

UNHEARD VOICES

Mining activities in the Katanga province and the impact on local communities

SOMO
November 2011



COLOPHON

TITLE: Unheard Voices, Mining Activities in the Katanga Province and the Impact on Local Communities

AUTHORS: ACIDH

PUBLISHED BY: ACIDH and SOMO

EDITING: SOMO

COVER ILLUSTRATION: JUSTAR.nl

LAYOUT: JUSTAR.nl and SOMO

This report is published as part of the makeITfair campaign, a Europe-wide project on consumer electronics. MakeITfair aims to inform young consumers about human rights, as well as social and environmental issues along the supply chain. It also addresses consumer electronics companies that can contribute to change.



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FUNDING:



This report is a publication of SOMO – Centre for Research on Multinational Corporations. Doen Foundation and the European Union financed the formation of this report. The contents of this report are the sole responsibility of SOMO and therefore both Doen Foundation and the European Union are not responsible for the content or accountable for any damage as a result of wrong or incomplete information in this publication.

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MakeITfair is a European wide project on consumer electronics industry, aiming to inform consumers about the human rights, social and environmental issues along the supply chain and ask multinational electronics brands to account for those issues. makeITfair is co-ordinated by the Dutch organisation SOMO (Centre for Research on Multinational Corporations). Project partners are SwedWatch and Fair Trade Center from Sweden, FinnWatch and Pro Ethical Trade Finland from Finland; DanWatch from Denmark, GermanWatch from Germany, Association of Conscious Consumers (ACC) from Hungary, ACIDH from the DR Congo, CIVIDEP from India, Workers Assistance Center (WAC) from the Philippines and Civil Society Research and Support Collective (CSRSC) from South Africa.



ACIDH

Action Against Impunity for Human Rights is a human rights defense organization based in Lubumbashi, DRC.



The Centre for Research on Multinational Corporations (SOMO) is a non-profit Dutch research and advisory bureau. SOMO investigates the policies of multinational enterprises and the internationalisation of business worldwide. Focus is placed on research into labour conditions in the global South and cooperation with local organisations and trade unions. Website: www.somo.nl.

This report is a translation of the ACIDH report « Les Sans- Voix », published in French. SOMO only provided textual and content editing to this English version. Therefore, differences might exist between the French and English versions of this report.

PREFACE

One of the major challenges of the 21st century is to ensure that the increased flows of international investment and corporate activity do not interfere with our commitment to human rights. This is not a theoretical issue: The complex task of reconciling human rights and investments has become an obligation with consequences for southern countries such as the Democratic Republic of Congo.

It is distressing to discover that, in many cases, foreign investments in developing countries have failed to contribute to the social and economic development of local communities.

During the planning, developing and negotiating phases of new projects in developing countries, companies often fail to take into account the dignity and legitimate interests of the people whose lives will be the most affected. This is why Action Against Impunity for Human Rights (ACIDH), upon the initiative of SOMO and makeITfair and with its financial support, undertook this study on the impact of copper and cobalt extraction on local communities in Katanga. We have here, with the collaboration of various local groups and individuals, attempted to assess the actual impact of investments on communities in various regions of the province. This report presents five cases, which outline some of the consequences of investment in terms of human rights, including the right to free, prior and informed consent.

This report further serves as part of a long-term ACIDH project. The knowledge acquired during the research phase is essential for the future capacity to assist governments and companies in their efforts to improve the planning phases of projects and ultimately maximise the positive impact that investments could have on the sustainable development and rights of local communities.

The report is also part of the makeITfair campaign (www.makeitfair.org), of which ACIDH is one of the participating organisations. makeITfair aims to inform young consumers about essential human rights issues as well as social and environmental issues along the supply chain, including issues in the mining phase.

Emmanuel UMPULA NKUMBA
Executive director

ACKNOWLEDGEMENTS

This report is the result of a cooperative effort by many people who worked together for six months to assess the impact of mining on local communities, notably the chiefs, government officials, local inhabitants near the mining sites, civil society members and those actually working in the mining industry. To all of them we offer our heartfelt thanks.

We thank Mr. Emmanuel Umpula, Executive Director of ACIDH, for providing the necessary oversight and the proper conducting of the various phases of this research project. Jean Claude AMISI, Vianney Malemba and Prince Kumwamba N'sapu who conducted the research on the ground.

We also wish to thank Mr. Jean Pierre Okenda for reading the draft and Mr. Petrus Yav for translating this report into English.

Finally, special thanks go to SOMO for their initiative, editing and financial support.

ACIDH

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LIST OF ACRONYMS

ACIDH	Action against Impunity for Human Rights
NPO	Non-Profit Organization (Association Sans But Lucratif)
EIB	European Investment Bank
Chemaf	Chemicals of Africa
CMC	Cobalt Metals Company
CMSK	Compagnie Minière du Sud Katanga (South Katanga Mining Company)
EGMF	Entreprise Générale Malta Forrest (Malta Forrest General Company)
ESIA	Environmental and Social Impact Assessment
GAFEM	Groupe d'Appui aux Femmes Mal nourries (Group for Support of Malnourished Women)
Gécamines	Générale des Carrières et des Mines
OECD	Economic Organisation for Cooperation and Development
NGO	Non-Governmental Organization
MRP	Mitigation and Rehabilitation Plan
ESMP	Environmental and Social Management Plan
RAID	Rights and Accountability in Development
DRC	Democratic Republic of Congo
SNCC	Société Nationale de Chemin de fer du Congo (National Railway Company)
SOMO	Center for Research on Multinational Corporations
UMHK	Union Minière du Haut Katanga (Haut Katanga Mining Union)
TFM	Tenke Fungurume Mining

1. GENERAL INTRODUCTION

1.1. CONTEXTUALISING

The Democratic Republic of Congo (DRC) is endowed with a wealth of natural resources in almost all sectors, of which the mining sector is the most prominent. One of the 11 provinces, Katanga, located in the southern part of the country has large deposits of high-grade copper and associated minerals such as cobalt, zinc and lead. These resources are concentrated in the District of Haut-Katanga and, in the cities of Lubumbashi, Kolwezi and Likasi, and in the townships of Tenke and Fungurume. These reserves are estimated to be some of the largest for the above-mentioned metals in the world.¹ Mining in Katanga takes place in both the formal and informal sectors, and the two often interact. Thus, cobalt and copper mined informally can often sneak into the refineries and the more formal business networks.

The mining sector in Katanga has traditionally been the prerogative of GECAMINES, a state-owned company that made the DRC the world's largest producer of copper and cobalt, and was the true provider and also the engine of the economy by contributing actively to the national budget.

In the 1990s, Gecamines faced numerous crises that eventually led to its bankruptcy. International financial institutions such as the World Bank reacted by calling for the privatisation of the mining sector.² DRC officials signed several contracts considered unfavourable with various Congolese private and multinational companies.

During this period, there was a mining scramble in both the artisanal (informal) and industrial mining (formal) sectors. It should also be noted that the exploitation occurred in a very untransparent manner and was characterised by rampant corruption.³

While several mining companies exploited mines at various sites, living conditions of the people who lived near these companies remained precarious and most of them still have no access to drinking water, health care, education or electricity. Some have become the victims of environmental pollution and still have nowhere to turn for help, while others rarely receive adequate compensation for the exploitation of mines located on their land. Local communities are often caught off guard by these mining companies who establish their operations in their villages. Most of them have never been consulted in advance and never gave their consent to these operations. Some villages were relocated without any appropriate planning or application of proper standards and their agricultural land is often confiscated without adequate compensation. These instances constitute violations of national and international (legal) provisions that are supposed to protect the affected communities.

While the mining companies bear a clear responsibility for the conditions at and around their mining sites, end-users of these materials also play a role. Several studies provide information about the large percentage of cobalt that is used in electronic equipment (25%), much of which comes from the mines in Katanga Province.⁴ Recent figures indicate that this percentage continues to increase, with most of the growth in demand coming from the electronics industry. Cobalt is mainly used in the manufacture of rechargeable batteries for mobile phones, mp3 players, game consoles and laptops. The electronics industry is increasingly aware of its role in the extraction of metals in general, and it is evident that they

¹ Kumbiwmba Musao, Joseph, "The issue of traditional mining in Katanga (District of Kolwezi)", <http://www.memoireonline.com/12/09/3006/m-La-problematique-de-lexploitation-mini%C3%A8re-artisanale-dans-la-province-du-Katanga--cas-du-distr2.html> (accessed November 28, 2011)

² Ibid.

³ Kwamba, Prince & Simpère, Anne-Sophie (2008), "Terrain miné : l'implication de la BEI dans le projet minier de Tenke-Fungurume en RDC", Counter Balance : Réformer la Banque européenne d'investissement, August, <http://www.amisdelaterre.org/IMG/pdf/tenke-study-fr-3rd-web-FINAL.pdf> (accessed July 20, 2011)

⁴ Nordbrand, Sara & Bolme, Peter (2007), "Powering the Mobile World", makeITfair, SwedWatch, November, http://makeitfair.org/the-facts/reports/Powering-the-Mobile-World-Swedwatch-November-2007.pdf/at_download/file (accessed July 20, 2011)

need to address the issues regarding corporate responsibility, which includes the mistreatment of local communities during the mining phase of their supply chains.⁵

Electronics companies have already shown a willingness and capacity to address the issues that arise during the mining phase, which is illustrated by their recent efforts to deal with the civil war in Eastern DRC. Recent legislation in the United States has made it imperative that the EICC and GeSI (the industry's sustainability initiatives) pursue a Smelter Verification Program to trace the origin of metals they use, and to apply their 'due diligence' to ensure they are not financing armed groups. While it is encouraging that companies have begun addressing armed conflict issues, it is also important that they also address other issues in the mining phase of their supply chain.

1.2. MOTIVATION

Several reports have already revealed the devastating effects of copper and cobalt mining in Katanga on the Congolese people. A 2007 makeITfair report, written by SwedWatch, reveals that over 50,000 children under the age of 18 are currently employed in the mining sector. These children often work in unsafe and unhealthy conditions, receive very low wages and receive no education to speak of. This research report will thus aid in clarifying the nature of these effects; whether they are actually structural and a direct consequence of the presence of the multinational mining companies. The research generated will also contribute to a vast body of knowledge regarding the issue of free, prior and informed consent of local communities and illustrates the need for direct action by the involved stakeholders, including companies located downstream along the supply chain such as electronics and automobile manufacturers.

This research report will hopefully serve as the basis for future projects and support defending the rights of affected communities.

1.3. RESEARCH OBJECTIVE

The objective of this research project is to investigate how local communities in the province of Katanga participate in large-scale cobalt and copper mining projects that have a direct effect on their lives, and how much the principle of prior, free and informed consent (FPIC) has been abided by.

Free, prior informed consent ("FPIC"), has evolved historically from the human rights position that force or involuntary conditions put on impacted peoples are not legitimate development mechanisms. It therefore demands the provision of adequate information as regards the type, risks and benefits of a potential project and/or resettlement that is both relevant and accessible in order for an affected community to reach an informed decision. This information must be sufficient for impacted persons to be able to negotiate on equal terms with more powerful project proposers, usually large multinationals or the state. Balanced negotiations also suggest the need for education of all stakeholders but because poor people are more vulnerable to needs and will therefore routinely settle for less, this is a particular imperative for this group. Other stakeholder education for the state and the corporation must emphasise the nature of their responsibilities. Fair or balanced negotiations between unequal parties will also normally require facilitators and access to technical expertise beyond the means of affected communities. For this reason, such expertise be it, legal, environmental or social should be provided at no cost and no obligation to such a community. The bottom line for any such negotiation to be considered a consent process as opposed to consultation, or being informed in advance, is the right or ability of the community to say no. It is only on this basis that a community has power to negotiate on an equal footing. It is only then that the general goal can be met where any displacement is made sufficiently attractive so as

⁵ makeITfair (2008), "Linking extractives to consumer electronics: Responsibilities of electronics companies down the supply chain," Roundtable report, MakeITfair, January, <http://makeitfair.org/companies/summary-round-table-brussels> (accessed July 20, 2011)

to ensure it is entirely voluntary. This in turn requires that compensation take full account for the potential social, environmental and economic aspects of relocation. In this sense a simple commercial value of land for example is woefully inadequate as it imposes a financial value system over a cultural/communal one and fails to adequately address social dislocation and a host of other potential externalised costs. Implicit in all of these elements is the notion that the consent is derived freely, and is devoid of manipulation, force, or threat thereof which includes threats of being left out of other state development processes.

