The main problem is that he gets access to the best mining concessions of the land without giving anything in return, except for some jobs.' This is correct: it is not because Forrest treats his employees relatively well that he does not damage the interests of Congo, for example by the nature of the contracts he signs with Gécamines, and the way he executes them.

And now the crown jewels
Mainly because these joint ventures do hardly generate any money, both the IMC report and the Lutundula report request that Gécamines for the moment does not conclude any new ones any more. The IMC report says that the mining concessions that Gécamines still owned in 2003 should be sufficient to revitalize the company again. The Lutundula commission also found that it is 'recommended that all ongoing negotiations on the mine of Kamote, the Luilu factory and the Kamoto concentrator, which form the backbone of Gécamines, are stopped at once.'

The report was handed over on June 25, 2005 to the office of parliament in which all major parties siege. In August 2005 president Kabila signed a decree which handed over Kamoto and Kamoto Oliviera Virgule (KOV) and other important processing installations for at least 20 years into private hands, in particular the Forrest group and Dan Gertler, an Israeli with a very strong position in the Congolese diamond sector. According to the IMC Kamoto and KOV hold 70 percent of the available copper reserves in Katanga.

Broederlijk Delen managed to get hold of these contracts and handed them over to MO*. Together with 11.11.11 and the British NGO Raid they gathered the means for an analysis by the specialized law firm Fasken, Martineau and DuMoulin (cf. frame). Even without this specific know-how it is clear that these contracts are in violation of all don't and do's mentioned by the Lutundula commission. The partners of Gécamines are both located on the British Virgin Islands; once more nothing is mentioned about the assets Gécamines contributes, even though they contain the richest copper soils in the world, with ore that has a copper value of 3 to 5 percent. The world's largest copper producer Chile works with values of 0,8 percent. Management will be controlled by private partners who will transfer all income to accounts on the British Virgin Islands. There was no international tender. Once again no minimal conditions were set for the contribution of own capital, everything can be borrowed, which puts a high pressure on the expected income of Gécamines, since the profits will mainly have to go to down-payments. The partners do not have the mining experience for the huge size of the project. This is not true for the mine of Tenke Fungurume where Phelps-Dodge, one of the greatest mining companies in the world, is one of the partners. Phelps does have the necessary competencies to exploit this rich copper reserve of 547 million ton with 3,5 percent copper and 0,27 percent cobalt.

A tango mortale
Fasken, Martineau and DuMoulin's conclusion is clear: once more Gécamines, and the Congolese population, will get little benefit from this partnership, even when it is about the largest known reserves of Katanga. The definition of the Belgian government of plundering (cf. above) seems to be valid here. A chance to turn the Katangese wealth into the cash-cow of the Congolese state is lost. A parliamentary commission and a report of the World Bank advise against these sorts of contracts.

Yet they are being signed. In August 2004 it was decided that the French Sofreco would take care of managing Gécamines. The Congolese politicians managed to postpone the appointment of a new international top manager until beginning 2006, in order to allow them to negotiate on the crown jewels of Gécamines without any foreigner. Why is the Congolese government doing this? A consultant who witnessed certain things from within: 'Because management of Gécamines did not really have the competencies to negotiate and because politicians can be bought.'

Christophe Lutundula: 'The leaders have little respect for parliament. When the same people stay on top, this policy will continue. Furthermore politicians finance their elections this way, and as such damage the long term interests of Congo.' Some time ago a document of the PPRD, Joseph Kabila's party was leaked: 'Let's underline that Mr. George Forrest and his group have created a distinct profile since they have supported us step by step in the implementation of our party.'
A lot of people are pleading to discuss the Lutundula report after the elections, since the explosive content could endanger the complete election process. Mwando Nsimba, who has been active in Congolese politics his whole live, does not believe in this strategy: 'The fact that this is not known by the Congolese makes that they cannot play a role in the elections. It increases the chance that Kabila will be elected. A lot of people believe that it will be better after the elections, that everything will be made right. I am afraid that it will become worse. The president will feel supported and continue. It was the same under Mobutu. The international community thought: we shouldn't bother him, and he became bolder by the day.'

