



POWERING CHANGE OR BUSINESS AS USUAL?

FORCED EVICTIONS AT INDUSTRIAL COBALT AND COPPER MINES
IN THE DEMOCRATIC REPUBLIC OF THE CONGO



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The Initiative for Good Governance and Human Rights is a non-profit organisation based in Kolwezi, in southern Democratic Republic of the Congo, specializing in the governance of the extractive and energy sectors. Since 2014, it has been conducting research, advocacy and litigation for the protection and defense of the rights of local communities impacted by mining and electrification projects in the province of Lualaba.

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Cover: Drone photograph of the neighbourhood of Gécamines Kolwezi, on the edge of the Kolwezi copper and cobalt mine operated by Chinese-owned company COMMUS, September 2022 © Amnesty International (videographers: Reportage Sans Frontières)



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MAP



↑ Overview map of Kolwezi in the Democratic Republic of the Congo. The green area shows the copper deposits designating the Copperbelt region stretching across the Congolese provinces of Haut-Katanga and Lualaba, and the state of Zambia.

KEY TERMS

ACRONYMS

AGRIPEL	Agriculture, Fishing and Livestock Farming ¹
CESCR	UN Committee on Economic Social Cultural Rights
CHEMAF	Chemical of Africa SA
COMMUS	Compagnie Minière de Musonoie Global SAS
DRC	Democratic Republic of the Congo
ERG	Eurasian Resources Group SARL
FARDC	Armed Forces of the Democratic Republic of the Congo ²
GECAMINES	Générale des Carrières et des Mines SA
IBGDH	Initiative for Good Governance and Human Rights ³
IVANHOE	Ivanhoe Mines Ltd.
KAMOA	Kamoa Copper SA
METALKOL RTR	Metalkol Roan Tailings Reclamation
OECD	Organisation for Economic Co-operation and Development
UN Basic Principles on Evictions	UN Basic Principles and Guidelines on Development-Based Evictions and Displacement
UN Guiding Principles	UN Guiding Principles on Business and Human Rights

GLOSSARY

Energy transition minerals: minerals essential to decarbonize the global economy including but not limited to aluminium, cobalt, copper, graphite, manganese, lithium and nickel.

Evictee: individual who experienced an eviction.

Eviction: acts and / or omissions involving the displacement of individuals, groups and communities from homes and / or lands and common property resources that were occupied or depended upon.

Forced eviction: removal of people against their will from the homes or land they occupy, without due process and legal safeguards, including adequate notice, legal remedies and compensation for their losses.

1 In French, Agriculture, Pêche et Elevage. In this report, this acronym refers to the provincial Division of the Democratic Republic of the Congo (DRC)'s Ministry of Agriculture, Fisheries and Livestock.

2 In French, Forces Armées de la République Démocratique du Congo.

3 In French, Initiative pour la Bonne Gouvernance et les Droits Humains.

EXECUTIVE SUMMARY

The climate emergency, caused by the burning of fossil fuels, is driving international efforts to decarbonize the global economy and prompting states to invest in renewable energy sources and set targets for the phase out of petrol and diesel-powered vehicles.

This trend is driving the demand for other raw materials. Electric vehicles and energy storage facilities require vast and increasing amounts of mined metals, including copper and cobalt. According to the International Energy Agency, copper is the most widely used mineral in clean energy technologies, while cobalt is an essential mineral for most lithium-ion batteries.

Expectations of accelerating demand for these two minerals are behind the increase in industrial mining in and around the city of Kolwezi, in the southern province of Lualaba in the Democratic Republic of the Congo (DRC), where many of the country's most productive cobalt and copper mines are located. The DRC holds the seventh largest reserves of copper globally and is the third largest producer. It also holds approximately half of the world's cobalt reserves and accounts for more than 70% of global production.

The people living in the region should be benefiting from the growth in mining. Instead, many are being forced out of their homes and farmland to make way for the expansion of large-scale industrial mining projects. As this report shows, such evictions are often carried out by mining operators with little concern for the rights of affected communities and little heed for national laws meant to curtail forced evictions in the mining sector.

KOLWEZI, CITY OF MINES

Kolwezi was built under Belgian colonial rule, an era defined by oppression and the extraction of raw materials. The city remains dominated, physically and economically, by the mining industry. A map maintained by the DRC's Ministry of Mines shows that most of it was built on land containing potentially rich mineral deposits. Because nearly all of Kolwezi falls within the perimeters of mining concessions, it is possible that most of the city could be sold off for mining operations in the future, putting nearly all its residents at risk of eviction.

This report, researched jointly by the Kolwezi-based Initiative for Good Governance and Human Rights (Initiative pour la Bonne Gouvernance et les Droits Humains — IBGDH) and Amnesty International, investigates the human rights impacts of four industrial mining projects.

