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Katanga Mining, a subsidiary of Switzerland-based mining conglomerate Glencore, settles a legal dispute with Democratic Republic of the Congo (DRC) state-owned mining company, Gécamines. The agreement will result in Kamoto Copper Company's debt being reduced from \$9 billion to \$3.4 billion as \$5.4 billion will be converted to equity, though there will be no change in the shareholding structure. Glencore agrees to pay former partner Dan Gertler money owed to him from copper and cobalt mines in the DRC, which will help Glencore avoid legal action. The International Criminal Court (ICC) overturns the conviction of former DRC vice-president Jean-Pierre Bemba for war crimes.

Glencore subsidiary settles legal dispute with DRC state-owned mining company...

Katanga Mining, a subsidiary of Switzerland-based mining conglomerate **Glencore**, settled a legal dispute with **Democratic Republic of the Congo (DRC)** state-owned mining company **Gécamines**, on 12 June.¹ Gécamines commenced legal action against Katanga Mining on 20 April in the **Kolwezi Commercial Court**, arguing that **Kamoto Copper Company (KCC)**, a joint venture between Gécamines (25%) and Katanga Mining (75%), should be dissolved due to KCC's \$9 billion debt (see *ARC Briefing DRC May 2018*).² KCC's loans to Glencore and its subsidiaries were at lower interest rates than Glencore was lending back to KCC.³ As KCC had not rectified its capital deficiency by 31 December, Gécamines was entitled to proceed with legal action.⁴

The settlement will result in KCC's debt being reduced from roughly \$9 billion to \$3.4 billion, as \$5.4 billion will be converted to equity.⁵ KCC's debt was mainly owed to its subsidiaries (see below).

Company	KCC debt holding
Katanga Mining Finance Ltd (KMFL) (Katanga Mining subsidiary)	\$3.644 billion
Katanga Mining Holdings Ltd (Katanga Mining subsidiary)	\$957m
KML (BVI) Holding Ltd (Katanga Mining subsidiary)	
Global Enterprises Corporate Ltd (Katanga Mining subsidiary)	
Glencore International AG (Glencore subsidiary)	\$4.450 billion

¹ IOL, 13 Jun 2018.

² Investing News, 24 Apr 2018.

³ Investing News, 24 Apr 2018.

⁴ IOL, 13 Jun 2018.

⁵ Investing News, 13 Jun 2018.

According to the settlement, all KCC debt will be assigned to **Katanga Mining Finance Limited (KMFL)**, making it the sole debt holder.⁶ Of the \$5.4 billion in new equity, 75% will be allocated to KMFL while 25% will be allocated to Gécamines, with the result that the equity positions of Katanga Mining and Gécamines will remain unchanged.⁷ The remaining \$3.4 billion debt, now owed to solely to KMFL, will be repaid over eight years at an interest rate of the six-month LIBOR plus 3% or 6%, whichever is less.

Katanga Mining will also make a once-off \$150m payment to Gécamines as “*settlement of certain historical commercial disputes*”,⁸ and to cover Gécamines’ \$41m expenses from an exploration programme in return for the end of the legal action.⁹

The settlement removes the risk that the government could use legal avenues to take KCC from Glencore. The payments are only rounding error for Glencore, which had \$205.5 billion revenue in 2017.¹⁰ However, other international mining companies operating in the DRC may find that Gécamines will now try to strong-arm them for increased royalties or other funding in an attempt to rein in its large debt.¹¹ Two days after the Glencore settlement, Gécamines chairman **Albert Yuma** called for the renegotiation of the terms of its joint ventures with foreign partners, calling them “*unfair*”.¹² At the **DRC Mining Week** conference in **Lubumbashi**, Yuma said,

*“If our partners think that operations bringing in 2.5% in royalties to the [DRC] are sufficient, they are mistaken.”*¹³

Yuma added that Gécamines would use “*all legal means to reclaim our rights*”¹⁴, which may refer to the revised mining code that the prime minister, **Bruno Tshibala**, signed into law on 9 June.¹⁵ The new mining code increases the government’s stake in all new projects and increases royalties, including on so-called ‘strategic substances’ to 10%.¹⁶

Gécamines’ success in legal action against one of the largest mining companies in the world may embolden it to go after other companies that have attempted to reduce their past tax or royalty payments to the DRC government – and it is very likely to obtain the same result. The resources and potential profit in the DRC are too great for mining companies to leave willingly. Miners would sooner pay several hundred million dollars than lose access to the DRC’s mines.