This will contribute to a broader base of knowledge regarding the practical application of the FPIC principle globally. Various reports have described the application of FPIC in other regions, such as South Africa, Southeast Asia and various Latin American countries. This report contributes to this general body of knowledge by investigating the application of the FPIC principle in the DRC.

Moreover, another objective of this report is to provide insight for local communities and civil society organisations regarding the rights they have and how this right is not respected by the involved mining companies. This insight will further enhance the ability of these communities and NGOs to more effectively stand up for these rights.

1.4. RESEARCH QUESTIONS

This research report will attempt to answer the following questions:

- Did the involved company consult the communities in a free, prior and informed way?
- What were the effects of mining on the local community and what actions has the company taken to mitigate these effects?
- Did the company compensate the communities for loss of land, loss of property, and loss of livelihoods?
- Have conflicts arisen between the involved communities and companies?
- Has the company performed environmental and social impact assessments?
- What types of social programs has the company introduced?

1.5. RESEARCH METHODOLOGY

The investigators conducted both desk studies of relevant documents and laws, and field work in the Fungurume, Kakanda, Lubumbashi, and Kawama regions.

The secondary literature covering the relevant laws and other international standards that the investigators consulted included: The Mining Code, Mining Regulations, the Investment Code, and the OECD Guidelines for Multinational Enterprises. These documents were used to analyze the relevant national and international (semi-)legal context.

The investigators interviewed various local community members including local chiefs, traditional leaders, village chiefs, religious leaders, civil society members, and employees at the involved companies, among others, during two visits to sites in Kakanda and Kawama and three to Lubumbashi and Fungurume. A total of 169 people were interviewed, either via a questionnaire or via semi-structured (recorded) interviews both individually and in groups. Individual interviews were performed with the heads of villages and townships, as well as police officers. Community members were interviewed both in groups and individually.

The field studies were conducted from April 2010 to April 2011:

- In Lubumbashi: 13- 15 April 2010; 25-27 June and 6-9 September 2010;
- In Kawama: 15-16 April 2010; 28-30 June 2010;
- In Kakanda: 26-29 June 2010; 22-25 July 2010;
- In Fungurume: 6-8 May 2010; 23-25 July and on 23 August 2010.

It should be noted that all attempts to meet with the officials of companies targeted in the study were unsuccessful. Numerous letters⁶ and phone calls by the investigators requesting meetings remained unanswered.

However, ACIDH shared the content of the report with the companies involved in the study prior to its publication. TFM and Ruashi Mining invited ACIDH members for an exchange on the contents of the report. As for Boss Mining and CHEMAF, they saw fit to provide written comments. CMSK did not react at all.

This report is divided into five sections, with each section covering one company currently under investigation. The first section covers Tenke Fugurume Mining Ltd. (TFM) (USA); the second investigates Boss Mining Ltd. (United Kingdom); the third looks into the case of Chemicals of Africa (Chemaf) (India); the fourth covers Ruashi Mining Ltd. (South Africa), while the fifth and final section deals with the Southern Katanga Mining Company (CMSK) (Belgium). These companies were selected based on where they are located, the origins of their capital and the size of their production facilities.

Each case study begins by providing basic information about the company and its mining operations, before it begins investigating how and to what extent the company applied FPIC; whether and how local communities were compensated for forced relocations and the loss of land, and, lastly, an overview of the social programs instituted by the mining companies.

1.6. LEGAL BASIS FOR THE STUDY

This section describes the relevant national and international frameworks.

The mining sector in the DRC is mainly governed by the 11 July 2002 007/2002 Mining Code, which has been further reinforced with various supplementary mining regulations that establish the terms and applicable conditions.⁷ The relevant passages in the DRC Mining Code for this study can be found in appendix 2.

The Mining Code includes 344 items divided into 17 titles. This study first looks at Title III, which describes how mineral rights are organised. Section 69 describes the conditions necessary before one can apply for the Exploitation License, which stipulates that applicants consult with local administrative authorities and representatives from the affected communities, also requires the drafting of a plan that outlines how the project will contribute to the development of the local communities. These conditions are further detailed in sections 477, 478, 479 and 481 of the Mining Regulations.

Moreover, Title XI establishes relationships between the mining or quarry rights holders themselves as well as the occupants of the land.

⁶ Read the letters requesting the hearings schedule in Appendix 1.

⁷ Democratic Republic of the Congo, LAW no. 007/2002 of JULY 11, 2002 RELATING TO THE MINING CODE, <http://www.unites.uqam.ca/grama/pdf/DRC2002.pdf> (accessed November 29, 2011).

Articles 280 and 281 of Title XI, stipulate that owners or lessees of mineral rights must provide fair compensation to the occupants of the land for any damage caused by any mining activities.

Moreover, the local people most affected by the involved project should be encouraged to actively participate in the drawing up of the Environmental Impact Assessment as outlined in Article 451 of the Mining Regulations, which also requires all holders of mining rights to adequately ensure the protection of the environment.

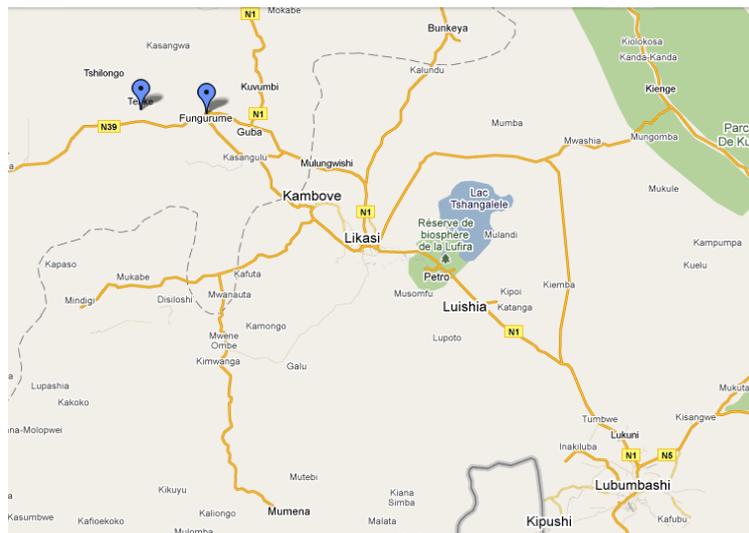
Beyond the current DRC legislation, there are also the OECD Guidelines, which govern the US (TFM), British (Boss Mining) and Belgian (CMSK) mining companies.

2. TENKE FUNGURUME LTD.

2.1. GENERAL INFORMATION

2.1.1 LOCATION

The mining town of Fungurume is located some 195 km northwest of the city of Lubumbashi, the capital of Katanga Province. It has an estimated population of 120,000 inhabitants whose livelihood depends mainly on the farming of corn, beans and various ground nuts. Meanwhile, the township of Tenke located circa 30 km west of Fungurume encompasses an area of some 7 square km and has an estimated population of 12,000 inhabitants⁸ who are mainly engaged in agriculture. The Tenke Fungurume Mining Ltd. mining project is located between these two cities.



2.1.2 HISTORY AND DESCRIPTION

The Democratic Republic of Congo (DRC) began privatising its mining industry in the 1990s. In 1994, it initiated proceedings to form a partnership with the state-owned Gecamines Company for the exploitation of the Tenke-Fungurume region. The government ultimately decided to accept the offer made by the Swedish group, Lundin Holding⁹, and a joint-venture agreement between Lundin Holdings and Gecamines was signed on 30 November 1996, effectively creating Tenke Fungurume Mining Ltd¹⁰ (TFM).

In 1999, TFM suspended the project as a reaction to the civil war that was ravaging the DRC at the time, and only recommenced its activities in 2005, when a new contract was signed, which created a partnership between Gecamines, Lundin Holdings and the American mining giant Phelps Dodge (which merged with Freeport McMoRan in 2007).¹¹ The construction of mining infrastructure began in early 2007 and was finally completed in early 2009. Mining in the Mount Kwatebala area began in April 2009 and, according to TFM engineers, the annual production levels are expected to be approximately:

- 115,000 tons of copper cathode
- 6,000 tons of cobalt precipitates
- 4,000 tons of cobalt cathode.

⁸ Ibid.

⁹ Group Lundin Holdings Ltd., Society under Bermuda Law, with headquarters at Cedar House, 41 Cedar Avenue, Hamilton HM12 (Bermuda).

¹⁰ Information on the Tenke Mining Group Office at: <http://www.lundinmining.com/s/TenkeFungurume.asp>, (accessed December 1, 2011)

¹¹ Kwamba, Prince & Simpere, Anne-Sophie (2008), op. cit. p. 5.

The goal was to ultimately produce 400,000 tons of copper annually in the coming five to seven years for a subsequent period of 50 to 100 years.¹² In 2010, Tenke Fungurume Mining produced 120,000 tons of copper and 9,000 tons of cobalt.¹³

2.2. CONSULTING THE LOCAL COMMUNITIES

TFM, in accordance with its legal obligations, undertook a series of community consultations prior to the commencement of the project. TFM conducted over 100 meetings,¹⁴ which included focus groups for both women and men, of which some took place in the presence of village chiefs. The meetings were announced by local media, which often emphasised the high expectations the people had regarding this project, particularly in terms of job creation, improvement of services (water, health, electricity, education, etc.), improvements of the administration and among the communities, modernisation and improvement of living conditions in general.¹⁵

While the initiative to hold meetings has been welcomed, it should nevertheless be noted that these consultations were supposed to be conducted in accordance with relevant DRC laws and international standards, while also taking into account the Environmental and Social Impact Assessment (ESIA), the Environmental and Social Management Plan (ESMP) and the Mitigation and Rehabilitation Plan (MRP).

However, many people in the affected communities were unable to sufficiently comprehend the contents of these documents because many of them are illiterate, and because TFM did not succeed in translating these documents¹⁶ into the local language, which is Swahili. These adverse circumstances made it difficult to discuss the issue of local community consent. Moreover, the people we met during the meetings emphasised the fact that, despite their large numbers, TFM did not give them enough time to properly comprehend the issues under discussion, and, even more importantly, never gave them the opportunity to voice their criticism.

The lack of time during the discussions between TFM and the communities no doubt further skewed the outcome of this particular consultation. Forty-two people who were interviewed noted that they had been consulted along with their traditional chief only as an afterthought in order to wrap up the legal formalities of the law, and they were never given the opportunity to voice their actual needs and concerns.

Moreover, the interviewed community members also complained that the company never did any follow-up after these consultations. To date, they still do not know which of their demands were actually incorporated into the Environmental and Social Management Plan, which focuses on the details agreed to by both the company and the involved communities.

A civil society representative spoke to ACIDH researchers and confirmed the aforementioned observations by noting that: “Since the parties have not agreed on a detailed timetable for implementing the social projects, the community believes that it is the company who makes the final choice regarding the social programs.”¹⁷

These conditions, to some extent, explain why the community is currently more likely to oppose further development of this particular project.

¹² Interview by ACIDH investigators with TFM engineers, March 18, 2009.

¹³ Details given by the TFM counselor to ACIDH, meeting on August 26, 2011, between TFM and ACIDH.

¹⁴ Figure submitted to ACIDH investigators in Fungurume, by a former TFM employee who wished to remain anonymous.

¹⁵ Statements made by local residents to ACIDH investigators during a visit to Tenke Fungurume, May 2010.

¹⁶ In some villages, the ESIA copies were submitted prior to the consultation with village chiefs, which meant that the timing of the public consultations left no time for actual reactions by members of the riverside communities.

¹⁷ Interview with a civil society representative in Fungurume, August 23, 2010.

TFM responded in the review that they made pamphlets of the summary of the ESIA translated into local language (Swahili) available during the “open houses” meeting and in accordance with Annex IX of the mining regulation. TFM also used radio and posters to promote public participation in the ESIA process¹⁸.

Annex IX, to which TFM refers, states in Article 126 paragraph A that the owner of the mine must provide to people affected by the mining project leaflets written in the language or dialect of the people concerned, explaining the exploitation project, the work, the impacts and the Environmental Impact Assessment process of the project.

According to this article, it is the written prospectus that must be transmitted to people and not a poster with a summary of ESIA on it. TFM gave the investigators no consultation documents translated into the local language. Neither did they provide any explanation on the imbalance in time for exchanges between parties.