The Compagnie Minière de Musonoie Global SAS (COMMUS) operates an open-pit copper and cobalt mine, covering an area of more than 3km² close to Kolwezi's city centre, that is surrounded by residential neighbourhoods. In November 2014, a Chinese mining multinational, Zijin Mining Group Ltd. (Zijin Mining) acquired a majority stake in COMMUS. The DRC state-owned company Générale des Carrières et des Mines SA (Gécamines) remains a minority owner. In 2022, the mine produced over 128,000 tonnes of copper and 2,506 tonnes of cobalt.

Mutoshi is a copper and cobalt mining project, north-east of Kolwezi. It covers an area of 105km². Mutoshi's operator is a DRC-registered company, Chemical of Africa SA (Chemaf). Chemaf's privately-owned parent company is headquartered in Dubai and incorporated in the Isle of Man. Chemaf acquired the lease of the Mutoshi mining project in June 2015. The company has been building a plant with the stated capacity to process close to 20,000 tonnes of copper and 16,000 tonnes of cobalt annually.

The Metalkol Roan Tailings Reclamation project (Metalkol RTR) is a cobalt and copper mining project 5km north-west of Kolwezi, that covers an area of 66.7km², and began operating in 2019. The DRC-registered entity *Compagnie de Traitement des Rejets de Kingamyambo*, also known as Metalkol SA (Metalkol), operates the project. Metalkol SA is a company of the Eurasian Resources Group SARL (ERG), which estimates that the site contains 110 million tonnes of reserves.

The Kamoakakula mining project is located 25km south-west of Kolwezi. The operating company, Kamoakakula Copper SA (Kamoakakula), is a joint venture between the Canadian company Ivanhoe Mines Ltd. (Ivanhoe), the Chinese company Zijin Mining (which is also COMMUS' majority owner), Gécamines and a private Hong Kong-based company that is incorporated in the British Virgin Islands, Crystal River Global Limited. Kamoakakula owns a mining license of 397.4km². Ivanhoe discovered the Kakula deposit in 2016, describing it as the “largest copper discovery ever made on the African continent.”

Mining Project	Actual or projected annual production according to mining operators	Operating company	Parent companies (share size and place of registration)	Dates of evictions documented in this report
Kolwezi copper and cobalt mine	Copper: 128,000 tonnes Cobalt: 2,506 tonnes	The Compagnie Minière de Musonoie Global SAS	Zijin Mining Group Ltd. 72%, China; Gécamines 28%, DRC	2012 - present
Mutoshi mine	Copper: 20,000 tonnes Cobalt: 16,000 tonnes	Chemaf SA	Chemaf Resources Ltd., 100%, United Arab Emirates / Isle of Man	2016
Metalkol RTR project	Copper: 94,807 tonnes Cobalt: 20,718 tonnes	Metalkol SA	Eurasian Resources Group SARL, 100%, Luxembourg	2017 - 2020
Kamoakakula mine	Copper: 6 - 800,000 tonnes	Kamoakakula Copper SA	Ivanhoe Mines Ltd., 39.6%, Canada; Zijin Mining, 39.6%, China; DRC government, 20%; Crystal River Global Limited, 0.8%, British Virgin Islands	2017 - 2018

The four case studies included in this report illustrate how many communities in and around Kolwezi have become collateral damage of energy transition mining. They depict what happened after multinational mining companies began developing or expanding cobalt and copper mines, and the human rights abuses caused by the eviction of neighbouring communities. To document these cases, researchers interviewed 133 affected people, in February and September 2022, as well as company representatives and government officials. They also reviewed a wide range of documentary evidence and satellite images. IBGDH and Amnesty International also exchanged letters with mining operators and their parent companies. Researchers reviewed the companies' responses, annexed to this report, and took appropriate account of the information that was provided in updating their findings.



FORCED EVICTIONS

A forced eviction is the removal of people against their will from the home or land they occupy without legal protections and other safeguards. It is a violation of the right to adequate housing.

Under international human rights law, evictions may only be carried out as a last resort once all other feasible alternatives to eviction have been explored in genuine consultation with all affected people and appropriate procedural protections are in place. Such legal protections and safeguards include adequate and reasonable notice for affected people, adequate information, compensation for losses, measures to ensure people are not made homeless or vulnerable to other human rights violations, and the provision of legal remedies.

Forced evictions can also lead to a range of other human rights violations, for example, when people's livelihoods are destroyed, or when evictees lose access to essential services such as education or health care.



HUMAN RIGHTS IN THE CONTEXT OF BUSINESS ACTIVITIES

States have an obligation under international law to respect, protect and fulfil human rights. The UN Guiding Principles on Business and Human Rights (UN Guiding Principles) explicitly recognize that such duty applies in the context of corporate activities. The UN Guiding Principles provide that states should enforce laws requiring companies to respect human rights. In the context of the DRC's mining sector, the country's Mining Code and Regulations provide a detailed framework that companies must comply with when conducting evictions in connection with the development or expansion of mining projects, including on the eviction process, identification and valuation of lost property and the payment of damages.