Lutundula thinks that the international community should insist much harder on good management. 'Why has one allowed those two contracts to be signed? The international community knew that they were about to be signed. I am afraid that economical interests are in play. Also with Belgium; it does a lot of positive things here, but it did not criticize these contracts. That is an ambiguous policy. Belgium and the EU should criticize our leaders much harder. That is no neo-colonialism if you know that 60 percent of the government budget comes from abroad.' Marc-Olivier Herman from Broederlijk Delen also feels that Belgium does a good job on the military and political level, but is too permissive on the economical level. 'Our country also wants a piece of the cake - through Forrest - and risks to mortgage Congo's future.'

It takes two to sign a contract. It is surprising that minister De Gucht criticizes the Congolese leaders on one hand, but has little or no remarks on the private actors, the other partner in this tango mortale. He even appointed one of them, George Forrest, as advisor for Foreign Affairs. Karel De Gucht said he did not want to comment contracts he did not know. 'With the Tanzania file I think I have proven my independence towards George Forrester. But I do not want to make a bad guy out of him. He is better than most entrepreneurs in Katanga. Furthermore he will have to adapt when there will be a constitutional state in Congo. His reappointment to advisor for Foreign Affairs is merely a symbolic matter.' Symbols however have meanings and the Congolese people will understand.

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The contracts revealed
The specialized Canadian law firm Fasken, Martineau and DuMoulin analyzed two recent mining contracts for us in which the crown jewels of the Katangese mining industry are handed over to private companies. One contract is between Gécamines and Kinross-Forrest (Katanga Mining Ltd in the mean time), who together funded Kamoto Copper Company (KCC). This joint venture will exploit the Kamoto mine and concentrator and the hydrometallurgical factory of Luilu. These very rich copper reserves and processing installations are in fact the heart of Gécamines . Katanga Mining, controlled by George Forrest and the Canadian Arthur Ditto, owns 75 percent of the KCC stocks. We have a copy dated February 2004.
The other contract between Global Enterprises Corporate (GEC) and Gécamines deals with the exploitation of the open mine of KOV and the Kananga and Tilwezembe deposits. This dates from September 2004.

Fasken, Martineau and DuMoulin have a lot of questions with regard to the contracts. Some excerpts from the analysis of the Kinross-Forrest contract. 'In cases like this it is common practice, sometimes even legally defined, to organize an audit and an evaluation of the deposit in kind, so that both partners are sure that their contribution gets a fair value. The shares in capital are divided based on this contribution. Here the distribution was done without a feasibility study. Has the contribution of Gécamines been fairly estimated? What would have been the cost to build a complete infrastructure (roads, electricity stations, water canals, railroads, access to public facilities) in that area, or a new factory and installations? How do the relative risks have to be weighed since none of the assets of Kinross-Forrest are given as a guarantee for the loans?'
Kinross-Forrest can deduct a very wide range of costs from the gross profits. This raises questions at FMD, since it provokes abuses. 'A payment (of rental costs) based on net profits is speculative. For this reason the percentage will usually be higher, between 10 and 15 percent. (here it is only 2 percent, jvd). But even a higher percentage does not compensate completely the risk linked to a payment based on a net amount, certainly in the case that all operations are being controlled by the one who has to pay the rent.'

The conclusions from FMD are clear:
· it is not unreasonable to assume that Kinross-Forrest will have been repaid in interests and capital from all loans and advances, and will have retrieved substantial advantages from the control it will have exercised on the operation before Gécamines will receive any reward for its contribution
· It is not unreasonable to assume that the payment for rented installations and machines will be minimal or zero
· It is not unreasonable to assume that the available cash for the payment of dividends will be minimized because it is more profitable for Kinross-Forrest to be paid in full via contracts with the manager (for exercising services for the joint venture, jvd) than sharing the existing cash with Gécamines.
For the GEC-contract a remark is added that dividends and royalties will not suffice to repay the loan and that Gécamines' burden of debt may even increase by signing this contract.

The investigation by Fasken, Martineau and DuMoulin was financed by MO, Broederlijk Delen, 11.11.11 and Raid.*

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