2.3. RELOCATION OF THE LOCAL COMMUNITIES

Some local communities were relocated to facilitate the construction of the company’s plant.¹⁹ However, this was done without first properly preparing the new location. This was particularly true in the case of the village of Mulumbu, where several hundred families had to be relocated.²⁰

These people lived in tents for almost two years, as they waited for their new homes to be built, despite the fact that the TFM’s Environmental and Social Impact Assessment clearly states that resettlement and compensation are among the TFM’s highest priorities. The company was committed to enforcing the Equator Principles and the DRC’s own laws that cover relocations.

In April 2010, TFM published a pamphlet entitled *Addendum to the Environmental and Social Impacts Assessment (ESIA) for the expansion plan for the mine and the processing plant of Tenke-Fungurume Mining (TFM), in Katanga, Democratic Republic of Congo*, which states that “the relocation program has been implemented according to national law and performance criterion 5 of the International Finance Corporation (IFC).”

However, numerous testimonies from the region have noted otherwise. One Fungurume inhabitant stated: “My family and I were forced to spend the night in tents because TFM had removed us without providing housing to us beforehand.”²¹

It took TFM several years before it had finally resettled all of the affected people in new housing. Investigators visited the villages Kiboko, Mwanga Muteba (Mulumbu) Amoni and Mpala to assess firsthand the quality of the new homes. Thirty-three houses were built in Kiboko, where the relocated people have been living since April 2008. Meanwhile, 43 homes were constructed in Mwanga Muteba, where some of the displaced people from Mulumbu were relocated. Construction also included a six-classroom school for 300 pupils including children from neighbouring villages. The village of Amoni, which is near Mwanga Muteba, saw the construction of 52 new houses. In Mpala I, 223 homes were built for people from Mulumbu who had been living in tents for a long time.

¹⁸ Meeting on August 26, 2011, between TFM and ACIDH.

¹⁹ TFM further justified the relocation as a way of avoiding unacceptable risks related to air quality, noise levels, traffic hazards, the proximity to the project’s infrastructure and loss of agricultural land.

²⁰ Statement by the Head of the Advisory Committee of the relocated people.

²¹ Interview with a Fungurume inhabitant, July 24, 2010.

It should also be emphasised that the Liaison Committee, which was established to negotiate between TFM and the communities, expressed the following concerns:

- The slow pace of implementing TFM's promises; the resettlement process took over 2 years, during which the affected people were forced to live in tents;
- The unclear situation surrounding the ownership of homes built for the displaced people delayed the signing of the Memorandum of Understanding (MoU) between the resettled people and TFM. According to one MoU clause: "the current occupants of these homes will live rent-free for a period of 3 years." What will happen after this 3-year period remains unclear²².
- TFM paid only US\$200 (€141²³) to compensate local people for the relocation, transportation and demolition costs. Despite the fact that TFM promised to compensate the people for the loss of income over a period a year related to the agricultural land they lost and the related loss of income from their agricultural livelihoods, they have yet to be properly compensated.
- TFM has yet to address significant issues involving its responsibilities to the relocated people: there is still no electricity, no health centre, while the quality of the soil in their new village is poor.
- The Committee has yet to come up with an Environmental and Social Management Plan (ESMP), which would clarify specific agreements that have reached between the company and the communities. The only legal document that currently deals with the issues affecting the rights of the relocated communities are found in the Tenke Fungurume law. Thus it is difficult to know what is rightfully theirs.

However, the Committee also indicated that the beneficiaries were very happy with their new homes and the fact that their children now had access to education.

TFM does not refute the allegations of the communities that they spent the night in tents for two years. TFM thinks that this delay was due to a technical problem in the local company in charge of building the houses, and the choice of the new site.

2.4. SOCIAL AND ECONOMICAL IMPACT ON THE LOCAL COMMUNITIES

2.4.1 ACCESS TO DRINKING WATER

The TFM Community Development Programs include providing access to drinking water. The investigators noticed that TFM had installed a water pump that filled sizeable water tanks²⁴ that, in turn, provide water for the community. The investigators also noted that over 61 drinking water wells had been dug in the villages in or near the concession and 40 water towers had been erected in Tenke and Fungurume.²⁵ Despite these



²² TFM officials mentioned they were connected with some great lawyers to sort out the house ownership issue, meeting on August 26, 2011, between TFM and ACIDH

²³ All conversions from other currencies into euros in this report were based on exchange rates for July 2011 on <http://www.oanda.com/>

²⁴ TFM officials mentioned the tanks had been replaced by taps, meeting on August 26, 2011, between TFM and ACIDH

²⁵ The addendum to the Environmental and Social Impacts Assessments (ESIA) for the proposed expansion of the mine and processing plant Tenke-Fungurume Mining (TFM), Katanga Province, Democratic Republic of the Congo, op. cit. p. 3.

efforts, however, the water supply remains insufficient for the number of people living in this region. Some of the local people told investigators that some of them were still using dubious well water, and that the tanks the company installed do not provide a consistent source of water.

2.4.2 ACCESS TO ELECTRICITY

The villagers pointed out that Fungurume has had a steady source of electricity since the country was colonised. But after the TFM plant opened, the town suddenly could no longer guarantee the continuous supply of electricity throughout the day because it needed to save electricity by turning the power off for two to three hours every night.

According to TFM, this was due to the fact that the transformer had broken down, so the company installed a generator that provided power only a few hours in the evening.

According to local inhabitants, “The National Electricity Company always gives priority to the mining company, TFM, and the citizens are left without power ... All they have is courtesy of us, but it seems like they’ve forgotten us ... We’ve told them that we have a right to electricity, especially for our hospital ... If they keep treating us this way, there’ll never be peace in this area... We are urging the authorities to apply the letter of the law in this case.”

2.4.3 ACCESS TO EDUCATION

The investigators pointed out a TFM project improvements, including the construction of three schools in Tenke and Fungurume and three more in the new relocation villages and neighbouring communities. Some parents told investigators that they were very satisfied with the schools, which create education opportunities for their children.

2.4.4 ACCESS TO HEALTH

TFM built a health center in Amoni and another in Kiboko, but during the investigators’ visit to these villages, these health centers were not yet open. The company also supports the Tenke-Fungurume health zone with pharmaceuticals.

However, some residents in Fungurume said they did not have access to the health zone facilities because of its low capacity as well as its cost. For instance, serum transfusion for malaria costs 9,000 DRC francs (10\$); simple surgery costs 100,000 DRC francs (111\$) or more²⁶.

2.4.5 ACCESS TO EMPLOYMENT

TFM claims that, during the building phase, approximately 7,000 Congolese employees worked on the project, a number of whom were hired as permanent operating staff. TFM currently has a permanent workforce of 2,000 plus 1,500 contract employees working at the mining and mineral processing plant in Kwatebala (the hilly area where the copper is being mined). Of this total of 3,500 employees, 98% are Congolese.

According to TFM, these workers were recruited via a lottery system for non-skilled and semi-skilled workers, which gives priority to local workers with similar qualifications. TFM said that eventually approximately 150 more workers would be hired as mining operations expanded, and another 300 would be hired to work in the processing plant. Furthermore, another circa 2,100 people would be hired on a daily basis to realise the expansion plans for the plant.²⁷

²⁶ Costs as shown on the menu at the reception at the hospital in Fungurume.

²⁷ The addendum to the Environmental and Social Impacts Assessments (ESIA) for the proposed expansion of the mine and processing plant Tenke-Fungurume Mining (TFM), Katanga Province, Democratic Republic of the Congo, pp. 2-7.

But interviews with people from the affected communities argued otherwise. They felt that TFM was actually hiring more workers from outside of the immediate area and that local residents were being passed over. Moreover, upon completion of the construction phase, nearly 6,000 employees²⁸ working for subcontractors were fired. This has adversely affected the relations between local inhabitants and TFM.

In addition, a group of artisanal miners staged a protest against TFM in Fungurume on 9 August 2010. Hundreds of traditional miners came to this demonstration to accuse TFM of restricting their ability to exploit their native land for their own survival. Some witnesses told the investigators that, during the protests, two trucks containing copper cathodes were looted and three empty trucks were burned.²⁹ Policemen from Kolwezi fired warning shots into the air, injured a number of the protestors and caused some property damage. Sadly, it should be noted that on 18 August 2010, nine days after the clashes between the miners, the police and the military, 13-year-old Freddy Ilunga³⁰ died of his gunshot wounds.

It should also be noted that prior to the completion of the plant, some 40,000 artisanal miners – both local and from outside the immediate region – were active on land that is now under TFM control. In exchange for abandoning the land, TFM promised to provide these artisanal miners with jobs either directly or indirectly related to TFM's mining operations.

These kinds of incidents confirm reports that the relationship between TFM and the local people, including the artisanal diggers (miners), are often very tense.

2.5. IMPACT OF MINING ON THE ENVIRONMENT

One TFM employee told investigators that TFM has developed various environmental programs to mitigate the negative environmental impacts of the mining. The aim of these programs is to not only to protect the environment but actually improve it as well. Significant efforts have been made to conserve water, protect the soil and local flora and fauna, with a particular emphasis on biodiversity. The company also provides waste management and has applied an impermeable plastic coating around the discharge area to protect the area's groundwater.³¹

2.6. COMPENSATION FOR THE LOSS ARABLE LAND

As noted above, one of the consequences of the relocation of these communities was the loss of arable land, which led to many complaints among community members about TFM's attitude regarding this issue. One interviewee stated that the company paid community members circa \$120 (€85) per hectare, with many in the community receiving the maximum compensation totalling \$270 (€190). This same villager further pointed out that, although the money helped pay the employees and feed their families, it was less than the 150% of the land value that TFM had agreed to pay. Moreover, the interviewee also complained that TFM had promised to provide crop seed for three years, but only provided these for the first year.³²

TFM said that they provided in-kind compensation (by the "land for land" formula) and cash compensation valued at \$ 456 for families whose fields had been damaged so that they could prepare their fields.

²⁸ Conversations between investigators and representatives of Fungurume's churches, NGOs, socio-cultural associations, schools and political parties.

²⁹ "Fungurume, des cresseurs artisanaux manifestent contre TFM" (2010), Radio Okapi, August, <http://radiookapi.net/actualite/2010/08/09/fungurume-des-creuseurs-artisanaux-manifestent-contre-tfm/> (accessed December 1, 2011)

³⁰ Information gathered by ACIDH and RAID during a visit to Fungurume, August 20, 2010

³¹ Statement by a TFM agent during an TFM exhibit in April 2010

³² ACIDH (2008), "Minefield: the European investment Bank (EIB) involved in the Tenke-Fungurume mining project in DRC", ACIDH, August, p. 15.

However, a TFM official said that if one or several inhabitants in and around Fungurume think that the compensation was not fair and equitable; they may contact the TFM team in charge of grievances³³.

2.7. SUMMARY

1. Did TFM consult with the affected communities in a free, prior and informed way?
 - The study acknowledges that TFM, is the only one of the five active mining companies investigated in this report to organise broad-based consultations with the involved communities. To this end, approximately 100 consultation meetings were organised.

However, these consultations were riddled with the following irregularities:

- Consultation documents were not translated into the local language, which prevented the communities from actively participating in the consultation sessions (see Article 451 of the DRC Mining Regulations);
- The time required for proper analysis of the documents was insufficient;
- There were no feedback sessions, which would have ensured that the demands of the affected communities were properly addressed by TFM; and
- There was no clear timetable for the implementation of the changes.

To conclude, we note that TFM did indeed consult with the involved communities prior to exploiting the mine, but those consultations were not free and informed.

2. What effects did mining operation have on the local communities and what actions has the company taken to mitigate these effects?
 - A number of communities were forced to relocate to new sites, before their homes at these new sites were built. The relocation process was unduly long and drawn out, which meant that many local residents ended up sleeping in tents for a period of several years. Moreover, local residents pointed out that company trucks created excessive dust, which became a health hazard and the likely source of various respiratory complaints including coughs and colds.
3. Did TFM adequately compensate the communities for the land they lost?
 - The company did compensate local communities for the land lost during the negotiations. However, the amounts paid out did not comply with the Mining Code and DRC Mining Regulations, which stipulated payments amounting to 150% of the assessed value of the land.
 - TFM thus paid an average of \$120 (€85) per hectare. TFM also promised to provide crop seeds to the affected inhabitants for a period of three years. The company eventually went back on its promise, ultimately providing seeds for only one year.
 - These compensation payments were basically unfair because TFM clearly failed to adequately compensate the affected landowners for their loss of land and livelihood.
4. Have conflicts arisen between the various local communities and TFM?
 - One particular conflict involved TFM preventing local artisanal diggers from exploiting their native land, which they depend upon for their survival. The demonstration organised by the artisanal miners led to violent clashes, causing a number of injuries, serious property damage, that included five torched trucks, and sadly the death of one teenager.