Companies also have a responsibility to respect all human rights wherever they operate and throughout their operations. This corporate responsibility to respect human rights is independent of a state's own human rights obligations and exists over and above compliance with national laws and regulations. The UN Guiding Principles establish that companies should have in place an ongoing and proactive human rights due diligence process to identify, prevent, mitigate, and account for how they address their impacts on the rights of people affected by their activities.

When human rights violations occur, international law requires that the perpetrator be held to account and the victim receive an effective remedy. The right to an effective remedy encompasses the victim's right to equal and effective access to justice; adequate, effective, and prompt reparation for harm suffered, and access to relevant information concerning violations and reparation mechanisms.

KOLWEZI COPPER AND COBALT MINE

Cité Gécamines is a residential neighbourhood, west of Kolwezi's city centre, originally built to house mine workers. In 2017, it was home to nearly 39,000 people. From 1963 to 2015, the southern boundary of Cité Gécamines was a disused open pit mine. In 2015, workers began to rehabilitate the site. As it has grown, thousands of residents of Cité Gécamines and other neighbourhoods bordering the mine have faced several waves of evictions.

The residents of Cité Gécamines have faced the threat of losing their home since 2012. It was then that, without any warning, staff working for the municipality of Kolwezi began painting red crosses on the walls and gates of the resident's houses. "They started to put up crosses, barriers, to scare people. We were patient, we saw it, we wondered. We were only told, 'wait,'" recalled Michel Ndoni.

But despite repeated calls from affected communities and civil society for more information about COMMUS' resettlement plans, local authorities failed to facilitate meaningful public consultations and address evictees' concerns. Instead, the authorities allowed COMMUS to proceed without ensuring that the company secured the informed consent of communities at risk. At the time of publication, COMMUS had not released its plans to expand the mine or any impact assessments that it may have conducted or commissioned.

A first wave of evictions, affecting 56 households, took place in 2016. Three former residents of Kinkole Avenue described how, in August 2016, a municipal agent visited their part of town without prior notice and asked them to attend a meeting with COMMUS and municipal agents the same day. After waiting several hours to receive further information, residents were met by COMMUS' legal attaché and representatives of the municipal and provincial government. COMMUS' legal attaché handed out an agreement protocol to participants, asking them to read and sign it.

Crispin Mwenda, 63, recalled that evictees were not allowed to keep a copy of this document. He said that "in the agreement protocol, there was no amount [specified for compensation] and there were legal terms that were beyond [our understanding]. Despite the fact that I am educated, I did not understand much. (...) They refused to respond to my questions or to give us copies."

Following the payment of compensation, 13 residents of Kinkole Avenue wrote to COMMUS complaining that they did not understand the terms of the agreement they signed, nor the calculation method behind the damages they received. In a subsequent letter, they asked COMMUS to provide them with copies of the agreement and to consider revising the compensation. According to this letter, "All we ask [COMMUS] is simply to respect us, to take into account our houses, plots, fruit trees... and finally, to pay us decently."



“They started to put up crosses, barriers, to scare people. We were patient, we saw it, we wondered. We were only told, ‘wait.’”

Michel Kanyimbu Ndoni

IBGDH and other civil society organisations escalated evictees’ concerns to the governor of Lualaba. Over the following two years, residents of Kinkole Avenue sought redress by writing letters and petitions to various authorities, including the national and provincial Ministries of Mines, the Congolese Environmental Agency, Lualaba’s governor and Provincial Assembly, to no avail.

Congolese law sets clear rules on compensation, which the company said it had followed. COMMUS explained that its compensation standards, “were set to ensure the residents’ quality of life are not affected and that their livelihoods are compensated for.” The residents of Kinkole Avenue received on average over US \$50,000, the company said. However, the lack of meaningful consultation, the lack of access to information and the feeling of coercion, have left former residents of Kinkole Avenue, as well as those from a subsequent wave of evictions in 2020, with no confidence that the compensation the company disbursed was fair. They all complained that they could only buy substitute homes on the outskirts of Kolwezi, in neighbourhoods with significantly worse access to essential services that they previously enjoyed.

Zijin Mining acquired a majority stake in COMMUS in November 2014. From then on, COMMUS has explained, it has been “advancing land acquisition and relocation in a harmonious and orderly manner, (...), protecting the legitimate rights and interests of affected residents in the Gécamines Community and ensuring procedures and processes are valid and compliant with regulations.”

But any human rights due diligence process would have identified the likely harm caused by the expansion of the mine, the need for meaningful consultation, and the critical importance of sharing all relevant information about COMMUS’ mining activities and eviction process with affected communities in a timely manner. In response to these findings, COMMUS wrote that it is currently looking to improve its practices relating to disclosure of information. This commitment is a welcome acknowledgment that this is an issue that the company needs to address. COMMUS must urgently publish its plans for the further development of its mine, as well any environmental and social impact assessment it has conducted or commissioned, and resettlement plans for communities most at risk. It must engage with former and current residents and their advocates in civil society. The value of the houses and land that have already been dispossessed should be reassessed so that adequate compensation is paid.

