global witness

6th Floor, Buchanan House
30 Holborn, London EC1N 2HS
Tel +44 (0)20 7492 5820
Fax +44 (0)20 7492 5821
Email mail@globalwitness.org
www.globalwitness.org

Questions submitted by Global Witness in respect of Kansuki, Mutanda, Kipushi, and loan agreements and stock trades.

Questions Submitted on 5 April 2012

Kansuki

1. According to information published by the Congolese Ministry of Mines, the Kansuki SPRL JV agreement was executed on 6 July 2010 between Gecamines and Kansuki Investments SPRL ("Kansuki Investments"). According to Glencore's prospectus, Glencore acquired 50 percent of Kansuki Investments approximately a month later in August 2010.

a) When did Glencore begin its negotiations to acquire this 50 percent interest in Kansuki Investments?
b) With whom did Glencore negotiate?
c) On what date was the agreement (or agreements) related to the acquisition signed?
d) Who executed the agreement/s on behalf of Kansuki Investments (or its shareholders/beneficiaries)?
e) Who according to Glencore was the beneficial owner of Kansuki Investments at the time that Glencore acquired its share in the company?

2. Between Glencore's stakes in Katanga Mining and Mutanda (which is adjacent to Kansuki) in July 2010 (when the Kansuki JV agreement was signed) Glencore was one of the largest operators of mines in the DRC. Considering the incredibly short timeframe between when the Kansuki JV was executed and Glencore's acquisition of 50% of Kansuki Investments SPRL, why did Glencore not negotiate directly with Gecamines for a stake in Kansuki?

3. Was there ever a cash consideration made by Glencore for the acquisition of a share in Kansuki Investments outside of its commitment to pay the first $400m of development related expenses? If so how much?

4. Glencore refers to the agreement for the $400m as being part of a deal which would also guarantee a mine off-take agreement for all copper and cobalt produced by Kansuki mine. Is this $400m matched by any other financing from any of the joint venture partners of Kansuki SPRL or joint venture shareholders of Kansuki Investments?

5. Now that the feasibility study is complete, what are the projected development related costs of Kansuki (rough estimates are fine)?

6. If the development costs are to exceed $400m what funding obligations do the other owners of Kansuki Investments have?

7. According to a share sales agreement between Gecamines and Biko Invest Corp (published by Gecamines) on 1 March 2011 Gecamines received a letter from Kansuki Investments explaining that Kansuki Investments was making a recommendation that Gecamines sell its share of the Kansuki SPRL joint venture to Biko Invest Corp.

a) Why did Kansuki Investments make the recommendation that the sale of the Gecamines share of Kansuki SPRL be sold specifically to Biko Invest Corp?
b) Did the letter also specify the purchase price Biko Invest Corp was proposing to pay?
c) Why did Kansuki Investments also waive its right of first refusal in its letter?
d) When did Kansuki Investments first enter into discussions with Biko Invest Corp regarding this recommendation?
e) Was Gecamines a party to these discussions?
f) What was Glencore's role in forming the recommendation issued by Kansuki Investments that Gecamines should sell its share of Kansuki SPRL to Biko Invest Corp and that Kansuki Investments should waive its first right of refusal?
g) Although the ownership of Kansuki Investments is apparently split evenly (please confirm) between Glencore and a private party, does Glencore effectively control (either de jure through a shareholders' agreement or de facto by withholding funding) the decisions of Kansuki Investments by virtue of the fact that it is funding the first $400m of development costs?
h) If not, why not? What commercial sense does it make for Glencore to take on all of the financial risk if it did not have control over Kansuki Investments' decisions?

8. Gecamines published the sale price of the Gecamines part of Kansuki at $17m. Why was Glencore unable to afford this relatively small amount given that Kansuki's expected production once developed would be at least 100,000 metric tonnes per annum? A 25 percent of that production would generate several times the investment.

9. Gecamines typically is a carried partner in joint ventures and has rights to receive royalties and signature bonuses (pas de porte) from the private partner to the JV. Is Biko Invest Corp therefore a carried partner in the JV given it has been awarded the Gecamines share?

10. Is Biko Invest Corp entitled to receive the royalties and signature bonuses contractually due to Gecamines under the JV agreement?

11. What cash consideration (i.e signature bonuses/pas de porte) has been paid (or is to be paid) by Kansuki Investments to Gecamines and/or Biko Invest Corp?

12. Has Glencore's $400m funding commitment been used to make these payments (or reimburse the other shareholder/s of Kansuki Investments to the extent any payments were made prior to Glencore's acquisition)?

13. Glencore has stated that it has entered into an option with another owner of Kansuki under which the owner has the right to sell an additional 18.75 percent of Kansuki at market value to Glencore.

a) Could Glencore clarify which partner has this option?
b) When was this option agreements signed?
c) Why did Glencore agree to this option?