... as Glencore settles to avoid trial with Dan Gertler

In a further bid to avoid legal action, Glencore agreed on 15 June to pay its former partner, **Dan Gertler**, money owed to him from copper and cobalt mines in the DRC.¹⁷ Glencore admitted that settling with Gertler was “*the only viable option to avoid the material risk of seizure of its assets under DRC court orders*”.¹⁸ Glencore had stopped paying Gertler royalties after the **United States (US)** imposed sanctions against him in December (see *ARC Briefing DRC May 2018*). Glencore will pay Gertler €21m (\$24.3m) from the **Mutanda** mine and €16.5m (\$19.1m) from KCC in order to avoid contravening the US sanctions.¹⁹ Glencore reportedly spoke with US and **Swiss** authorities, and

⁶ www.katangamining.com

⁷ www.katangamining.com

⁸ IOL, 13 Jun 2018.

⁹ Investing News, 13 Jun 2018.

¹⁰ www.glencore.com

¹¹ Africa Intelligence, 4 Jul 2017.

¹² Reuters, 14 Jun 2018.

¹³ Reuters, 14 Jun 2018.

¹⁴ Reuters, 14 Jun 2018.

¹⁵ Reuters, 9 Jun 2018.

¹⁶ African Arguments, 29 Mar 2018.

¹⁷ FT, 15 Jun 2018.

¹⁸ FT, 15 Jun 2018.

¹⁹ FT, 15 Jun 2018.

determined that Glencore need not apply for a licence to pay Gertler as no US person or financial institution would be involved in the transaction.²⁰

Gertler, a close friend of President **Joseph Kabila** (2001-present), had sought \$3 billion in damages relating to the unpaid royalties.²¹ Court action, possibly within the jurisdiction of DRC courts, would have been unfavourable to Glencore.

International Criminal Court acquits former DRC vice-president, Jean-Pierre Bemba

The **International Criminal Court (ICC) Appeals Chamber** overturned the conviction of former DRC vice-president, **Jean-Pierre Bemba**, for war crimes on 8 June.²² The ICC **Trial Chamber** initially convicted Bemba in June 2016 for rape and pillage by his militia in the **Central African Republic (CAR)** in 2002-2003, sentencing him to 18 years in prison.²³ Bemba was one of four vice-presidents in President Joseph Kabila's power-sharing government in 2003 due to Bemba's control of northern DRC through his rebel group, the **Mouvement pour la Liberation du Congo (MLC)** (movement for the liberation of the Congo).²⁴ However, after the end of the war in the DRC and prior to being named vice-president, CAR President **Ange-Felix Patasse** (1993-2003) requested help to stop a coup attempt by Patasse's army chief of staff, **Francois Bozize**, which led to the MLC deployment.²⁵ The MLC's looting, civilian killings and mass rape led to the ICC charges against Bemba, and his eventual arrest in **Belgium** in May 2008.²⁶ The five judges in the ICC Appeals Chamber reversed the conviction as they found that the trial chamber had erred in declaring that Bemba did not take enough measures to prevent the crimes committed by the MLC in CAR, and that the trial chamber did not appreciate the limitations Bemba faced in trying to organise troops in a foreign country.²⁷

Bemba left the ICC detention unit in **The Hague (Netherlands)** on 13 June and plans to return to **Brussels** (Belgium) where his wife and five children live.²⁸ Bemba remains under ICC observation as he was convicted in a separate ICC case of corruptly influencing witnesses and falsifying evidence during the ICC trial.²⁹ He is due to be sentenced on 4 July.³⁰ Despite his release, Bemba must wait until Belgian authorities accept his residence permit. **Jean-Jacques Mbungani**, the national secretary of the MLC, Bemba's former militia and now political party, stated that Bemba plans to stay in Belgium while waiting to prepare his return to the DRC.³¹

Bemba has maintained a loyal support base in the DRC and reportedly hopes to run for president in the December elections.³² Bemba lost a presidential run-off to Kabila in 2006 and was later elected to the national senate before leaving the DRC in April 2007 in 'forced exile' due to government charges of treason.³³ According to Bemba's lawyer, **Peter Haynes**, Bemba has never given up on his political ambitions.³⁴

If Bemba does wish to run for president, he may join forces with the other major opposition leaders, **Moïse Katumbi** and **Felix Tshisekedi**, to take on any challenger from Kabila's **Parti du Peuple pour la Reconstruction et la Démocratie (PPRD)**. However, Bemba could also weaken the opposition if

²⁰ FT, 15 Jun 2018.

²¹ FT, 27 Apr 2018.

²² Al Jazeera, 13 Jun 2018.

²³ The Guardian, 21 Jun 2016.

²⁴ BBC, 8 Jun 2018.

²⁵ BBC, 8 Jun 2018.

²⁶ BBC, 8 Jun 2018.

²⁷ Al Jazeera, 13 Jun 2018.

²⁸ Daily Nation, 14 Jun 2018.

²⁹ BBC, 12 Jun 2018.

³⁰ BBC, 12 Jun 2018.

³¹ Daily Nation, 14 Jun 2018.

³² BBC, 12 Jun 2018.

³³ Daily Nation, 13 Jun 2018.