Provincial authorities allowed COMMUS to proceed with evictions without properly informing or meaningfully consulting with affected communities. They should now take concrete measures to protect the rights and interests of all those affected by the expansion of mine. They should listen to the concerns of evicted and at-risk communities before, during and after any eviction, monitor COMMUS’ response, and compel the company to remediate any harm it has caused.

MUTOSHI MINE

Mukumbi was an informal settlement of several thousands of people located about 5km north-east of Kolwezi. It was located within a copper and cobalt mining concession known as Mutoshi, acquired in 2015 by the DRC-registered mining company Chemaf. There are conflicting accounts of what happened to Mukumbi. Former residents have accused military personnel of having destroyed their homes, with the involvement of the mining company. As outlined below, Chemaf has denied this claim.

Ernest Miji, Mukumbi's neighbourhood chief, summarized the former residents' account. He recalled how, after Chemaf acquired the lease of the Mutoshi concession in 2015, representatives of Chemaf visited him along with two police officers, to say that it was time for them to move away. Then, according to former residents, in November 2016, soldiers from the feared Republican Guard, also known as the presidential guard because of its mandate to protect the head of state, descended on the community.

Ernest Miji recalled that the soldiers immediately set about destroying the village, which was largely made from wood and tarpaulin. "(It was) around 8:30 in the morning, I was surprised by children who told me: 'Dad, come see, they are burning houses,'" he said.

Three of the former residents said that they also recalled seeing a senior Chemaf manager in Mukumbi, at the time that the soldiers were burning houses and buildings, which he, and the company dispute.

CONTESTED CLAIMS

Amnesty International and IBGDH have gathered information that supports the claims by former residents.

A series of satellite images demonstrate that the settlement of Mukumbi contained several hundred structures; that it existed prior to, and after, Chemaf acquired the Mutoshi lease in 2015; and that it continued to exist until November 2016, when satellite imagery shows that all structures had disappeared.

In a court submission relating to a criminal investigation into Mukumbi's destruction, the senior Chemaf manager who was accused by former residents, described how, after they refused to leave, "inhabited straw-huts that were on the concession were burnt down."

Furthermore, following protests by former community members in 2019, Chemaf made a payment of \$1.5 million to them. While the settlement agreement, brokered by the provincial government, did not provide an account of how the evictions occurred, it did state that Chemaf, while not "formally admitting" to any wrongdoing, had in 2016, "evicted the residents of Mukumbi village without any compensation."

Members of neighbouring communities have also supported the account of the former residents of Mukumbi. In 2019, the chiefs of five neighbouring villages, wrote to the provincial governor and other authorities, along with Mukumbi's village chief, to complain about its destruction.

“(It was) around 8:30 in the morning, I was surprised by children who told me: ‘Dad, come see, they are burning houses.’”

Ernest Miji

Regarding the identity of the perpetrators, former residents of Mukumbi claim that they were soldiers from the Republican Guard, who are recognizable because they wear different coloured berets and uniforms from the rest of the army. It has been widely reported that during the presidency of Joseph Kabila, the Republican Guard was present across the cobalt and copper mining region. The involvement of the public security forces in the demolitions of the homes of artisanal miners elsewhere has also been well documented by human rights groups, including Amnesty International.

In response, Chemaf told Amnesty International and IBGDH that it has “no relationship with the Republican Guard nor does it direct or instruct this group,” but that the force had been present on the site before it acquired the concession. Chemaf also insisted that it was not involved in the destruction of Mukumbi because while it might have been the leaseholder for the Mutoshi concession, it had not yet gained full access to the site in November 2016 when the former residents say the eviction took place. The company claimed that for the first two years following the acquisition of the concession, it only conducted “extensive desktop research and planning.” The company also stated that it “was not aware of an alleged village called Mukumbi until 2019,” once the former residents began their protests. Furthermore, the company has pointed to a court ruling in 2022, that cleared Chemaf and its senior member of deliberately setting fire to houses in Mukumbi, due to a lack of evidence.

But even if one disregards the accounts of former community members and accepts at face value Chemaf’s claim that it was not involved in the forced eviction, the company still bears some responsibility for the human rights abuses suffered by the former residents of Mukumbi. As leaseholder of the Mutoshi site since 2015, the company had a responsibility to conduct human rights due diligence. This should have involved it assessing likely human rights risks linked to its operations or planned operations and taking reasonable steps to mitigate or prevent these from occurring. Given that the company was developing plans to build a processing plant, on the site of Mukumbi, the company’s due diligence should have identified the likely impact that this would have had on the community members, i.e. the need to move them away in order to build the plant. As a result, the due diligence process should then have considered the risks associated with moving people against their wishes and the necessary steps to avoid these risks from occurring. Chemaf could for example have followed a similar protocol that it put in place to manage the evictions of other communities from Mutoshi in 2017, which did not involve the military. But it did not — either according to the former residents, or to the company itself which claimed it was not aware of Mukumbi until 2019.

