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**L'ENTRAIDE
MISSIONNAIRE**

Mr. Eric Siegel
President and Chief Executive Officer
EDC
151 O'Connor St.
Ottawa, ON
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April 25, 2008

Dear Mr. Siegel:

On March 20, the Government of the Democratic Republic of the Congo publicly released the report of the Mining Contract Review Commission. The Commission is an inter-ministerial body mandated to review numerous contracts that were awarded to mining companies between 1996 and 2005 in the DRC.¹ The Commission confirms that many of the contracts are highly irregular and that their terms are extremely unjust. The government body recommends that a significant number of these agreements be annulled and in some cases, renegotiated.

Among those contracts reviewed is the agreement for the Tenke Fungurume project. Export Development Canada has received an application to support this investment. The original contract for the project was issued by the Mobutu government in 1996 through an international bidding process. The parties to the agreement were Lundin Holdings and the Congolese parastatal, Gecamines. This contract underwent substantial modification, at the request of Lundin Holdings and its new partner, Phelps Dodge Corporation, in 2005 during the transitional government.

In its review of the amended Tenke contract, the Commission identifies a number of serious irregularities, both in content and with regard to the negotiation process. The Commission enumerates multiple violations of Congolese law and identifies contractual breaches by Lundin Holdings.

The Commission concludes that the mining contract governing the project is illegal and calls for its annulment. It further calls for the cancellation of the presidential decree that sanctioned the contract. The Commission invites the parties to sign a new agreement that both conforms to the

¹ <http://www.miningcongo.cd/>

Mining Code and respects the terms of the original agreement that was reached with Lundin Holdings.

Other sources have expressed similar criticisms of the mining contracts that were approved by the transitional government, including the amended Tenke agreement. The principal mining specialist at the World Bank has identified widespread and serious deviations from international best practices including, *inter alia*, a lack of transparency regarding the contract negotiation and approval processes, a lack of clarity regarding key issues such as environmental liability, the transfer of unusually large volumes of mineral assets and a number of conflicts of interest associated with the concession-granting process.²

The Lutundula Commission, a Congolese parliamentary body established to assess the legality of contracts signed with mining companies during the war, released its report in 2005.³ The Commission concludes that many of the contracts are illegal, while others are highly disadvantageous to state signatories. The Commission reveals that contract negotiations, which lacked transparency, featured a marked power imbalance between the private and public signatories. The Commission calls for a number of the contracts to be rescinded or renegotiated, for several companies to be investigated and for a number of individuals to be prosecuted.

The Commission's findings regarding the amended Tenke Fungurume contract are particularly stark. The Commissioners conclude that the revised terms, particularly the low production volumes, indicate a corporate strategy to manipulate the world market in non-ferrous metals. The report further states that significant modifications to the terms of the original contract, such as those made in 2005, have the effect of creating a new contract. The authors argue that this new contract is vulnerable to legal challenge by those mining companies that unsuccessfully bid for the concession in an international auction.

Given these findings, EDC must promptly deny the Tenke Mining Corporation's request for support. Should the crown corporation back the project, it would violate its stated policies and could expose itself to legal liability. Both internal EDC policies⁴ and international standards⁵ that the corporation has adopted require that any supported project comply, at a minimum, with host country laws. The Tenke Fungurume project clearly fails this test.

In the event that the project proponents negotiate a new contract with Gecamines and wish to be considered for EDC support, the crown corporation must insist that the proponents submit a new

² The World Bank / IFC / M.I.G.A. Office Memorandum. From Craig Andrews, Principal Mining Specialist to Pedro Alba, Country Director for Democratic Republic of Congo, re contracts between Gecamines and Private Companies. September 8, 2005.

³ <http://www.freewebs.com/congo-kinshasa/>.

⁴ For example, the Environmental Policy, in which EDC commits itself to ensure that "transactions comply with host country laws and regulations."

⁵ The OECD Revised Council Recommendation on Common Approaches on the Environment and Officially Supported Export Credits states that, "[p]rojects should, in all cases, comply with host country standards." Moreover, the Equator Principles, which EDC adopted to reflect its "ongoing commitment to conduct its international business in a socially and environmentally responsible manner," requires that borrowers "comply with all relevant host country social and environmental laws, regulations and permits in all material respects."

application. The terms of any new contract that may be negotiated will differ significantly from the 2005 amended agreement. This new project must be assessed through a separate application process.

Should EDC receive a new application for the project, it will need to pay close attention to a number of serious concerns regarding mineral development in Katanga province, site of the Tenke and Fungurume deposits. A Congolese human rights organization reports that on January 14, 2008, more than 5000 locals staged a violent uprising against Tenke Fungurume Mining, causing significant damage to the company's property.⁶ The Congolese expressed frustration that the company has failed to fulfil its promises regarding local employment and the provision of social benefits. They allege that sub-contractors pit locals against out-of-province Congolese in a ploy to minimize salaries and avoid binding employee contracts.

More recently, on March 31, the international press reported an incident involving the eviction of small-scale miners in Katanga. A child fatality that occurred when police shot at civilians sparked a protest involving hundreds of local residents.⁷

Expectations in Katanga regarding the Tenke Fungurume project are extremely high. Congolese authorities will continue to be tested and it remains unclear whether they will respond in a manner that is respectful of local residents' human rights.

In closing, we urge EDC to promptly deny Tenke Mining Corporation's request. Any other course of action will undermine the credibility of EDC's policies and its stated commitment to corporate social responsibility.

Yours truly,

Karyn Keenan
Halifax Initiative

Denis Tougas
Entraide missionnaire

⁶ Action Contre l'Impunité pour les Droits Humains. Cité de Fungurume : la population proteste contre le manque de réalisations sociales de l'entreprise Tenke Fungurume Mining. Communiqué de Presse No. ACIDH/01/01/2008. Le 21 janvier 2008.

⁷ Police clash with miners in Congo copper heartland. Reuters. April 1, 2008.