

## **A HOT BUSINESS AT THE SUMMIT OF THE STATE**

### **"We want 35 BILLION CFA"**

Who would believe it? The Burkina Faso government "dragged" to the International Chamber of Commerce of Paris, in France! While a big deal, involving our country was already pending before that court, here comes another burst.

All these burning issues concerning the project of exploitation of the manganese of Tambao. The new case that is on the table of the International Chamber of Commerce may drain the Treasury Burkinabe over 35 billion CFA francs.

This folder with the smell of manganese and big money starts to annoy some senior officials of the state. François Compaoré, economic advisor to President of Burkina Faso, is very concerned. The Minister of Mines and Energy, Salif Kabore, too. As the Minister of Economy and Finance, Lucien Marie Noel Bembamba. The news landed on their heads, in December 2012, so shattering, like a storm in the dry season. The complainant? A mining company, General Nice International Mining (GNIM Co Ltd) and its subsidiary, General Nice Resource Africa (GNR-Africa), a company incorporated in Burkina Faso. Their lawyers firm Fidal based in Paris, seized the Minister of Mines to say that the case where all remedies of mediation have failed in Burkina Faso, had taken a new turn: a procedure has been initiated in the French capital against the State of Burkina Faso. The complainants allege a "blatant injustice". They have a grudge against the State to have wrung the neck, in December 2011, of the Memorandum of Understanding which should enable them to exploit the deposit of manganese Tambao. This protocol signed on 28 March 2011, was still in force until April 2013. But contrary to all expectations, the government has decided to award the lucrative market to another company, Pan African Minerals. Expenditures made by General Nice International Mining for the realization of the early work in the MOU were enormous. Even very huge. The Society has assessed, firstly, to 30.7 million U.S. dollars. So about 15 billion CFA francs. But beware! This amount may be revised upwards. It plans to include all expenses incurred in connection with the implementation of the MoU. And do you know how much it rises? 20 billion? 25milliards? No! It will be about 35 billion CFA. The Burkina Faso government has apparently hitherto very poorly operated, could therefore get hurt. Not least. Another case of burning is waiting for him at the International Chamber of Commerce. And it might hurt! very bad! Reminder: Before signing the MoU with GNIM, another folder smell of scam exploded. Again it was about the manganese deposit of Tambao. Wadi al Rawda Investments company was strongly felt aggrieved by the state. Summary of facts: A Memorandum of Understanding was signed in April 2007. The Feasibility studies conducted and submitted to the government in September 2008. But the rights to the deposit of Tambao were denied the company. Yet it was planned in the Memorandum of Understanding. This case was strongly tainted the former Minister of Mines, Abdoulaye Cissé Abdul Kader without shaking him. Dealings with the state had all ended in failure. And the society had come before

the House International commerce. Le case is pending. And now the state is found in Burkina Faso once more in trouble. Nice International General Mining is to drive the nail ....

Everything started off well. Stop on the episodes: 28 March 2011: GNIM sign with the Burkina Faso government a *"Memorandum of Understanding revised"* after a first protocol was signed between the two parties in October 2010. The company was responsible for carrying out at its own expenses *"activities to allow the operation, as soon as possible, of the manganese deposit of Tambao."* The Article 3 of the MoU is clear about that: *"the State undertakes, in case of validation of technical feasibility, financial and environmental studies, to deliver to the operating company all mining titles and permits required by it and necessary to the activities to be implemented for the operation of the manganese of Tambao, that in accordance with the regulations in force."* And that the company started to work. It deploys on the ground, *"the human, financial and material resources"* to meet its contractual obligations. Its subsidiary, General Nice Resources Africa SA, put fully time and effort to fulfill its commitments. It realized the technical feasibility, financial and environmental studies, as well as related work. She gave these studies to the departments of concerned ministers. Following? Here it is: the competent services of the various departments have validated the studies. GNIM then filed, in July 2011, with the Ministry of Mines, two applications. One for the operating license of the deposit of manganese of Tambao, the second for two research permits of *"Inawas and Débanga."*

But to everyone's surprise, everything changed! In December 2011, the State undertakes a process of limited tendering. The subject of this tender appears to be a stab in the back of General Nice International Mining and its subsidiary. "a flagrant violation of the agreement signed in March 2011.

### **Was there already something going on?**

Here's the new deal: the selected company following a call for tender shall undertake *integrated work* and develop the manganese deposits of Tambao. Yet in the MoU, the state was committed *"in the event of validation of technical, financial and environmental studies, to deliver to the operating company (General Nice Resources-Africa Sa, Ed), all mining titles and authorizations requested and necessary to implement the activities for the exploitation of the deposit of the Tambao manganese."* But soon, the hope of GNR-Africa collapses. The Minister of Mines turned round. Yet, all studies had been validated by the Ministries of Mines, Environment and Finance. In the business environment, a question insistently arises: what is this game played by the State? But that does not deter the Burkinabe authorities. At first, they use diplomacy. The Head of Markets of the ministry of mines address, January 11, 2012 a correspondence to General Nice International Mining. And he invited her to participate in the restricted tender. The same invitation is addressed to seven other companies. But curiously, in the dossier of limited

tendering that candidates had to buy 750 000 F CFA, the number of companies has increased from 8 to 13. Was there already something going on? Mystery and gumdrop.