Acts of violence that evictees described experiencing at the hands of military officials may amount to criminal misconduct. Evictees reported that the Republican Guard destroyed their property and physically assaulted people who tried to protect themselves and their property. At least one former resident, a girl who was under three years-old at the time of the incident, suffered life changing injuries after residents say soldiers set fire to the house in which she was sleeping. According to the settlement agreement brokered by the government in 2019, Chemaf agreed to pay former residents a total of \$1.5 million, but some individuals only received as little as \$300 each—a wholly inadequate sum. The authorities must open an investigation into the forced eviction of Mukumbi, including the role of Chemaf, prosecute perpetrators and ensure that survivors have access to effective remedy.

METALKOL RTR

Before Metalkol RTR began operating in 2019, thousands of people lived or had farmland inside or near the project's permit area. Samukonga and Tshamundenda were two of the affected villages. Samukonga was within the concession and the company resettled its residents to a new site in 2017.

In addition, hundreds of people lost access to farmland near the village. Five of these farmers described flaws in the compensation process. They described how military officials were present at a meeting convened by operator Metalkol, making some people feel coerced into accepting the compensation that the company offered. "In September 2018, they called us to Metalkol's [offices]. There were military officers everywhere. They started giving us envelopes, one by one. They gave me US\$390 and they forced us all to sign," recounted one of the farmers.

Interviewees reported receiving from US\$7 to a few hundred US dollars for hectares of cropland and being forced to sign a registry that they did not understand. They said that the monetary damages they received were insufficient to buy equivalent plots of the same size, within a reasonable distance. Farmers complained that the company has refused to listen to their complaints since then, forcing them to organize public demonstrations. Following these protests, in 2020, the governor of Lualaba wrote to Metalkol's General Manager, in support of the farmers' claim, warning the company that farmers had not been sufficiently compensated.

Metalkol's parent company, ERG, has disputed these findings, stating that compensation levels were based on official calculations, and that, "no form of coercion is used during this process and the farmers receive their payments fairly and without any undue pressure." ERG also emphasized that "Metalkol does not use (Armed Forces of the DRC) FARDC intervention in relation to resettlements, compensation assessments or payments."

But the farmers of Tshamundenda, who cultivate farmland on the outskirts of Metalkol's concession, also complained about the role of military personnel in the eviction. They reported that not only did Metalkol fail to consult with them, but soldiers destroyed their crops without prior notice. In response, ERG denied the involvement of the military in this instance. It confirmed that it did not pay the 144 farmers, but stated that this was because the government found they had already been compensated by the former mine operator. Community members denied that this was not the case. For example, Madeleine Tumba, aged 50, said, "no, we were not consulted...They told us that the land had been sold and that [the former mine operator] said it had paid the farmers, but I replied that we hadn't received anything. They said, 'Leave, if you resist we'll arrest you!' They should have given us time to harvest, so we wouldn't have to beg."

The farmers also complained that soldiers later patrolled Metalkol's concession and at times used unlawful force and intimidation tactics when carrying out evictions. One evictee claimed that she was sexually assaulted by military forces while attempting to retrieve crops.

In response to this account, ERG stated that it had urged the military to investigate the case. It wrote that Metalkol, "does not exercise command or control over the deployment of FARDC" and that soldiers had "not been involved in any resettlement or crop compensation activities undertaken by Metalkol."

The two groups of farmers from Samukonga and Tshamundenda interviewed for this report had different experiences. But neither eviction followed due process requirements and legal safeguards prescribed by international human rights standards, or protections enshrined in the revised Mining Code and Regulations.

“In September 2018, they called us to Metalkol’s [offices]. There were military officers everywhere. They started giving us envelopes, one by one. They gave me \$390 and they forced us all to sign.”

Colin Tshikula

The eviction of farmers from Samukonga occurred in 2017, before the revision of the DRC Mining Code. But international standards had already established the need for genuine consultation with affected people. Yet interviewees said that they felt coerced into signing compensation agreements that they deemed insufficient.

The 144 farmers from Tshamundenda were evicted in 2020. By then, the revised Mining Code and Regulation had entered into force, recognizing mining-impacted communities’ rights to information and effective participation. ERG claims that the community had earlier been compensated by the previous owners of the mine and were illegally occupying the land.

But even if that is the case — which the community disputes — this does not justify what happened next. Not only did Metalkol fail to consult with Tshamundenda farmers but community members reported that soldiers then came to destroy their crops, without prior notice. States have a duty to protect human rights in the context of business activities. By failing to facilitate meaningful consultation, through the illegal conduct of public security forces and by failing to ensure that farmers evicted to make way for the Metalkol RTR project had access to effective remedy, Congolese authorities violated evictees’ right to bodily integrity, freedom from torture, adequate housing, access to information, and effective remedy, enshrined in both the Congolese Constitution and international human rights law. State agents also breached their constitutional duty and obligations under international human rights law to respect human rights.