³³ Meeting on August 26, 2011, between TFM and ACIDH

5. Has the company performed environmental and social impact assessments?
 - TFM performed only one environmental and social impact assessment in April 2010.

6. What kinds of social programs has TFM introduced?
 - TFM installed one hydrophore unit to ensure a steady supply of drinking water, has drilled some 60 water wells and constructed 40 water towers in Tenke and Fungurume. However, in order to make an easier access to water, TFM replaced the tanks with taps.
 - Furthermore, to aid access to healthcare, TFM supports the region's healthcare facility.
 - TFM has also constructed a total of six schools in the Tenke and Fungurume area.

3. BOSS MINING LTD.

3.1. GENERAL INFORMATION

Boss Mining Ltd. is located in Kakanda, which lies some 180 km to the northwest of the city of Lubumbashi.

Boss Mining is registered in the New Business Register of Lubumbashi under number 8980 and the DRC National Identification Number as 6-193-N4383E. The head office is located at N° 238, Likasi Road, in the city of Lubumbashi, Katanga Province, DRC³⁴.

Boss Mining's ore processing factory is located in Luita, some 18 km from Kakanda.

Kakanda has an estimated population of 15,000. The inhabitants' livelihood consists mainly of agriculture (corn, cassava, beans, potatoes, vegetables), and the production of charcoal and various beverages.

3.2. CONSULTING THE LOCAL COMMUNITIES

The survey was conducted among inhabitants living in the villages of Mitoni Mbili and Kamimbi and the township of Kakanda.

3.2.1 VILLAGE OF MITONI MBILI

Mitoni Mbili, with a population of more than 680 inhabitants, according to the latest census in August 2009,³⁵ is located about 4 km from Kakanda, next to the quarry currently being exploited by Boss Mining. The people have lived here since 1943, and they are mostly involved in agriculture (corn, cassava, potatoes, vegetables), cattle breeding and the brewing of local beverages.

This community was not consulted prior to the commencement of copper and cobalt mining operations by Boss Mining Ltd.³⁶

As we noted in chapter 1, current DRC mining legislation requires that any company applying for an operating permit must include a report documenting its consultations with the authorities of local administrative bodies and with representatives of the involved communities.³⁷

3.2.2 VILLAGE OF KAMIMBI

Located approximately 3 km from the township of Kakanda, this village is linked to the Kakanda region.

No consultation was conducted here; neither with the great chief Kamimbi nor the villagers themselves. This clearly constitutes a breach of current DRC mining laws.

3.2.3 THE TOWNSHIP OF KAKANDA

This township had its heyday when Gecamines was enjoying its most prosperous period. It has since fallen on hard times and has been plagued by countless problems. The presence of Boss Mining has done little to alter this reality.

³⁴ Information from letter N. Ref ETKAB/LUB/AK/062/2011, "Kabinda Study" (2011), Boss Mining's Legal and Consultancy Firm, Sept 2, 2011

³⁵ Interview with the Secretary of Mitoni Mbili on May 27, 2010

³⁶ Interview with villagers on May 27, 2010

³⁷ Article 69 of the mining code, appendix 2

The researchers interviewed 44 local people, notably the heads of these two villages (Mitoni Mbili and Kamimbi), Kakanda's youth, women and men, as well as employees at Boss Mining. All of them insisted that Boss Mining never organised any public consultations.

The only person to indicate that a public consultation had been organised by Boss Mining was Kakanda's police chief. But no one could verify this consultation or said they had participated in it.

The company says that the consultation was actually carried out in 2006 according to the public consultation timetable. The company said they consulted the different segments of the population, notably: the government and customary authorities as well as the State Service officials in charge of the Center in Kakanda, the executives of mining companies and education, the workers in the mining companies and the grassroots communities³⁸.

3.3. COMPENSATION FOR THE LOSS OF ARABLE LAND

Boss Mining Ltd. built its factory some 18 km from Kakanda and also operates a quarry near the villages of Mukondo and Mitoni Mbili (or Kikaka).

The mining operations here have had a significant effect on the agricultural land of some community members. This is due to the in great part to significant changes made to the landscape by the creation of landfill and embankments as well as the acids that seeped into the waterways and soil. Community members protested these conditions and eventually forced Boss Mining to offer them a compensation plan for the damage caused.

3.3.1 THE COMPENSATION PROCESS

The compensation process was instituted to address the rights of all those who have been adversely affected by the detrimental effects of mining operations in the Mukondo quarry in and the dumping of acids throughout the area called *le désert*.

Boss Mining and its Director of Human Resources and Social Affairs hired an agronomist to assess the damage of mining operations on local agricultural land. He performed a series of tests and probes in the area in the presence of a company representative as well as the owners of the fields.

3.3.2 TYPES OF COMPENSATION

Compensation consisted of reimbursements paid in the local currency by an agricultural scientist who sent proof of payment to both the company and local government officials in Kakanda. Larger reimbursements were made in weekly or monthly instalments.

3.3.3 BENEFICIARIES OF COMPENSATION

There were 24 farmers with fields located near the Mukondo quarry who received compensation from Boss Mining. The farmers received their reimbursements that ranged from between 77,500 to 1,506,460 DRC francs (€58 to €1,118) on January 19, 2010. Meanwhile, there were four other disputed cases that were eventually resolved.³⁹

³⁸ Letter N. Ref ETKAB/LUB/AK/062/2011, "Kabinda Study" (2011), Boss Mining's Legal and Consultancy Firm, Sept 2

³⁹ Interview with an inhabitant of Kakanda on July 24, 2010.

Community members noted that two farmers were never compensated⁴⁰ because they appeared after the claim period had ended, and it was apparently too difficult to prove their fields had actually existed because mining operations had effectively eliminated their properties.

Meanwhile, 53 farmers from the *le désert* area received compensation in amounts ranging from 40,000 DRC francs (€30) to 5,600,000 DRC francs (€4,156).

However, it should be noted that all of the farmers who received compensation were required to sign a MoU pledging that they would never cultivate their land again and, if they did so anyway, they would be duly prosecuted.

Some of the local farmers were satisfied with their compensation packages, while others were not because they considered their fields to be more valuable than the compensation received.

3.4. SOCIAL AND ECONOMICAL IMPACT ON THE LOCAL COMMUNITIES

3.4.1 ACCESS TO DRINKING WATER

Village of Mitoni Mbili (Kikaka)

The release of by-products from the mining operations into local waterways has led to the pollution of both the Kibembe and Luita Rivers. The company responded by drilling two wells to provide clean drinking water. However, one well does not function at all, while the other provides water that is unfit for human consumption.

Results of this analysis were never made public to those most affected by the mining operations. They are generally considered to be an open secret, however.

“Company officials analyzed the water and warned us not to use it,” one resident said.

”The well water is not good and causes many diseases,” another resident said⁴¹.

To address the drinking water issue, company officials took emergency action and installed two drinking water storage tanks. However, during a second inspection, ACIDH investigators discovered that the company had stopped providing water for at least six months. This meant that local residents had to resort to using water from the area’s polluted rivers and wells.

Kamimbi

The inhabitants of Kamimbi do not have access to drinking water and the company has never provided either a bore well or a water pipe system. Local villagers are thus forced to use water from the Dikulwe River for drinking water.

Kakanda

The inhabitants of Kakanda and the surrounding area continue to use the water pumps supplied by Gecamines that had been installed before Boss Mining’s arrival. Boss Mining did provide one new pump

⁴⁰ In this regard, the company says in their letter N. Ref ETKAB/LUB/AK/062/2011 from “Kabinda Study” (2011), Boss Mining’s Legal and Consultancy Firm, Sept 2, that all these compensations were made faithfully and equally; the proof of this is that to date there are no disputes about this.

⁴¹ In this regard, the company answers as follows: “people continued to believe that water was not proper. In order to prevent psychosis among the villagers in Kikaka, Boss Mining set up two tanks for storing drinking water. So the supply is regular”.

to increase the local drinking water supply, but it still fails to meet the basic needs of the local community. Which means that Kakanda's residents are forced to haul water over great distances.

3.4.2 ACCESS TO ELECTRICITY

The Village of Mitoni Mbili (Kikaka) and Kamimbi

Neither of these villages has access to a reliable source of electricity.

Kakanda

Boss Mining continues to recycle and reuse infrastructure left behind by Gecamines, so one would expect that it would also ensure a reliable source of electricity for the part of town where its operations are located. It did install a new transformer in one of the city's neighbourhoods where some residents apparently are trying to profit of this by charging their neighbours exorbitant fees for the electricity. Meanwhile, other parts of the same neighbourhood have no access to electricity.

3.4.3 ACCESS TO EDUCATION

Boss Mining built a two-classroom schoolhouse in Mitoni Mbili, where first and second grade students attend classes in the morning and third and fourth grade students attend in the afternoon. Meanwhile, fifth and sixth grade students are forced to commute to Kakanda to go to school. This school opened its doors on 20 October 2009 and currently has an enrolment of 232 students.

The company pays the four teachers and one headmaster a monthly salary of US\$150 (€106)⁴². Tuition fees are 1500 DRC francs (€1.11) per quarter.⁴³ However, there are still over 200 children here who do not attend school because they cannot afford it.

Villagers are generally positive about the fact that a school was built here and generally accept the tuition fees. However, many of them believe that the company should also build a school to accommodate the large number of students of high school age.

Boss Mining also constructed a school called the Maranatha Centre, which provides free education for the children of its employees. The tuition fees for non-employee children is \$30 (€21) annually, or \$10 (€7) per trimester.

3.4.4 ACCESS TO HEALTHCARE

The company established a healthcare facility in Mitoni Mbili, which serves as a clinic where nurses hypothetically come once a week to see patients free of charge.

However, according to one villager, "This clinic is not equipped with any medicines for any disease, while doctors give us nothing more than a few aspirin⁴⁴."



When investigators visited this clinic, there had not been a nurse in attendance for over a month.⁴⁵ The nurses claimed they had no transportation to take them to the clinic. Furthermore, Boss Mining has failed

⁴² The company confirms that it supports six teachers and a director. The lowest salary is \$ 240 and not \$ 150 according to the company.

⁴³ Interview with a primary school teacher in Kikaka on May 27, 2010.

⁴⁴ In this regard, the company says that for first aid, residents are consulted locally in Kikaka where a well-equipped clinic is open

⁴⁵ An observation made by one of the interviewers on July 23, 2010

to provide any other healthcare infrastructure to deal with the effects of pollution caused by their mining operations.

3.4.5 ACCESS TO EMPLOYMENT

Boss Mining Ltd. employs people from all parts of the country. However, when it comes to hiring locals, the quota remains low. In Mitoni Mbili, Boss Mining requested a list of 20 eligible workers from the village chief, but they hired less than 10 from this list and none of them were women because the company does not hire women.

3.4.6 OTHER INFRASTRUCTURE

Boss Mining ensures that there is a certain continuity of the infrastructure left behind by Gecamines. Boss Mining did some renovation work including repainting the walls in the General Reference Hospital Kakanda and the offices of the government's local official.

The road between Kakanda, Mukondo and Luita over which Boss Mining's trucks transports its minerals, was also rebuilt.

3.5. IMPACT OF MINING ON THE ENVIRONMENT

In Kakanda and the surrounding area, environmental protection has become a sore subject. Despite its environmentally friendly claims, Boss Mining is far from meeting its industry obligations. In 2005, Boss Mining dumped acidified waters into the Luita and Kibembe Rivers, which flow into the Nguba River. This dumping not only polluted the rivers causing numerous outbreaks of disease among the local population, but it also killed the fish in these rivers. As a reaction, Boss Mining constructed a dam that was meant to prevent the discharge of acidified water into the Kibembe River. But, it was soon discovered that this dam does not prevent the seepage of acid into the rivers, because the acidified water seeps into the dam's gravel and then seeps into the Kibembe River via a small stream called the Kisona.⁴⁶

The pollution of the Kibembe River by Boss Mining Ltd. will likely continue to have an adverse impact on Kikaka's inhabitants for some time to come. Unfortunately, Boss Mining's operations are based at the source of the Kibembe River and the people have no choice but to continue to use Kibembe River's water.