GNIM takes a look at the file and address, in January 24, a stiff letter to the Minister of Mines salt. The content can be summarized in one sentence: the implementation of the tender constitutes a violation of our rights and the commitments made by the State in the MOU. On 27 January, the Minister of Mines reacts. He informed the company that the *"new vision of the Government of Burkina Faso for the exploitation of mining sites is to proceed by open or restricted tender for the allocation of licenses."* And that's not all: the State recognizes that under his involvement in the project Tambao, GNIM had a significant advantage in the competition for the award of the license to operate. But it does not seem too reassuring the society. She requested a meeting with the Ministry of Mines. Here they are the 20 and 21 February 2012, around a discussion table. But the conclusions are not very successful. The company wants to be reassured. She is afraid to be in the trough of the wave. And, without waiting, she submits to the State on February 28, a Memorandum of Understanding on the new deal. The Ministry receives the new MoU but no answer. Tired of waiting, the company sent him on 16 March, a new letter. This time she gives straight out, the condition of its participation in the tender. She wants to get in advance, irrevocable written commitment of the State to pay the sum of 30.7 million U.S. dollars (about 15 billion CFA francs) as *"the minimum compensation of the studies, due diligence and execution of work already done according to Memorandum of Understanding."* And here the state finally wakes up! On 6 April, the Minister of Economy and Finance broke his silence. But he kept a low profile. The State expressly recognizes, through a letter from the Minister that the company GNIM *"has complied with the MOU, the decision to implement a tender could cause inconvenience to GNIM, thus, it undertakes, in case the company offer is not accepted as part of the tender, to reimburse any amount committed to the project by it, which amounts may be evaluated by an expert"*. The company had finally tranquil heart. She decides to make an offer. She was convinced that the State, having made such a commitment, would not clear off. And being already on the ground, because of the MOU, it would win. But she was really wrong. Following is rather bitter.

### **A decision fraught with meaning.**

The provisional results published on 11 June 2012, in the review of procurement are disappointing for GNIM. The situation has indeed shifted in favor of another company, Pan African Burkina Ltd. GNIM was placed second. Suddenly, another fight begins. Two bidders, Villar Mir Group and GNIM opened the ball of challenges. The Dispute Resolution Committee of the Regulatory Authority for Procurement (AGP) hears appeals and decides. And the decision that falls on June 21, 2012, has a heavy sense! Here is the conclusion: *"The commission award*

(CAM), as constituted, is irregular and incompetent to receive and evaluate tenders in a procurement procedure for public service delegation." and CRD invites "the contracting authority (state, Ed) to draw all legal consequences." Clearly, the tender that gives Pan African Burkina Limited is canceled.

The government then grabbed the ball. Here, about it, the Council of Minister of 27 June 2012 says: "After seeing the difficulties relating to the nature and the sequence of the tender, the Board has decided to cancel the process of the selection of the offers and instructed the Minister in charge to identify credible partners and conduct negotiations for the implementation of a public-private partnership for the implementation of the project. " Instruction was also given so that this partnership can be established by the end of July 2012. GNIM notes the decision. She tells to herself that no doubt, the situation in her favor. She even wrote to the Ministry of Mines and reiterates its commitment to fulfill its "contractual obligations". But, curiously, the State does not respond to her correspondence. Not even the slightest reaction! Meanwhile, the tension mounts. And here we are at 23 July 2012. That day the company wrote to the Minister of Mines. She denounced the silence of the state. But not only that. She points to what she sees as a combined cleverly planned and fully implemented. "The State had already for several days, committed, she, said negotiations with a competitor on the project. It has already invested the site of the mine of Tambao, presenting himself to the people as the operator finally selected by the State for its operation." It did not take long for the Minister to receive the same day representatives of GNIM. The Minister told them, at the meeting, that he was instructed by the government to negotiate with the candidates in the order determined by the results of the tender ... He started with the first on the list. So Pan African Burkina Limited. And he states that it is the absence of an agreement with the latter that he could negotiate with GNIM ranked second on the list.

### **Individuals maybe too greedy?**

But soon, the hope of GNIM was in a bad way. Casting a glance at the clock, the company realized that the time granted to the Minister of Mines to conduct negotiations had expired. While she had not been contacted for any negotiation whatsoever. She finally noted that the operating license for the deposit of Tambao could be already attributed to the company Pan African Burkina Limited. In total contradiction with Article 4 of the Memorandum of Understanding. Here's what this article says: "No mining title will be given in this area to any other mining operator for the exploration or exploitation of manganese during the period of validity of this MoU." And the MoU was valid until April 2013. According to the document signed by both parties, the operating license of the deposit of Tambao should have been assigned ownership to the company or its subsidiary GNIM GNR-Africa SA. But now everything has tumbled down, the protocol agreement has been violated. Even when GNIM who could no longer cope with the turn of events, referred to the Centre of Arbitration, Mediation and Conciliation Ouagadougou (CAMC-O), there was no

positive response. At the first meeting: GNIM requires the license to operate the deposit of Tambao given the fact that the tender was canceled. The Government officials to sweep this argument out of hand. They clearly indicate to GNIM that the license was awarded to another company, and now, only the compensation will be the order of the day. At the second meeting: the representatives of GNIM ask the government to make concrete proposals for compensation., The amount is known: U.S. \$ 30.7 million (15 billion CFA francs). At the third meeting: the government delegation is absent. The reason cited: the head of the delegation had malaria. At the fourth meeting: no government official. No reason for absence. The last meeting took place on 15 November 2012. GNIM warned: if at this meeting the government does not say how it intends to compensate, she would summon it to the International Chamber of Commerce in Paris. On 15 November, the government made no concrete proposal. But there are still few signs of hope. The representatives of the governments have proposed that an expert be appointed by both parties to verify the expenses incurred by the company. But until now, there has not been followed. Dead silence. The company has finally brought this hot matter before the International Chamber of Commerce in Paris. And the State must reply. GNIM has already made its calculations. It includes all other costs incurred for the implementation of the Memorandum of Agreement. The amount ? About 35 billion CFA francs. If she wins the case, it will be a great loss to the national treasury. Due to individuals or groups of individuals, perhaps a little too greedy, who acted on behalf of the State. Without any elegance.