Metalkol and its parent company ERG state that they adhere to human rights policies that align with international standards. They are both aware that, in order to meet their responsibility to respect human rights, companies must conduct an ongoing and proactive human rights due diligence process. All the issues raised in this case study were foreseeable and preventable.

The only evidence that Metalkol conducted anything like a due diligence process is that it commissioned a consultancy to conduct an environmental impact study. The company has only published this report’s executive summary, in English, and not the full report. The report was published in September 2019, nine years after ERG bought Metalkol, and more than two years after it began evicting people from the concession.

Metalkol may have had valid reasons for relocating people away from mine infrastructure but has not conducted this task in a way that mitigated harm to affected communities. A human rights due diligence process would have seen the company engage meaningfully with affected communities and share all relevant information in a timely way. Instead, both sets of farmers feel they have been coerced into accepting low or no compensation to make way for Metalkol’s mining activities. While Metalkol denies commissioning military forces to patrol its concession or to facilitate the eviction of farmers, the company should have taken steps to monitor the activities and conduct of armed soldiers on its concession, and tried to prevent harm resulting from their security practices.

KAMOA-KAKULA MINE

The Kamo-a-Kakula mining project is located 25km south-west of Kolwezi and covers an area that, according to its operator, Kamo-a, is home to approximately 40,000 people, 1,352 of whom lost access to homes, businesses, or fields as a result of mining activities.

Amnesty International and IBGDH interviewed residents of Muvunda, where Kamo-a resettled 45 households evicted from their homes and farmland during the construction of the Kakula mine in 2017. Interviewees benefited from adequate procedural safeguards in the course of their resettlement. Kamo-a, in consultation with provincial authorities, shared accessible information about the eviction and convened several meetings to assess evictees' needs and demands. The 2017 consultation process was meaningful, complied with international human rights standards, and went beyond the requirements of applicable Congolese law at the time of the resettlement. But the replacement housing that evictees received was inadequate.

According to the company, "each household received a house... based on what was decided by the (Resettlement Working Group) committee according to the design signed and attached to the individual transfer deed." However, several community members complained about the size and amenities of the houses the company built. Researchers observed that none of the resettlement houses were equipped with showers, running water or electricity. Kamo-a confirmed that the holes the company dug for residents to use as toilets were not connected to any sewage system.

Families moved to Muvunda in 2017, but it was not until 2021 that the primary school the company built opened, and they had to wait until 2023 for the completion of a health clinic.

Kamo-a claims to have in place a, "robust grievance mechanism with flexible channels for effective communication." In contrast, resettled households told researchers that Kamo-a's engagement, following their relocation, was non-existent.

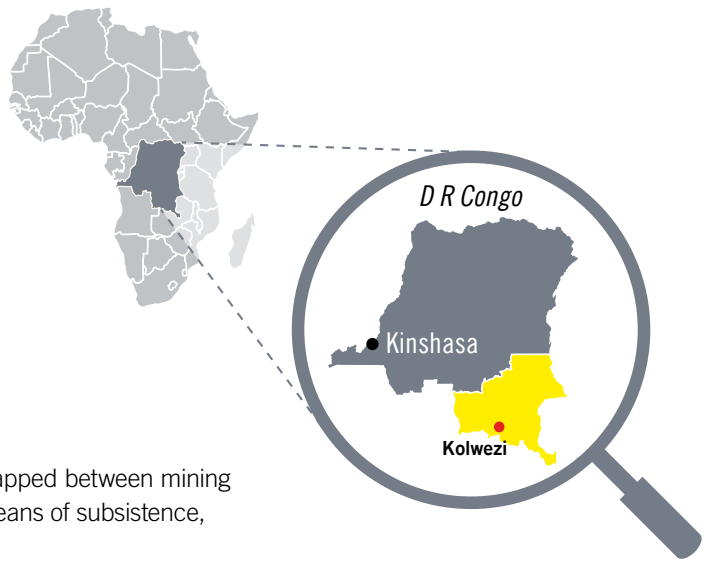
Kamo-a said that in 2017 the company's "relocation standards were benchmarked to International best practices... The actual United Nations (UN) principles are commendable, but challenging to implement in the context where electricity is not available in the region." However, it is apparent that Kamo-a was able to overcome such challenges to develop what the company describes as cutting edge, carbon efficient mining and processing facilities.

Moreover, Kamo-a's standard for compensation based on providing housing that is similar to the accommodation where the evictees lived before the eviction (or "like for like") contravenes the revised Mining Regulations' requirement that "[t]he new living environment...enable evictees to reach a standard of living superior to what they experienced in their original environment."

Researchers observed that none of the resettlement houses were equipped with showers, running water or electricity. Kamo-a confirmed that the holes the company dug for residents to use as toilets were not connected to any sewage system.