14. Has Glencore established a preliminary market value (or a likely range of values) for Kansuki?

Mutanda

15. How much did Glencore pay for its share of SAMREF and when was the sale made?

16. Does Glencore have a majority casting vote within this 50-50 arrangement with SAMREF?

17. Although the ownership of SAMREF is apparently split evenly (please confirm) between Glencore and Groupe Bazano, does Glencore effectively control (either de jure through a shareholders' agreement or de facto by withholding funding) the decisions of SAMREF by virtue of the fact that it is the operator of Mutanda? If not, why not?

18. As part of its prospectus, Glencore published a lengthy valuation of Mutanda prepared by Golder Associates (which used Glencore's data and methodology). Included in this is a cash flow analysis for Mutanda for 2011-2030. Using this data, it is possible to come to a net present value of both Gecamines' dividend cash flow and royalty cash flow (2.5% of gross revenues) which were sold to Rowny Assets Limited. Using Glencore's 10% discount rate and this data, the NPV of Gecamines' free cash (or dividends) is $617.8m and the NPV of the royalty is $230.8m, for a total NPV of roughly $849m, or at least $467m for the years 2011-2015. Can Glencore explain why therefore it would not have been in the company's interest to exercise its pre-emption option on the Gecamines share of Mutanda (a mine that is already producing) which Gecamines has said was sold for $120m, or 1/7 of the Golder Associates valuation?

19. What is the schedule of development financing for Mutanda going forward, and what is Glencore's share of it? If Glencore is not financing all of it, which partners specifically in Mutanda will be co-financing the other investment?

20. According to the sales contract published by Gecamines, it sold its interests (including pas de porte payments) for $120m. According to the same agreement, on 1 March 2011 Gecamines received notification from SAMREF informing Gecamines that SAMREF was making a recommendation that Gecamines sell its share of the Mutanda joint venture to Rowny.

a) Why did SAMREF make the recommendation that the sale of the Gecamines' share of Mutanda be sold specifically to Rowny Assets Limited?
b) Why did SAMREF also waive its right of first refusal ("ROFR") in this 1 March 2011 letter?
c) What was Glencore's role in forming the recommendation issued by SAMREF that Gecamines should sell its share of Mutanda to Rowny Assets Limited and that SAMREF should waive its ROFR?
d) When did SAMREF first enter into discussions with Rowny Assets Limited regarding this recommendation?
e) Was Gecamines a party to these discussions?
f) What were/are the total amount of pas de porte payments owed by SAMREF/Glencore following the transfer to Rowny Assets Limited (28 March 2011)?
g) When were these payments made/to be made?
h) Did this letter also specify the purchase price Rowny Assets Limited was proposing to pay?

Acquisition of more than 50 percent of Kansuki and Mutanda combined

21. During Glencore's 7 February 2012 news release, the company refers to the announcement of a number of "bolt-on acquisitions" possibly covering an extension of Mutanda and "increased stake-building in Chemoil and likely Mutanda".

a) From which partner is Glencore proposing to buy its increased stake in Mutanda?
b) How much does Glencore intend to increase its stake by?
c) Has this acquisition now occurred?
d) If so, when and at what price?
e) If not, when is it likely to happen?
f) And what will Glencore roughly pay for this stake?
22. Mr. Glasenberg stated in a Dow Jones article in August 2011 that Glencore was looking to increase its stake in Kansuki and Mutanda to over 50 percent. Why did Glencore forego its pre-emption right on the Gecamines share of Kansuki SPRL in March 2011 only to appear to want to increase its share shortly thereafter?

23. Has Glencore indeed gone ahead with the acquisition to over 50 percent of Kansuki and/or Mutanda? If so, from which joint venture partners did it increase its stake?

Kipushi

24. Gecamines originally awarded the Kipushi concession to a Swiss company named United Resources Holding AG 13 February 2007. Barely a year after the JV agreement was signed, another company (the apparent current title holder to Kipushi) Kipushi Resources International Limited (KRIL") was incorporated in the Cayman Islands. On 8 February 2008, Glencore Finance entered into Amended and Restated Term Loan Facility with Fleurette Properties Limited ("Fleurette"), Caramia ("Borrower"), and Greenworth "to facilitate Greenworth's entry into the KRIL Joint Venture Agreement" for US$30 million. Mr. Gertler has confirmed in court documents that "there was an existing indebtedness (defined by definition (vi) of the Settlement Agreement as the "Glencore Kipushi Indebtedness") under which the sum of $30,000,000 and interest of $200,000 (together the"Glencore Debt") was owed by Caramia Enterprises Limited to Glencore Finance (Bermuda) Limited ("Glencore") and in respect of which indebtedness Holdgreen and Greenworth had pledged their 100% share interests in Greenworth and KRIL respectively as first ranking share pledges to Glencore as security (in the Settlement Agreement, the "Glencore Kipushi Security"). The Glencore debt was repayable to Glencore by April 30th 2011." He also confirmed that Greenworth is the 100% shareholder of KRIL.

