

Congo fails to dislodge ICC arbitrator from mining dispute

Cosmo Sanderson
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Charles Poncet

The Republic of the Congo has failed to disqualify Swiss arbitrator **Charles Poncet** from hearing an US\$18 billion ICC claim by two mining companies based on his repeat appointments by the claimants' law firm, Clifford Chance.

On 24 November, the ICC Court issued an unreasoned decision rejecting Congo's bid to prevent Poncet from hearing two consolidated claims brought by Australia's Sundance Resources and its subsidiary Congo Iron. It upheld the admissibility of the challenge but dismissed it on the merits.

The ICC Court also confirmed French-Lebanese academic **Ibrahim Fadlallah** as chair of the London-seated tribunal. Congo's appointee is DLA Piper arbitration co-head **Michael Ostrove**.

Clifford Chance represents Sundance and its subsidiary in their claim, which is being [funded](#) by Burford Capital. Congo is represented by Curtis Mallet-Prevost Colt & Mosle and Paris-based firms Jeantet and Cabinet Grossmann.

Sundance is among a handful of mining companies that have brought claims against Congo in the past year over the revocation of their licences for iron ore projects. The investors are all represented by Clifford Chance.

Congo Iron and its parent filed separate ICC claims months apart earlier this year, appointing Poncet in each. The state had already challenged Poncet in the Congo Iron case but it is understood that petition was dismissed by the ICC Secretariat. Congo filed a renewed challenge on 2 November after the two cases were consolidated by the ICC over the state's objections.

The state argued that there were reasonable doubts about Poncet's impartiality and independence because of his repeat appointments by parties represented by Clifford Chance.

Besides the Sundance and Congo Iron cases, the state cited three other cases in which Poncet disclosed parties represented by Clifford Chance have appointed him in the past three years: an [ICSID claim against Peru](#), another ICC case and an LCIA case.

The state also criticised Poncet after he said he could not respond to the allegations in the timeframe set by the ICC Secretariat. Poncet said he was involved in 33 arbitrations, of which he was sitting as arbitrator in 31. Congo said this raised concerns over his lack of availability.

The consolidated claims are worth US\$17.6 billion, though Congo is understood to have characterised this figure as unfounded, fictitious and abusive. It appears that each of the two claims has been valued at US\$8.8 billion, though it is unclear to what extent they are duplicative of each other.

The backdrop to the slew of arbitrations against Congo is the state's decision to award various disputed concessions to Chinese-backed entity Sangha Mining Development Sasu.

Sangha Mining was apparently incorporated in October 2020 just a month before it was awarded its first licence by Congo. Its sole shareholder is a Hong Kong-based Bestway Finance, which is ultimately owned by Anguilla-based First Director Inc, itself a shell company.

The director of Bestway is Alexandre Mbiam, a 30-year-old Cameroonian finance consultant. His father is said to be an influential Cameroonian lawyer with links to the country's long-serving president, Paul Biya.

Nevis-registered Avima Iron Ore is pursuing a US\$27 billion ICC claim against Congo over the revocation of its licence.

Avima's case is before a [recently constituted](#) tribunal chaired by France's **Alexis Mourre** of MGC Arbitration and including **Laurent Jaeger** of King & Spalding and **Pierre Tercier** of Peter & Kim.

UK mining company [Midus Holdings](#) and a subsidiary Perth-based [Equatorial Resources](#) have meanwhile launched treaty claims against the state at ICSID. The value of those claims remains undisclosed.

Congo Iron SA and Sundance Resources Ltd v The Republic of the Congo (ICC Case No. CCI 26145/DDA/AZO (c-26344/AZO))

Tribunal

- **Ibrahim Fadlallah** (France/Lebanon) (chair)
- **Charles Poncet** (Switzerland) (appointed by Sundance)
- **Michael Ostrove** (US) (appointed by Congo)

Counsel to Sundance

- Clifford Chance

Sam Luttrell, **Amanda Murphy**, and **Rodolphe Ruffié** in Perth, **Audley Sheppard QC** in London, **Romesh Weeramantry** in Singapore, and **Peter Harris** in Tokyo

Counsel to Congo

- Jeantet

Thierry Lauriol, **Martin Tavaut**, **Josephine Hage Chahine** and **Marine Lecompte** in Paris

- Cabinet Grossmann

Kevin Grossman, **Marie-Bénédicte Thomas**, **Gaspar Billette** and **Constance Castres Saint-Martin** in Paris

- Curtis Mallet-Prevost Colt & Mosle

Partners **Geoffroy Lyonnet** and **Remy Lerner** and counsel **Marie-Claire Argac** in Paris and partner **Simon Batifort** in Brussels

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