FINDINGS

Amnesty International and IBGDH have found that in and around the city of Kolwezi, multinational mining companies are forcibly evicting communities from their homes and farmlands in the name of energy transition mining, or otherwise failing to meet their responsibility to respect human rights. Forced evictions have become a systemic issue that affects most residents, from families residing in densely populated hubs at the heart of Kolwezi, to farmers cultivating fields on the outskirts of the world's cobalt capital. Communities are often trapped between mining projects, forced to abandon their homes and means of subsistence, with no meaningful avenues for redress.



The mining companies operating in Kolwezi should now take immediate action to provide meaningful remedy for the harm they have caused and, to avoid future harm, revise their eviction and resettlement policies and practices.

The Congolese government has adopted laws meant to curtail forced evictions in the mining sector, but as demonstrated in this report, it has failed to implement or enforce these legal protections. Worse, Congolese authorities have in most cases actively carried out or facilitated the forced evictions documented in this report. To meet their obligation to protect human rights in the context of business activities, Congolese authorities must cease doing so, and instead ensure that all individuals and communities that have been forcibly evicted have access to effective administrative, judicial, and other appropriate remedies. They must also ensure that all protective legal standards adopted at the national and provincial level translate into new corporate practices. To that end, Congolese authorities should declare a moratorium on mass evictions in the mining sector until a commission of inquiry completes a comprehensive review of existing implementation gaps of legal protections against forced evictions and formulates concrete policy reforms.

KEY RECOMMENDATIONS

DRC AUTHORITIES

TO THE PRESIDENT

- Ensure that mining and all related activities do not lead to forced evictions and other human rights abuses of affected communities.
- Ensure that the rights and interests of people whose homes and land will be affected by mining operations come first in the development and monitoring of projects extracting copper, cobalt and other energy transition minerals throughout the DRC.

TO THE PRIME MINISTER

- Adopt a nation-wide moratorium on mass evictions in the mining sector until a commission of inquiry completes a comprehensive review on evictions linked to the extraction of cobalt, copper and other minerals throughout the DRC and presents policy recommendations to national and provincial authorities, with the effective participation of mining-impacted communities and civil society.

TO THE NATIONAL ASSEMBLY AND THE SENATE

- Amend—in consultation with mining-impacted communities and civil society—the Mining Code to align its provisions with international human rights standards, including the UN Basic Principles on Evictions and the UN Guiding Principles by, among others, explicitly prohibiting forced evictions and codifying all legal protections and safeguards against forced evictions outlined in Annex XVIII of the Mining Regulations.

COMPANIES

TO ALL MINING OPERATORS IN THE DRC

- Ensure that all future evictions are carried out in accordance with the DRC's Mining Code and Regulations, as well as international standards, so that human rights are respected.
- Conduct human rights due diligence in line with international standards to ensure that mining operations, including evictions, do not harm the rights of affected communities.

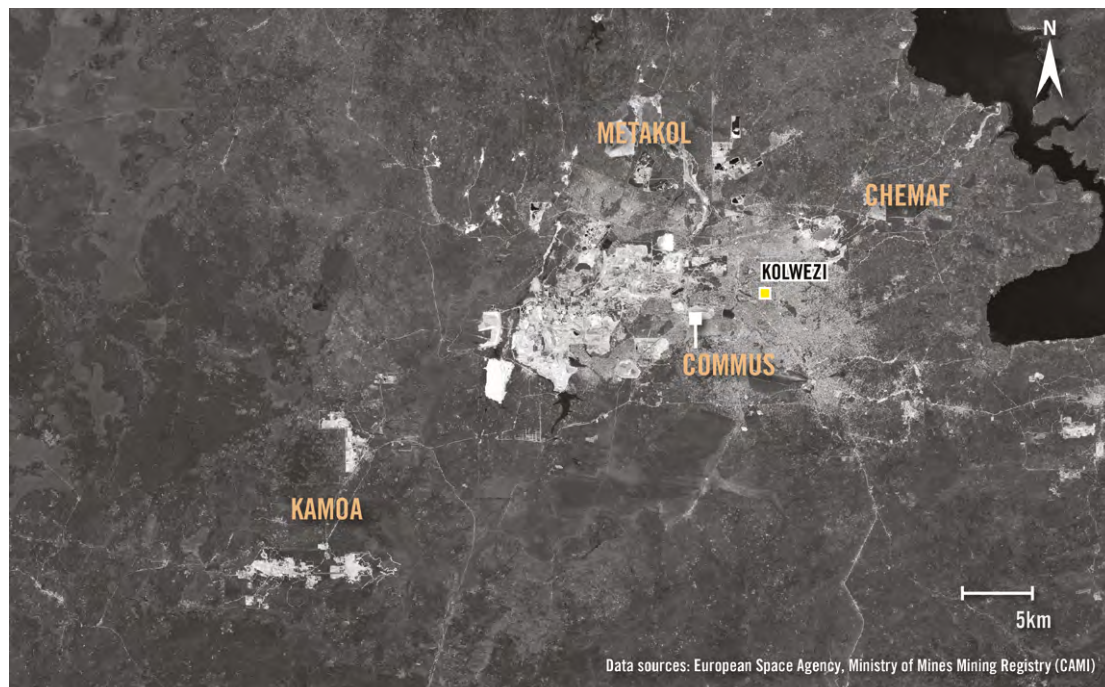
TO THE COMPANIES NAMED IN THIS REPORT

- Immediately investigate and address rights abuses documented in this report, in good faith, and in consultation with mining-impacted communities, and provide effective remedy where adverse human rights impacts have been identified.