A former employee revealed anonymously that "It is often during the rainy season that the pool of acid overflows and ends up spilling into Kibembe River."

Kakanda's residents often complain about the disappearance of one of their main food sources, the fish, due to the release of high levels of pollution. "All of the fish have disappeared because of the acid that the company pours into the Kibembe and Luita Rivers," one villager in Kikaka observed.⁴⁷

Moreover, all of the vegetation in the area surrounding the factory has been destroyed by the release of acidified water into the immediate surroundings, which constituted a clear violation of the DRC's constitution⁴⁸ if one takes the gravity of its negative effects into consideration.

3.6. SUMMARY

1. Did the company consult the communities in a free, prior and informed way?

⁴⁶ An observation about the dike made by investigators on July 24, 2010.

⁴⁷ Interview with a Kikaka villager on July 24, 2010

⁴⁸ Article 55 of the DRC Constitution, February 18, 2006

- According to the evidence gathered on site, Boss Mining has never organised any consultations with the neighbouring communities, which contradicts Article 69 of the DRC's Mining Code and Article 451 of the Mining Regulations, which respectively provide that "The applicant establishes his/her application for an operating License and introduces it to the Mining Registry in accordance with Articles 35 and 37 of this Code." The application must be submitted with the following documents:
 - a) a copy of a valid Research Certificate;
 - b) a research report that details outcomes regarding the nature, quality, volume, and location of the identified mineral resource;
 - c) a feasibility study for the exploitation of the mineral deposits;
 - d) a technical plan that details development , construction and operation efforts of the mine;
 - e) EIA and ESMP for the project
 - f) a report regarding consultations organised with local administrative bodies and local community representatives of

Violation of any of these key provisions of the Mining Code or the Mining Regulations would clearly reveal that the "prior free and informed consultation," principle had not respected by Boss Mining.

2. What were the effects of mining activities on the local community and what actions has the company taken to mitigate these effects?
 - The study reveals that mining has caused a variety of adverse effects on the environment due to the discharge of acidified water into the Luita and Kibembe Rivers. This pollution has caused numerous diseases among the area's communities. Boss Mining responded by building a dam that was meant to prevent acidified waters from entering the rivers. However, this method proved less than adequate and so the rivers continue to be polluted by run off produced by the mine.
3. Did the company compensate the communities for the loss of land?
 - The company actually damaged the fields of many of the local residents who only received compensation outlays ranging from €30 to € 4,156 after having filed numerous complaints.
4. Have conflicts arisen between the various local communities and Boss Mining?
 - The affected communities in this case have not openly protested Boss Mining's presence or its activities and they have not sought any other types of confrontations.
5. Has the company performed any environmental and social impact assessments?
 - The only assessment Boss Mining undertook was a water quality analysis. However, it never made the results of this analysis public. The company did notify the community that the water was not fit for consumption.
6. What types of social programs has the company introduced?
 - Boss Mining does provide schooling for local children. However, it fails to deliver other essential services such as water and electricity to the local community.

4. CHEMICALS OF AFRICA (CHEMAF LTD.)

4.1. GENERAL INFORMATION⁵⁰

Chemicals of Africa (Chemaf Ltd.) is a subsidiary of Shalina Resources Ltd., a private company that has been active in the Democratic Republic of Congo (DRC) for nearly 30 years. Its headquarters are in Lubumbashi. This particular subsidiary was created in 2001 to produce copper and cobalt and currently employs approximately 2,500 workers, including 2,000 Congolese, according to one official in charge of production. A pilot plant that produces copper and cobalt carbonate was built between the Kabestha region and the SNCC's Camp Tshamilemba in Lubumbashi. Moreover, the company also exploits the "Mine de l'Etoile" located some 16 km outside of Lubumbashi. The Washeni live within the boundaries of this particular concession. Chemaf Ltd. acquired the rights to the "Mine de l'Etoile" (license number: 577) from Gecamines on 29 November 2003.

A metallurgical engineer said that Chemaf initially produced some 200 tons of cobalt carbonate and 600 tons of copper carbonate daily. The table below shows the annual copper and cobalt production figures that Chemaf posted on its Web site, which have increased significantly since then.

	2005	2006	2007	2008
Cu Carbonate	666	5,025	5,344	N/A
Cu Cathode			1,063	11,353
Co Carbonate	424	2,044	2,599	2,402

4.2. ESTABLISHMENT OF CHEMAF AND ITS ACTIVITIES

4.2.1 VILLAGE OF WASHENI

Before the arrival of Chemaf, the people in Washeni earned their livelihood from farming, mainly growing corn, cassava and sweet potatoes, and producing charcoal, local beverages and breeding small animals.

In 2003, Chemaf acquired the "Mine de l'Etoile" near the villages of Kebumba and Washeni, which meant the inhabitants were forced to move.

It should be noted that Washeni, located in the rural area surrounding Lubumbashi ("La commune Annexe") has a population of some 317 people of which only five families remain. They remain in defiance of Chemaf and continue to demand fair compensation for their land. Meanwhile, the rest of the people were forced to leave and received very little compensation for their land.

4.2.2 THE KABETSHA AREA AND THE TSHAMILEMBA CAMP

Chemaf also established factories in a residential area⁵⁵ located between Kabetsha and the Tshamilemba Camp in Lubumbashi. There was no relocation plan for this area and so the residents have been regularly exposed to the adverse environmental effects of the mining operation.

4.3. CONSULTING THE LOCAL COMMUNITIES

Residents of Washeni, Kabetsha and Camp Tshamilemba told investigators that they had never been consulted by Chemaf officials regarding the mining operations.

⁵⁰ <http://www.chemaf.com/>, (accessed November 29, 2011)

⁵⁵ The company reacts as follows: "We remind you that CHEMAF was not established in an open residential area, but in the industrial area.

There was no disclosure document for any consultation on file, and there were no documented discussions between the affected communities and Chemaf officials.

The people of Kabetsha and Tshamilemba pointed out that sustainable solutions could have been worked out had Chemaf bothered to organise regular consultations to identify the relevant issues related to the social and environmental impacts on the area and its people.

On 13 April 2010, the chief of Washeni told investigators that “the people were never consulted by anyone but they were surprised when Chemaf officials asked them to come up with prices for their homes and fields because the company wanted to buy this or that plot.”⁵⁶

Another resident condemned Chemaf’s attitude regarding a village that had existed here since 1830, and noted that Chemaf did not take ancestral traditions of the village and the land into consideration and insensitively forced the villagers to leave.

The people in Kabetsha and Camp Tshamilemba noted that prior to the construction of these plants in their neighbourhoods, they heard that Mr. Shiraz Virji, President-founder of Chemaf and Director of SHALINA Group, had been planning to build a pharmaceutical manufacturing plant on the site. So, of course, they were very surprised to find out that a mining plant was to be constructed there instead.⁵⁷

A resident who spoke to investigators anonymously confirmed this commenting that “It’s the lie of the company and the responsibility of the Congolese authorities ... At first we were informed that the company was going to build a pharmaceutical manufacturing plant ... Unfortunately, after acquiring the plot, the company changed its mind and built a mining plant instead.”

None of the residents gave any indication that they had ever been consulted by the company’s officials⁵⁸. This has led to increased tension between people and Chemaf, and this has since escalated into a real conflict.

One example of this tension occurred on 12 November 2009 in Washeni, after Chemaf suddenly set up checkpoints around the ancestral village. Chemaf argued that it had already legally purchased the plot, while the villagers accused Chemaf of treating them as hostages.

One Chemaf official appeared on a local radio station to confirm the existence of this checkpoint, claiming that this would allow their security officers to identify anyone entering and leaving their dealerships.

Access to this village remains strictly controlled by Chemaf’s security officers, despite the criticism and protests of the villagers.

4.4. COMPENSATION FOR THE LOSS OF ARABLE LAND

Chemaf has clearly taken advantage of the ignorance of the villagers when, together with Washeni’s chief and municipal authorities, it set up its compensation process for the homes and fields the villagers were about to lose.

⁵⁶ Interview with Manda Muyambo Ernest, the chief of Washeni, on April 13, 2010.

⁵⁷ Interview with residents from these neighbourhoods, June 27, 2010.

⁵⁸ About the consultation, here is the company’s reaction: “Sir, concerning this case we want to let you know that there are authorities above us, so they can enlighten your opinion on this”. The company mentions that everything has taken place with the authorization of the government.

During the initial negotiations in 2009 between Chemaf and the government official in charge of the “*Commune Annexe*” (the immediate perimeter of Lubumbashi) on one side, and a committee of villagers on the other side, it was agreed that an empty plot would be purchased at US\$1200 (€846), but no prices were agreed upon for individual homes or fields.

In August 2009, residents were unpleasantly surprised when the company purchased an empty lot for a mere US\$400 (€282) and a mere US\$300 (€211) for an entire field. The agronomic inspector in charge of the sales received a 20% fee of the total purchase price for each home or field sold.⁵⁹

Several residents severely criticised the compensation scheme, which they considered ridiculously low since it never seriously considered actual value of the homes, the vacant plots or the fields into account, never mind the cost of living.

A total of 215 individuals received compensation for their fields, their vacant lots or their uninhabited properties. Moreover, it should also be noted that 30 houses were destroyed by the police at the behest of Chemaf on the grounds that this concession had already been legally purchased by the company. Chemaf’s chairman was pressured into compensating these 30 homeowners with amounts ranging from \$710 (€500) to \$1310 (€923).⁶⁰

4.5. SOCIAL AND ECONOMIC IMPACT OF MINING ON THE LOCAL COMMUNITIES

The villagers of Washeni, Kabetsha and Tshamilemba are convinced that Chemaf has no significant impact on the socio-economic development of the affected communities⁶¹. The only residents to have benefitted from Chemaf’s policies were the people of Camp Tshamilemba who received a water pump, which at the time of the interviews was, however, no longer operational. Chemaf also provided the villagers with a healthcare facility, but it had been vandalised by camp youths who were angry that Chemaf was trying to purchase their land out from under them.

A local resident in Kabetsha complained that “The company has created no social programs in our neighbourhood; we have no schools, no hospitals, and no power supply, despite all of the complaints we’ve registered.”⁶²

4.6. IMPACT OF MINING ON THE ENVIRONMENT

Although Chemaf’s Web site provides information about how it has attempted to minimise its environmental footprint through effective planning, Kabetsha Area and Camp Tshamilemba residents continue to be faced with the negative environmental impacts of Chemaf’s mining operations. The residents who have been the most adversely affected have accuse Chemaf of polluting the air with emissions from its factory chimneys. As one Kabetsha resident observed: “The smoke often comes at night, so we are forced to take refuge in our houses.”⁶³

Another resident added: “The smoke often dries our plants; the leaves fall off our trees and the smoke has made some people sick, especially among the children and the elderly.”

⁵⁹ Interview with Manda Muyambo Ernest, June 25, 2010.

⁶⁰ Ibid.

⁶¹ In this regard, the company mentions their contributions such as medical care, contribution in schools, drinking water supply, building schools, health center, churches

⁶² Interview with a resident of Kabetsha on April 16, 2010

⁶³ Interview with a resident of Kabetsha, Mr. Kyungu, on April 16, 2010.

Meanwhile, Camp Tshamilemba residents have accused Chemaf of polluting their camp. They are convinced that the colour of the water in the wells has changed, while trees and grasses dry out and chimney smoke continues to pollute the air⁶⁴ and has made it difficult to breathe properly in their camp.

They also complained about ore concentrates that fell off the open dump trucks and, when it dried in the sun, created tremendous clouds of dust that led to numerous health complaints.



Moreover, the residents were never properly informed about Chemaf's Environmental Impact Assessment Plan and the Environmental Management Plan for this particular mining venture.

4.7. SUMMARY

1. Did the company consult the communities in a free, prior and informed way?
 - Chemaf did not consult the affected local population. In effect, it disregarded the “free, prior, and informed consultation” principle.
2. What were the effects of mining operations on the local community and what actions has the company taken to mitigate these effects?
 - The study found some evidence of negative impacts on the local communities as a result of mining operations including the release of toxic emissions and the discharge of effluent into a channel near Camp Tshamilemba. No actions have thus far been taken to mitigate these effects.
3. Did the company compensate the communities for their loss of land?
 - Chemaf offered compensation packages ranging in amounts from US\$300 (€211) to US\$1310 (€923) per household. The levels of compensation that Chemaf offered were considered inequitable and significantly less than Chemaf had announced earlier.
4. Have conflicts arisen between the various local communities and Chemaf?
 - The threat of conflict is mainly due to the fact that there is no framework for dialogue and no resolution process for the pollution of the local environment. A conflict arose in 2009 after checkpoints were built effectively encircling an entire ancestral village.
5. Has Chemaf performed any environmental and social impact assessments?
 - No environmental and social impact assessments have thus far been performed.
6. What types of social programs has the company introduced?
 - It is difficult for the local communities to assess the situation regarding social programs since Chemaf has yet to arrange a consultation that could help the affected communities learn more about Chemaf's development plans.