³⁴ Daily Nation, 14 Jun 2018.

he decides that unity would not be in his interest. If he splinters the opposition groups, he could allow the PPRD to benefit. In a **Congo Research Group** opinion poll conducted in February before the ICC acquittal, Bemba placed third of opposition candidates with 10% of the vote, illustrating his continuing popularity in the DRC.³⁵

There are doubts about whether Kabila will name his successor, given that the PPRD has begun campaigning using his picture.³⁶ However, in a free and fair election, a united opposition would have a strong chance of handily beating Kabila or a PPRD nominee. However, doubts remain whether there will be an election, free and fair or not, in December.

Planner

July 2018 **(DRC)** President **Joseph Kabila** (2001-present) expected to name his preferred successor for December elections

23 Dec 2018 **(DRC)** President, legislative and provincial elections scheduled

9 Jan 2019 **(DRC)** Electoral results published

13 Jan 2019 **(DRC)** President to be sworn into office

Chronology

14 Jun 2018 **Brussels (Belgium)** *News24*. Foreign minister **Didier Reynders** states Belgium is prepared to accept former **Democratic Republic of the Congo (DRC)** vice-president, **Jean-Pierre Bemba**, following Bemba's release from the **International Criminal Court** detention centre;

14 Jun 2018 **Kinshasa (DRC)** *FT*. **Switzerland**-based mining company, **Glencore**, agrees to pay **Dan Gertler** the money owed to him from copper and cobalt mines in the DRC to avoid a legal dispute;

13 Jun 2018 **Kinshasa (DRC)** *Bloomberg*. The head of the **Grand Inga III** project, **Bruno Kapandji**, states that work on the delayed 4,800 megawatt hydropower project will start in 2018;

12 Jun 2018 **The Hague (Netherlands)** *Al Jazeera*. **International Criminal Court** judges order the interim release of former **Democratic Republic of the Congo (DRC)** vice-president, **Jean-Pierre Bemba**;

12 Jun 2018 **Kinshasa (DRC)** *Al Jazeera*. The prime minister, **Bruno Tshibala**, reiterates that President **Joseph Kabila** will not seek a third term in the December presidential elections;

12 Jun 2018 **Kinshasa (DRC)** *Nasdaq*. **China**-based state owned company **CITIC** states it will pay \$555m for 20% of **Canada**-based mining company, **Ivanhoe Mines**, which has major operations in the DRC;

11 Jun 2018 **The Hague (Netherlands)** *BBC*. Lawyers representing former DRC vice-president, **Jean-Pierre Bemba**, call for this immediate release after an appeals court overturned his **International Criminal Court** 2016 conviction;

9 Jun 2018 **Kinshasa (DRC)** *Reuters*. Prime minister **Bruno Tshibala** signs the unamended mining code into law, with no changes made despite pressure from international mining companies;

8 Jun 2018 **Hague (Netherlands)** *Al Jazeera*. Former DRC vice-president **Jean-Pierre Bemba** wins an appeal in the **International Criminal Court** over war crimes allegedly committed in

³⁵ www.congoresearchgroup.com

³⁶ Reuters, 29 May 2018.

the **Central African Republic** in 2002-2003;

7 Jun 2018 **Kinshasa (DRC)** *ESI Africa*. **United Kingdom**-based next generation utility company, **BBOXX**, signs a deal with the DRC to import off-grid solar equipment to rural areas;

7 Jun 2018 **Kinshasa (DRC)** *Reuters*. Prime minister **Bruno Tshibala** plans to sign the controversial new mining code into law on 8 June, which could lead to legal challenges from international mining companies;

31 May 2018 **(DRC)** *News24*. Officials state that rebel groups kidnapped at least 20 civilians in eastern **Democratic Republic of the Congo**, demanding ransoms that may be used to continue conflict in the region;

30 May 2018 **(DRC)** *Mining Weekly*. **Australia**-based metals company **Nzuri Copper** raises \$4.5m to advance its **Kalongwe** copper and cobalt project in the **Democratic Republic of the Congo (DRC)**;

30 May 2018 **(DRC)** *Reuters*. The ruling **Parti du Peuple pour la Reconstruction et la Démocratie** begins campaigning for the December elections using the face of President **Joseph Kabila**, stoking fears Kabila plans to remain in office despite pledging to step down;

29 May 2018 **(DRC)** *Business Day*. International mining companies warn the DRC government that it may lose more than \$3 billion in a decade and face legal actions if it implements new mining code;

29 May 2018 **(DRC)** *Africa Intelligence*. Non-profit organisation **TradeMark** enlists **India**-based **Mahindra Group** to rehabilitate the DRC-based **Kasenye** port as well as the **Uganda**-based **Ntoroko** port;

24 May 2018 **(DRC)** *Mining Weekly*. A **Mai Mai** militia attack on **Canada**-based mining company, **Banro Corporation's Namoya** gold mine leaves five people dead and several wounded;

21 May 2018 **(DRC)** *Reuters*. The **World Health Organisation** begins administering an experimental **Ebola** vaccine in the **Democratic Republic of the Congo**;