a) When did Gertler first approach Glencore about financing his purchase of Kipushi?
b) Why did Glencore finance Gertler's purchase of Kipushi? What was Glencore's objective in making the loan.
c) What were its commercial interests in doing so considering it owns no interest in Kipushi?
d) Were the proceeds of the loan used for anything other than the purchase (such as the development of the mine)?
e) How much financing did Glencore extend to Gertler in respect of Kipushi?
f) Was Glencore ever paid back for this loan? If not, why not?
g) What is Glencore's current interest in Kipushi?

25. We have obtained documentary proof showing that Fleurette owns a part of Kansuki Investments and is also the parent company of Biko Invest Corp. Can Glencore clarify what was the relationship between the Kipushi loan and the Kansuki Investments agreement?

Dan Gertler

26. Can Glencore define precisely what its relationship is with Dan Gertler?

Auditing of Beneficial Interests

27. Can Glencore explain whether it has ever requested the exact breakdown of beneficial ownerships of:

a) Kansuki Investments SPRL
b) SAMREF
c) Biko Invest Corp
d) Rowny Assets Limited
e) Fleurette Properties Limited and the Fleurette Group?

28. What were Glencore's findings in relation to the beneficial ownerships of the above entities?

Questions submitted on 24 April 2012

Loan Agreement

29. On 12 January 2009, Katanga Mining Limited received the final instalment of a $265 million convertible loan from Glencore, in which a number of private companies participated. One of the companies that participated was Lora Enterprises Limited, which Katanga Mining Limited announced as being owned by a trust for the benefit of family members of Dan Gertler. However, just six days before Lora Enterprises participated in the loan on February 9 2009 to the tune of $45 million, Glencore entered into an agreement with Zuppa Holdings Limited, the parent company of Lora Enterprises Limited, where Glencore was given as collateral all Zuppa's shares in Lora in exchange for a promise by Zuppa to repay Glencore the sum of $45.9m at a later date.

a) Did Glencore lend Lora the money (or a portion thereof) to participate in the syndication via a loan to Zuppa?
b) If so, why?
c) If so, why was this not disclosed by Katanga Mining Limited?
d) What evidence does Glencore have that Gertler is the only beneficiary of Lora Enterprises?
e) If there are other beneficial owners of Lora Enterprises who are they?
f) Did Glencore offer the same deal to other Katanga Mining shareholders as it did to Lora, and if so how many of these shareholders are affiliated to Dan Gertler?

Stock Trades

30. In the Katanga Mining Limited press release of 11 February 2009 it was stated that "Lora has transferred US$16 million back to Glencore Finance (Bermuda) Limited ("Glencore"), a wholly-owned subsidiary of Glencore International AG, and Glencore has issued a call option over such US$16 million to Ellesmere Global Limited ("Ellesmere"), whose ultimate owner is also the [Dan Gertler family] trust". Ellesmere exercised the option it had acquired from Glencore as part of the convertible loan facility "syndication". Ellesmere thus acquired 58,400,760 shares of Katanga from Glencore at US$0.2970/share on 26 February 2010. Katanga shares were trading at CDN$0.75/share on that day. A month later – on 25 March 2010 – Ellesmere sold these shares back to Glencore at US$0.7580/share.

a) What were the terms of the Ellesmere option?
b) What was the total consideration paid by Ellesmere for the stock and the option and when was the consideration paid?
c) Why would Glencore want to underwrite this massive transfer of wealth to Gertler?
d) Are there other beneficiaries of Ellesmere other than Dan Gertler? If so who are they?

31. On October 13, 2009, Glencore announced that it had, through its subsidiary Jangleglade, sold 98,787,701 Common Shares (representing approximately 5.2% of the issued and outstanding Common Shares) to Breton Global Limited ("Breton") another entity purportedly owned by a trust for the benefit of the Gertler family, "for an aggregate base purchase price of US$34,575,695 (or US$0.35 per Common Share), *plus an agreed amount of interest*". Breton also sold back to Glencore 41,599,240 shares of Katanga on the same day at the same price as the Ellesmere shares were sold back.

a) Unless Glencore was financing/carrying this transaction with Breton in some form or fashion, why would the words "*plus an agreed amount of interest*" be used?
b) What were the terms of the agreement between Glencore and Breton?
c) Why did Glencore allow Breton to buy the shares for $0.35/share, plus interest, rather than selling them on the open market?
d) Why did Glencore then purchase these shares back at more than twice the price?
e) Why would Glencore want to underwrite the massive transfer of wealth to Gertler?
f) Are there other beneficiaries of Breton other than Dan Gertler? If so who are they?