⁶⁴ CHEMAF said that pollution is a matter for scientists. To see this, technical explanations are requested from specialists in this area. So it is not good to get laymen to talk about pollution indiscriminately.

5. RUASHI MINING LTD.

5.1. GENERAL INFORMATION

Ruashi Mining Ltd, a subsidiary of Metorex Group, is a mining company that operates under DRC law. It is listed as number 8711 in the New Trade Register. Its headquarters and operation facilities are located in the periphery of the Ruashi community, about ten km from Lubumbashi.

Gecamines and Cobalt Metals Company Ltd (CMC) signed a contract establishing Ruashi Mining Ltd. on 9 June 2000 for the extraction, treatment and transportation of minerals, in accordance with the feasibility study that establishes exploitation conditions. This contract runs until the site has been completely exploited, but it can also be terminated on mutual agreement.⁶⁶

The Ruashi area has sizeable copper, cobalt and other valuable mineral deposits located in the “Pompage Mine”.

In 2009, Ruashi Mining produced 21,372 tons of copper and 2,186 tons of cobalt.⁶⁷

5.2. CONSULTING THE LOCAL COMMUNITIES

The Ruashi community, where Ruashi Mining is located, is spread out over a large area, necessitating investigators targeting Luano and Kawama, two smaller areas within the community and within close proximity to Ruashi Mining’s facilities.

Luano used to be a village before it was incorporated into Kalukuluku. In December 1995, it became part of the Ruashi district,⁶⁸ one of the seven Lubumbashi’s districts.

Its population was approximately 10,900 inhabitants in 2009 according to information provided by a district officer.⁶⁹ Most of them are employed in the agricultural sector.

Kawama, with its 42,830 inhabitants,⁷⁰ is also located in the Ruashi district.

The inhabitants in Luano and Kawama have never been consulted by Ruashi Mining either before or after the company was installed⁷¹. There is still no framework for the organisation of consultations where local residents would be able to voice their concerns and criticism. Moreover, Ruashi Mining has never informed local residents about their rights and the environmental impact of the mining project. One inhabitant told investigators that “The establishment of this company was a surprise for us since no company official ever informed us about the mining operations that were going to take place right in our own neighbourhood.”

5.3. COMPENSATION FOR THE LOSS OF ARABLE LAND

Section 281 of the Mining Code stipulates that mining companies must compensate local communities for land confiscated for mining operations. Section 281 does not, however, ensure fair compensation for the affected communities. It only covers the value of the land and home, but does not take into account other

⁶⁶ “Report on work” (2007), Mining Contracts Review, November, p. 149.

⁶⁷ <http://www.gecamines.cd/production.php> (accessed July 20, 2010)

⁶⁸ Interview with Luano’s former chief officer on 25 June 2010.

⁶⁹ Ibid.

⁷⁰ Interview with the chief of the Kawama area in June 2010.

⁷¹ The company maintains that it used SRK, a private company, which actually consulted the local communities

factors such as restitution for lost property or living costs during the interim period before actual relocation.

After the establishment of Ruashi Mining, the company offered compensation to several residents for land confiscated by the company, while others were never compensated for the loss of their fields.

Interviews with the residents reveal that the compensation scheme was largely insufficient; the local residents could not purchase new fields, which were essential to their mainly agricultural livelihood.⁷²

5.4. SOCIAL AND ECONOMIC IMPACT ON THE LOCAL COMMUNITIES

5.4.1 ACCESS TO DRINKING WATER

Despite the establishment of Ruashi Mining near their village, the community continues to use water from Luano River, which has been polluted by the company as well as water from the wells for domestic use.

Since the creation of Ruashi Mining, there has been no drinking water in areas adjacent to the mining company.

Ruashi Mining did manage to drill two standpipes to compensate for the general lack of clean drinking water. However, one of the standpipes is no longer functional. There are five areas within the Luano region but only at one area standpipes were ever drilled. Ruashi Mining clearly did not arrange for sufficient access to clean water in the communities near the mining facilities.

As one resident observed, “The fountain is very far from our area, so we simply use water from the wells.”

Meanwhile, Ruashi Mining drilled four wells in Kawama, two of which are no longer functioning. Furthermore the quality of the water from these wells is not very good, which means that local residents have to daily haul drinking water from a source several kilometers away.

Moreover, Ruashi Mining also restored Ruashi’s large water tank in an effort to resolve the area’s drinking water issues, unfortunately the tank has been inoperable for some time now.

5.4.2 ACCESS TO ELECTRICITY

Local residents in Luano currently have no electricity supply for their homes. Meanwhile, Kawama inhabitants managed to benefit to some degree from a transformer that Ruashi Mining installed in 2007. Moreover, during the period of 15 to 21 August, 2010, 5 new transformers were delivered to the Ruashi area.

After the Ruashi Mining officials and the ACIDH members met and discussed the issue on August 29, 2011 in Lubumbashi, the company provided some areas in Ruashi with a few transformers, including the Kawama area on September 16, 2011. Nevertheless, the Luano area has still no power supply.

5.4.3 ACCESS TO HEALTHCARE

Ruashi Mining has to date not built any healthcare facilities for the affected communities. Thus, residents are forced to travel significant distances to be treated at their own expense, even for health complications related to its mining operations.

⁷² Interview with several Luano residents on April 13, 2010.

5.4.4 ACCESS TO EMPLOYMENT

Inhabitants also noticed that Ruashi Mining does not employ many local residents for work in the mines, not even for the most menial of jobs. It seems to prefer to hire people from outside the region.

“We expected the company to hire young people across this district, but they hire people from elsewhere,” one local resident lamented.⁷³

From the above, the company violates the OECD Guidelines, which require companies to employ local labor and provide training to improve skill levels⁷⁴.

5.4.5 OTHER INFRASTRUCTURE

No infrastructure has been built but an office near the head of district.

5.5. IMPACT OF MINING ON THE ENVIRONMENT

In September 2009, members of the Group for Support of Malnourished Women (GAFEM) accused Ruashi Mining of polluting⁷⁵ the water supply⁷⁶ that they use for irrigating their farmlands.⁷⁷ Ruashi Mining apparently released industrial waste into the water supply several times in September 2009 alone, which caused substantial damage to local farmland belonging to organisation members. Ruashi Mining has yet to compensate the victims for the loss of their crops.⁷⁸

In a press release dated 21 October 2009, Action Against Impunity for Human Rights (ACIDH) reported the spill and called on the Environment minister to form an independent commission to investigate the matter. Thus, on 3 November 2009, ACIDH accompanied the DRC’s Environment Ministry investigation commission, which came from Kinshasa and were accompanied by provincial officials in charge of the environment. Unfortunately the commission has never released the results of the investigation.

Agents in the custody of the company prohibit the communities and passersby to use that water.

However, victims were never compensated for the loss of their fields of vegetables damaged by acid discharged by the company as of September 18, 2009.⁷⁹

Ruashi Mining reacted to criticism of the spills by building a pool some yards from the mining facilities to store the acidified water. Ruashi Mining also declared a prohibition on the use of this water.

5.6. LOCAL COMMUNITY KNOWLEDGE OF LEGAL DOCUMENTS

Most of the area’s residents are insufficiently aware of their rights and do not know where they can claim compensation when their crops are destroyed, they lose parcels of land and/or their drinking water is polluted. All 27 residents who were interviewed by investigators were basically unaware of their consultation rights prior to a mining company establishing itself in a region and their right to be compensated for land confiscated by the company.

⁷³ Interview with an inhabitant in Luano on April 13, 2010.

⁷⁴ ACIDH & RAID (2007): Understanding the OECD Guidelines for Multinational Enterprises and the Principles of Transparency Initiative in Extractive Industries, Lubumbashi, August, p.9.

⁷⁵ In response to this, the company maintains that it never polluted any rivers.

⁷⁶ Acids were poured out on September 18, 2009

⁷⁷ Press release No.ACIDH/02/10/2009.

⁷⁸ Phone conversation with the ONGD GAFEM chairman on July 30, 2010

⁷⁹ Phone conversation with the ONGD GAFEM chairman on July 30, 2010

5.7. SUMMARY

Did the company consult the communities in a free, prior and informed way?

- According to people in the affected communities, no public consultations were ever held. Ruashi Mining claims that it did indeed consult the communities in a free, prior and informed way, but the residents reject this claim.

What were the effects of mining on the local community and what actions has the company taken to mitigate these effects?

- In September 2009, Ruashi Mining allowed acidified water to run off into Luano area marshlands where numerous residents farm their plots, which severely damage their harvests. To date, these spills continue to have a negative impact on production because the land has grown increasingly barren and untellable. To remedy this situation, Ruashi Mining built a pool near its facilities where acidified waters are stored. But polluted water continues to seep into the marshlands.

Did Ruashi Mining compensate the communities for the loss of arable land?

- It compensated some of the farmers for the land they farmed near the mine facilities. But these people were not documented or interviewed during the course of this research. According to the former Luano chief, the level of compensation was insufficient.

Have conflicts arisen between the various local communities and Ruashi Mining?

- Thus far, there have been no reported conflicts between Ruashi Mining and local communities.

Has the company performed any environmental and social impact assessments?

- No environmental and social assessments have ever been carried out here, according to the interviewed residents. Ruashi Mining's representatives seldom visit Luano. When they do visit, the reasons are never clear to the local residents. Some believe that Ruashi mining is considering relocating some of Luano's residents.

What types of social programs has the company introduced?

- The communities in the Luano and Kawama areas are unaware of any social programs that Ruashi mining has instituted. Residents in Kawama have, however, benefited from the electricity that Ruashi mining now provides

6. SOUTH KATANGA MINING COMPANY LTD. (CMSK)

6.1. GENERAL INFORMATION

The South Katanga Mining Company (CMSK) is a limited company (Ltd.) that was founded on 18 May 2004. It is a legal entity with and has current assets of US\$26,274,455 (€18.5M).⁸⁰ The partnership consists of Gecamines, the former Union Minière du Haut-Katanga (UMHK), and the Malta Forrest General Company (EGMF). The value of Gecamines the mining rights it possesses at the Luiswishi (open pit mine) and Luisha sites plus several metallurgical plants in Kipushi. EGMF brings its new Luiswishi concentrator and its various peripherals to the partnership.

Partnership shares are divided as follows: EGMF owns 60 shares or 60% and Gecamines owns 40 shares or 40% of the company.⁸¹ In 2009, CMSK produced 1,512 tons of copper and 437 tons of cobalt.⁸² Annual production capacity is approximately 4,500 tons of cobalt and 12,000 tons of copper.⁸³

6.1.1 HISTORY OF THE SITE

In 1913, uranium was discovered in Luiswishi while the Union Minière du Haut Katanga (UMHK) was exploring the area for copper. Copper mining was eventually halted in 1957 when copper production dried up. In 1998, DRC's new President handed the site over to EGMF, which they exploited until December 2002 in partnership with Gecamines. EGMF resumed operations in April 2003 and transferred the quarry to CMSK, which has owned it since 2004.⁸⁴

6.1.2 LOCATION

The Luiswishi quarry is located 20km northwest of Lubumbashi in the village of Kawama, which has a population of about 2,543 inhabitants.⁸⁵ The quarry is about 1300 m long, 400 m wide and 100 m deep.

6.2. CONSULTING THE LOCAL COMMUNITIES



The inhabitants of Kawama have never been consulted – before, during or after the company began operations there – about CMSK's mining plans for the area. The people stood by as trucks and machinery came and went without any of them having been informed of their purpose. Thirty of Kawama's residents who were interviewed individually and in groups all mentioned that CMSK had never consulted them and this led to an increase in animosity between the people of Kawama and CMSK.

Kawama's inhabitants protested against CMSK on a number of occasions. When the police intervened it led to injuries and even several deaths. A case in point occurred during the last protest on 24 November 2009, when the police came to search the homes of the villagers. They were looking for minerals that had reportedly been stolen by artisanal miners in the CMSK concession. The situation quickly escalated when villagers refused to allow the police into their homes, which resulted in extensive property damage

⁸⁰ Response by George Forrest International Africa Group to report: Global Witness (2006), "A deep corruption: Fraud, abuse and exploitation in the copper and cobalt mines in Katanga," on November 3, 2006

⁸¹ "Case Study of the South-Katanga Mining Company (CMSK)," CEPAS, 2009.

⁸² <http://www.gecamines.cd/production.php> (accessed July 20, 2010)

⁸³ <http://www.forrestgroup.com/fr/chap06/infos42.html> (accessed July 20, 2010)

⁸⁴ "Rapport de mission sur le prélèvement des échantillons pour analyse et mesure de la radioactivité à la carrière de Luiswishi", May 2007, p. 2.

⁸⁵ Interview with Kawama's mayor on September 1, 2010

including a torched truck and a ransacked CMSK bus. The provincial government through the Ministry of Interior, upon the instigation of CMSK officials,⁸⁶ responded by sending in military troops and police reinforcements to quell the miners' protest, firing warning volleys into the air and sending in a demolition brigade with the mission of demolishing all the homes owned by the so-called illegal artisanal miners.⁸⁷ They also razed more than 500 homes⁸⁸ that belonged to families who had no direct connections to any mining activities and who had lived here since 1958.⁸⁹

6.3. COMPENSATION FOR THE LOSS OF ARABLE LAND

Mining operations in the Luiswishi quarry led to the destruction of numerous hectares of fields belonging to certain local farmers who addressed this issue in several letters they sent to CMSK officials. They responded by requesting that the State's agronomist assess the damage to the farmland in question. The agronomist reported that the affected land was comprised of some 22 hectares of farmland.⁹⁰

In October 2008, in the presence of Kawama's chief, the DRC national police commander and a representative of the farmers, the non-profit organisation Mulumba Lukoji oversaw a CMSK compensation plan that saw payments going to some 73 farmers ranging from US\$44.4 (€31) and US\$70 (€49), based on the size of the fields.⁹¹

The amount of compensation paid out at this session was estimated to be about one-third of the total amount. It was agreed that the remaining sum would be paid out within a reasonable period of time. Unfortunately, however, the company has yet to pay out the remaining sum, which is of real concern to the involved farmers.

The total amount of compensation established by CMSK fails to comply with both section 281 of the Mining Code and established best practices, which stipulate that all of the relevant factors should be considered when calculating the amount of compensation.

The victims whose homes were destroyed in November 2009 have also not received (fair) compensation for their homes. The affected artisanal miners received a mere US\$300 (€211) as compensation for their removal from CMSK land. Meanwhile, the owners of the more than 500 homes destroyed in November 2009 had still not been compensated by the end of 2010. One of these victims told the investigators that "There have been several attempts to meet with company officials via the local government official. Nevertheless, the company has still not compensated anyone for the destroyed homes not belonging to miners but to peaceful villagers whose only livelihood is agriculture."

On 21 September 2010, the victims organised a meeting to once again demand compensation for the damage done.

6.4. SOCIAL AND ECONOMIC IMPACT ON THE LOCAL COMMUNITIES

Many of Kawama's residents emphasised the fact that they have seen no positive developments regarding social and economic issues as a result of the company's arrival. Their main water supply is not a reliable source of clean, drinkable because it comes from contaminated wells. There are no schools to speak of in

⁸⁶ In a local television interview, a CMSK official stated that the presence of the illegal miners had escalated the general level of insecurity at the site, which necessitated their being banished from the site. This account was confirmed by a police source; "It was an operation that entailed removing the illegal miners from the mining quarry in the Malta Forrest group"

⁸⁷ It should be noted that the vast majority of the miners accused of improprieties did not even live in Kawama. Most of the miners came from other districts in Lubumbashi

⁸⁸ Two of the most affected areas were Sampasa and Bikuano.

⁸⁹ ACIDH press release, November 30, 2009

⁹⁰ Interview with the farmers' representative on June 28, 2010

⁹¹ Evidence collected from the villagers of Kawama on June 28, 2010

the village, which means that pupils must travel over 3 km outside the village to attend a school. Meanwhile, the local youth remains predominantly illiterate and are seldom offered jobs by CMSK.

Some of the accomplishments credited to CMSK include:

1. Healthcare:
 - Constructed five bathrooms in the maternity ward at the Ubumi Clinic;
 - Provided the healthcare clinic with medicine, an incubator, a birthing bed, 20 bed sheets and blankets, a bath heater;
 - Painted the clinic's walls;
 - Provided a 30-kva generator.
2. Education:
 - Funded the restoration of the NEEMA School;
 - Built two additional classrooms at the NEEMA School.
3. Other achievements:
 - Drilled for water
 - Distributed fertilizer to a farmers association.

These achievements, however, have done little to improve the quality of life in the affected communities, especially Sampasa and Bikwano where residents are forced to travel long distances just to fetch water. However, they often end up using less-than-clean well water.

6.5. SUMMARY

1. Did the company consult the communities in a free, prior and informed way?
 - The local communities claim that they were never consulted before CMSK arrived to set up its operations here.
2. What were the effects of mining in the local community and what actions has the company taken to mitigate these effects?
 - The single most devastating effect of mining operations thus far has been is the company's sanctioning of the destruction of some 500 homes that belonged to local residents, arguing that this village was actually nothing more than an illegal miners' camp. The legal case is still pending.
3. Did the company compensate the communities for their loss of land?
 - Mining operations in the Luiswishi area damaged an estimated 22 hectares of arable land. However, after many claims, the company hired NPO Mulumba Lukoji to organise compensation for 73 farmers. The farmers remain convinced that the reimbursements were ridiculously low and have demanded more equitable compensation from CMSK. The same dilemma applies to compensation for homes that were destroyed as a result of mining operations. They were inadequate at best, and many have thus far received no compensation at all.
4. Have conflicts arisen between the communities and CMSK?
 - Peaceful marches demanding compensation have been regularly held ever since CMSK destroyed the homes of so many local residents. But there has yet to be any kind of positive response to their demands from CMSK.

5. Has the company performed any environmental and social impact assessments?
 - Several respondents pointed out that the company never notifies the villagers of to do with its operations in their villages. CMSK never provided documents or brochures to the affected local communities which, of course, also means that CMSK has never provided any environmental and social impact assessments.

6. What types of social programs has the company introduced?
 - The absence of any consultations, of course, hinders the ability of the local communities to remain cognizant of CMSK's social programs. The company did build a number of facilities as well as make some improvements in the areas of healthcare and education, but the communities remain convinced that CMSK's presence in their midst has not had a positive impact on areas of social and economic concern.

7. GENERAL CONCLUSION

The DRC's combination of a significant wealth of natural resources and the absence of effective law enforcement in this sector has created a unique dynamic of rapaciousness that we have tried to document throughout this study. We have shown how this directly contributes to widespread human rights violations, particularly in the area of the rights of local communities and even more specifically, those people directly affected by the mining activities of multinational companies.

This research report will allow readers to better understand how local communities participate in large-scale cobalt and copper mining projects that have a direct effect on their lives in relation to the principle of prior, free and informed consent.

Methodological considerations determined that we focus of our research project on five companies: Tenke Fungurume Mining, BOSS Mining, RUASHI Mining, South Katanga Mining Company, and Chemical of Africa were selected on the basis of the origins of their social capital and the specific stage of production each of them had reached.

7.1. FREE, PRIOR AND INFORMED CONSENT

ACIDH researchers analyzed countless documents and paid numerous visits to the aforementioned companies, enabling them to identify three significant approaches to company consultations: 1. some of the companies actually consulted the affected communities; 2. others attempted to organise consultations but these were ignored or rejected by the local communities; and 3. three of the companies did not even bother to attempt arranging consultations with the communities in question

In the first category, TFM was the only company to organise any kind of consultation process. The report did, however, note some significant irregularities and deficiencies in the consultation procedures. Consultation documents were never translated into the local language, which hindered the ability of local communities to actively participate in the consultation sessions (see section 451 of the DRC Mining Regulations). Not enough time was reserved for the analysis of the documents by community representatives. Furthermore, TFM did not offer any feedback options or sessions, which are crucial if the affected communities are going to be able to effectively present their concerns and demands regarding the company's proposals. Moreover, TFM did not offer any clear timetables detailing the implementation schedule of their proposals.

Ruashi Mining, Boss Mining, Chemaf fell into the second category; although they claim to have attempted to consult local communities, these communities repudiated their consultations. The third and final category includes CMSK.

7.2. IMPACT ON LOCAL COMMUNITIES

The study came up with three categories of negative impacts that the various mining projects had on local communities: The first category covers the relocation of local communities. This includes TFM, which, in order to build its plant, had to relocate hundreds of families. To accommodate the relocation process, TFM built 33 houses in Kiboko, 43 in Mwanga Muteba, 52 in Amoni, and 223 in Mpala I where the local villagers were resettled. But, a major problem was the fact that people were displaced before their new homes were built, meaning that many of the families spent up to two years outdoors or in tents awaiting the completion of their new lodgings.

Meanwhile, Chemaf relocated some 245 local villagers in Washeni, offering them compensation amounting to US\$400 (€282) per empty lot and a sums ranging from US\$710 (€500) to US\$1,310 (€923) per home. The affected villagers, however, claimed that the compensation amounts were inadequate to enable them to rebuild their homes at the new locations.

The second negative impact incurred by many of the local farmers was the fact that the mining companies ruined their farmlands. This was the case for all five of the investigated companies. It seems that all of the compensation schemes established by the companies were deficient: compensation was either inadequate and/or unfair although the companies claimed they had compensated the farmers at 150% of the value of the land as stipulated by DRC law. Some examples of injustices include:

- TFM paid US\$120 (€85) per hectare of land, and those farmers with more than 3 hectares of land have received amounts totalling US\$270 (€190) per farmer.
- Chemaf paid US\$300 (€211) for some of the affected fields, but refused to pay for other fields, claiming that the owners had already been compensated.
- In response to Boss Mining's despoliation of two sites, it paid 24 farmers at the Mukondo site sums ranging from 77,500 DRC francs (€58) to 1,506,460 DRC francs (€1,118), while they paid 53 farmers at the so-called "le desert" site sums ranging from 40,000 DRC francs (€30) to 5,600,000 DRC francs (€4,156).
- Ruashi Mining compensated a few local residents whom investigators never managed to track down because they had moved elsewhere. Luano's chief was convinced that there was very little compensation involved.

In practice, there are two compensation methods: the first method compensates solely per hectare of land; the second method also takes into account the value of the crops and the production costs. The second, more equitable, method also takes into account displacement costs and reimbursement for lost earnings. However, all five of the companies investigated for our study preferred the first method, which is considered unfair to the affected local communities.

7.3. ENVIRONMENTAL IMPACT

The third category concerns the polluting of the environment (rivers, air, farmland) by these companies, specifically Boss Mining, Chemaf and Ruashi Mining.

For example:

- In 2005, Boss Mining dumped acidified water into the environment in both Luita and Kibembe. This led to the dying out of several essential fish species as well as various aquatic plant species. In response, Boss Mining constructed a dike to prevent the acidified waters from flowing into rivers. However, this solution proved inadequate because the polluted water continued to seep into the area's rivers.
- Chemaf's plant pollutes the air with emissions from its factory chimneys late in the evening. These emissions fall on the local plants, drying them out and effectively killing them. The emissions also pose a health hazard for local residents who are forced to breathe the polluted air.
- In September 2009, Ruashi Mining's plants poured acidified water into the Luano area's marshlands where numerous farmers till their fields. This spillage severely damaged local agricultural harvests. These spills continue to have an impact on agricultural production in these communities because the farmlands have become barren.

7.4. CONFLICTS

Two conflicts have arisen between the mining companies and local communities. The first conflict involved TFM, which, after it completed construction, fired several local workers, which precipitated

violent demonstrations in the village. TFM also angered the artisanal miners, who were forbidden to mine in the region. A 13-year-old child died and damage was recorded, notably two trucks belonging to the company were burned.

The second conflict arose after CMSK destroyed 500 homes in the Kawama area on the pretext that the camp was inhabited by illegal miners. Thousands of victims, including many children, lost their homes and ended up homeless for a significant period of time.

7.5. SOCIAL DEVELOPMENT PROGRAMS

It is difficult for the local communities affected by the operations of these companies to gain any insight into their social development programs because the companies that did bother to consult the local villagers, did not provide adequate opportunities for the locals to provide feedback and thus their demands and reactions went unheard. Furthermore, the companies offered no clear timetables detailing the implementation of these social projects. Meanwhile, the investigated companies that offered no consultation procedure whatsoever have also not undertaken any social programs.

7.6. CONCLUDING REMARKS

This research project investigated five mining companies and offers clear examples of how mining operations affect local communities. It presents significant evidence that local communities are systematically being left out of the decision-making process about issues that have a significant impact on their livelihoods. The overall conclusion is that the principle of prior, free and informed consent is not being respected.

The investigated mining companies neither conform to DRC mining regulations nor international agreements, including the OECD Guidelines.

8. RECOMMENDATIONS

The following recommendations are not intended to be exhaustive and are merely meant to highlight some of the priorities that deal directly with the serious human rights violations incurred by the local communities in the province of Katanga.

8.1. TO THE DRC GOVERNMENT

Government inquiries should investigate the importance of amending the mining code and regulations to ensure respect and improved enforcement of existing mining legislation. It is essential for the Government to increase the capacities of institutions and personnel responsible for implementing the Mining Act. The government should also require that companies operate more transparently and comply with legislation that ensures the rights of affected communities.

8.2. TO THE INTERNATIONAL FINANCIAL INSTITUTIONS

International financial institutions should insist on financial provisions that will ensure that mining companies respect the human rights of local communities, support civil society's efforts in monitoring the practices of mining companies, and require partners in joint mining operations to solemnly respect basic human rights and their corporate social responsibilities.

8.3. TO THE INDUSTRIES THAT PURCHASE DRC COPPER AND COBALT

These industries should demand full transparency of their suppliers in order to discourage illegal mining activities or a history of human rights violations in general and of the local communities in particular.

8.4. TO THE MINING COMPANIES

Mining companies should ensure a greater degree of respect for the Constitution of the DRC especially regarding fundamental human rights as well as DRC legislation that covers mining and labour issues. These companies must ensure that local communities have been adequately consulted about their operations and that these communities have had the proper opportunity to give their free, prior and informed consent to any mining activity in and near their villages.

8.5. TO CIVIL SOCIETY REPRESENTATIVES

DRC civil society should exert pressure on its government to ensure respect for the laws and regulations that govern the mining sector. It is important for civil society to bring existing mining laws and applicable international laws to the attention of the general public to promote and protect human rights in local communities, among extractive companies and political authorities.

We further recommend that civil society conduct periodic surveys of the impact of mining activities on local communities and human rights and to periodically publish a report.

APPENDIX 1



ACIDH
Action Contre l'Impunité pour les Droits Humains
Action against impunity for human rights
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Lubumbashi, le 08 juillet 2010



N/Réf : ACIDH/UNE/JPO/80/07/010

Objet : Demande d'audience

**A Monsieur le Directeur Général
de Boss Mining
de et à Lubumbashi**

Monsieur le Directeur,

L'Action Contre l'Impunité pour les Droits Humains, **ACIDH** en sigle, soumet à votre bienveillante attention la possibilité de lui accorder une audience au jour et à l'heure de votre convenance au cours de la période allant du 11 au 17 juillet de l'an courant.

L'organisation mène une étude sur « l'impact de l'extraction du cobalt et du cuivre sur les communautés du Katanga ». Elle souhaite, ainsi s'entretenir avec vous sur le programme social de votre entreprise en faveur des communautés et de l'environnement ainsi que les rapports entre votre entreprise et les communautés locales.

En cas d'indisponibilité pour nous recevoir, nous annexons un questionnaire à cette lettre auquel vous pourriez répondre dans un délai raisonnable.

Dans cette attente, veuillez agréer, Monsieur le Directeur Général, l'expression de notre considération.

Emmanuel UMBULA NKUMBA
Directeur Exécutif



L'ACIDH est une ONG des Droits Humains créée le 15 janvier 2004 avec pour objectif : Mettre fin à l'impunité en RDC.



ACIDH

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Lubumbashi, le 03 juin 2010

N/Réf : ACIDH/UNE/JPO/61/06/010

Objet : Rappel de notre lettre de
demande d'audience

**A Monsieur le Directeur Général de
la Compagnie Minière du Sud
Katanga
de et à Lubumbashi**

Monsieur le Directeur,

L'Action Contre l'Impunité pour les Droits Humains, **ACIDH** en sigle, rappelle à votre attention sa lettre référencée N/Réf: ACIDH/UNE/JPO/42/04/010 portant demande d'audience du 12 avril de l'an courant et couvrant la période du 19 au 24 avril.

Nous souhaitons, si elle nous avait été accordée, nous entretenir avec vous sur l'impact de l'extraction du cobalt et du cuivre sur les communautés du Katanga, étude que mène notre organisation.

De la sorte, nous sollicitons une autre audience au jour et à l'heure de votre convenance au cours de la semaine allant du 07 au 11 juin 2010.

Dans cette attente, veuillez agréer, Monsieur le Directeur Général, l'expression de notre considération.

*Par réception
C. T. S. T.
04/06/2010*



Emmanuel UMPULA NKUMBA
Directeur Exécutif

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Lubumbashi, le 03 juin 2010



T.F.M.
Reçu le

N/Réf : ACIDH/UNE/JPO/60/06/010



**Objet : Rappel de notre lettre de
demande d'audience**

**A Monsieur le Directeur Général de
l'entreprise Tenke Fungurume Mining
de et à Lubumbashi**

Monsieur le Directeur,

L'Action Contre l'Impunité pour les Droits Humains, **ACIDH** en sigle, rappelle à votre attention sa lettre référencée N/Réf : ACIDH/UNE/JPO/43/04/010 portant demande d'audience du 12 avril de l'an courant et couvrant la période du 19 au 24 avril.

Nous souhaitons, si elle nous avait été accordée, nous entretenir avec vous sur l'impact de l'extraction du cobalt et du cuivre sur les communautés du Katanga, étude que mène notre organisation.

De la sorte, nous sollicitons une autre audience au jour et à l'heure de votre convenance au cours de la semaine allant du 07 au 11 juin 2010.

Dans cette attente, veuillez agréer, Monsieur le Directeur Général, l'expression de notre considération.

Emmanuel UMBULA NKUMBA
Directeur Exécutif



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Lubumbashi, le 12 avril 2010

N/Réf : ACIDH/UNE/JPO/40/04/010

Objet : Demande d'audience

**A Monsieur le Président Délégué Général
de l'entreprise CHEMAF
de et à Lubumbashi**

Monsieur l'Administrateur,

Par la présente, l'Action Contre l'Impunité pour les Droits Humains, **ACIDH** en sigle, soumet à votre bienveillante attention la possibilité de lui accorder une audience au jour et à l'heure de votre convenance au cours de la semaine allant du 19 au 24 avril 2010.

En effet, cette demande d'audience s'inscrit dans le cadre d'une étude qu'elle mène sur « l'impact d'extraction du cobalt et du cuivre sur les communautés du Katanga ».

Dans cette attente, veuillez agréer, Monsieur le Président Délégué Général, l'expression de notre considération.

CHEMAF SPRL	
Ave Usoko Lubumbashi	
Accuse réception	
13 APR 2010	
Heure	07h24
Signature	[Signature]
Nom	[Signature]



L'ACIDH est une ONG des Droits Humains créée le 15 janvier 2004 avec pour objectif : Mettre fin à l'impunité en RDC.



ACIDH
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Lubumbashi, le 16 juin 2010

N/Réf: ACIDH/UNE/JPO/70/06/010

Objet : Rappel de notre lettre de
demande d'audience

**A Monsieur l'Administrateur
Délégué Général de l'entreprise
Ruashi Mining
de et à Lubumbashi**

Monsieur l'Administrateur,

L'Action Contre l'Impunité pour les Droits Humains, **ACIDH** en sigle, rappelle à votre attention sa lettre référencée N/Réf: ACIDH/UNE/JPO/41/04/010 portant demande d'audience du 12 avril de l'an courant et couvrant la période du 19 au 24 avril.

Nous souhaitons, si elle nous avait été accordée, nous entretenir avec vous sur le programme social de votre entreprise en faveur des communautés avoisinant le site que vous exploitez; le progrès que vous aviez réalisé sur la protection des droits des communautés et de l'environnement et les rapports entre votre entreprise et les communautés locales, étude que mène notre organisation.

De la sorte, nous sollicitons une autre audience au jour et à l'heure de votre convenance au cours de la semaine allant du 21 au 26 juin 2010.

En cas d'indisponibilité pour nous recevoir, nous annexons un questionnaire à cette lettre auquel vous pourriez répondre dans un délai raisonnable.

Dans cette attente, veuillez agréer, Monsieur l'Administrateur Délégué Général, l'expression de notre considération.



Emmanuel UMPUMA NKUMBA
Directeur Exécutif

L'ACIDH est une ONG des Droits Humains créée le 15 janvier 2004 avec pour objectif: Mettre fin à l'impunité en RDC.

APPENDIX 2: RELEVANT PASSAGES FROM THE DRC'S MINING CODE

ARTICLE 69: PREPARATION OF AN APPLICATION FOR AN EXPLOITATION LICENCE

The applicant drafts an application for an Exploitation Licence and submits it to the Mining Registry in accordance with articles 35 and 37 of the present Code.

The following documents should be attached to the application:

- a) A copy of the valid Exploration Certificate;
- b) The report on the outcome of exploration work with regard to the nature, the quality, the volume and the geographical situation of the mineral resources identified;
- c) The feasibility study for the exploitation of the deposit;
- d) The technical framework plan for the development, construction and exploitation of the mine;
- e) The EIS and EMPP for the project;
- f) The report on consultations with authorities from local administrative entities and with representatives from the surrounding communities;
- g) The plans for the development of the surrounding communities;
- h) The financial plans that identify the sources of investment; and
- i) Proof of payment of the filing costs.

ARTICLE 280: ACTUAL LIABILITY FOR THE OCCUPATION OF THE LAND

The holder or lessee must compensate for the damages caused by the works he carries out in connection with his mining activities, even if they are authorized.

In case of transfer of a mine exploitation right or an Authorisation for Permanent Quarry Exploitation, liability for damages deriving from works prior to the transfer is joint and several for both the former and the new holder.

In case of transfer, the former holder must notify the new holder in writing. He also notifies him, in so far as he is aware of them, of the significant dangers or disadvantages resulting from exploitation. In the absence of this information, the beneficiary of the transfer has the option to request termination of the transfer or to have a portion of the price reimbursed to him. He may also request, at the expense of the former holder, elimination of the dangers or the removal of the disadvantages that may cause damage to third parties.

The holder may be required to provide a guarantee, to pay full compensation if these works are likely to cause a particular damage, and if it is suspected that his resources may not be sufficient to meet his potential liabilities.

The courts shall assess the need for this guarantee and shall determine the nature and amount thereof.

All damages caused to the assets of third parties shall be settled at their actual replacement value, plus 50%, unless the assets are returned to the condition they were in prior to the occurrence of said damage.

ARTICLE 281: COMPENSATION FOR THE OCCUPANTS OF THE LAND

Any occupation of land depriving the rightful holders of enjoyment of the surface rights, any modification rendering the land unfit for cultivation, shall cause the holder or lessee of the mining and/or quarry rights, at the request of the rightful holders of the surface rights, and at their convenience, to pay fair compensation, corresponding either to the rent or the value of the land at the time of its occupation, plus fifty per cent.

Land, as referred to in the above paragraph, means the ground on which the individuals have always carried out or are effectively carrying out any activity.

Amicable settlement of the dispute may be made by any legitimate method other than resorting to the courts, especially by compromise, settlement, arbitration or before an Officer of the Judiciary Police or an Officer of the Public Ministry.

In the absence of an amicable settlement between the parties within three months from the date on which the dispute arises, the compensation shall be determined by the competent court pursuant to the rules on judicial organization and jurisdiction in force in the Democratic Republic of the Congo.

However, the usual occupant of the land may, in agreement with the holder, continue to exercise his right to cultivate the land provided that the work in the fields does not hinder the mining activities. The owner of the surface rights shall then no longer continue to construct buildings on it.

Lastly, the simply passing through the land does not entitle to any compensation if no damage results therefrom. The act of passing must take place with a view to best conserving the environment.



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