METHODOLOGY

This report is the product of joint research by the Initiative for Good Governance and Human Rights (*Initiative pour la Bonne Gouvernance et les Droits Humains* — IBDGH) and Amnesty International.

IBDGH is a non-governmental organization based in Kolwezi. IBDGH documents human rights abuses in the natural resources sector and supports communities affected by large-scale mining projects. For example, in July 2022, IBDGH published a report in partnership with the Carter Center, assessing the human rights impacts of mining operators *Compagnie Minière Musonoie Global SAS* (COMMUS) and Kameo Copper SA (Kameo).⁴ Amnesty International has been documenting cases of corporate human rights abuses for more than 20 years and has been investigating human rights abuses linked to the Democratic Republic of the Congo's (DRC's) copper and cobalt mining sector since 2013.⁵



↑ A closer look at Kolwezi shows the areas of the mining concessions discussed in this report.

- 4 IBDGH, *Exploitation du cuivre et du cobalt (2C) dans la province du Lualaba: un danger pour les droits humains* [Copper and cobalt (2C) mining in Lualaba province: a threat to human rights], July 2022, available at <https://congominestorage.blob.core.windows.net/congominestorage/Rapport%20d%E2%80%99%C3%A9valuation%20d%E2%80%99impacts%20de%20COMMUS%20et%20Kameo%20Copper%20sur%20les%20droits%20des%20communaut%C3%A9s%20locales%20IBDGH%202022.pdf> (in French).
- 5 Amnesty International, *Profits and Loss: Mining and Human Rights in Katanga, Democratic Republic of the Congo* (Index: AFR 62/001/2013), 19 June 2013, <https://www.amnesty.org/en/documents/afr62/001/2013/en/>; Amnesty International, *Bulldozed: How a mining company buried the truth about forced evictions in the Democratic Republic of the Congo* (Index: AFR 62/003/2014), 24 November 2014, <https://www.amnesty.org/en/documents/afr62/003/2014/en/>; Amnesty International and Afreewatch, “*This is What We Die For*”: Human rights abuses in the Democratic Republic of the Congo power the global trade in cobalt (Index: AFR 62/3183/2016), 19 January 2016, <https://www.amnesty.org/en/documents/afr62/3183/2016/en/>; Amnesty International, *Time to Recharge: Corporate action and inaction to tackle abuses in the cobalt supply chain* (Index: AFR 62/7395/2017), 15 November 2017, <https://www.amnesty.org/en/documents/afr62/7395/2017/en/>; Amnesty International, *DRC: Crisis in mines requires sustainable solution* (Index: AFR 62/0772/2019), 25 July 2019, https://www.amnesty.org/en/documents/afr62/0772/2019/en_

In February and September 2022, researchers from the two organisations jointly visited communities impacted by the development of six industrial mining projects, four of which were ultimately included in this report.

Researchers interviewed 133 people affected by evictions linked to cobalt and copper mining projects in the southern province of Lualaba, including 57 men and 76 women, in 57 individual interviews and 11 focus groups that separated participants self-identifying as women or men. Researchers conducted most interviews and focus group discussions in Swahili, working with interpreters who translated accounts into French and English where necessary. Other interviews were conducted in French. Most interviewees and focus group participants consented to sharing their stories openly and authorized researchers to use their real name. Researchers anonymized a few testimonies to mitigate security risks.

In February 2022, Amnesty International and IBGDH also interviewed Lualaba's provincial Minister of Mines and his chief of staff, the provincial Inspector of Agriculture, Fisheries and Livestock Farming (AGRIPEL), and the provincial Minister of Land Affairs who acts as the president of Lualaba's Relocation Commission (*Commission Provinciale de Délocalisation*). Researchers also met with representatives of two companies, Chemical of Africa SA (Chemaf) and Kamo, in September 2022. The other companies did not agree to meet.

Amnesty International and IBGDH collected photographic and video footage, and reviewed documentary evidence (including correspondence between communities, mining operators and the authorities, minutes of public consultations, court records, settlement agreements, as well as corporate policies and reports). They reviewed and analysed both national and provincial legal and regulatory frameworks against international human rights law and standards, including but not limited to the DRC's Constitution, provisions of the 2002 and revised Mining Code and Mining Regulations, as well as provincial decrees from the province of Lualaba. Amnesty International's Evidence Lab reviewed and analysed satellite images of mining areas.

Amnesty International and IBGDH wrote to each of the mine operators and their parent companies to request information and provide them with an opportunity to respond to the findings. In each case, either the operating company or the parent company or both replied. Researchers reviewed the responses and took appropriate account of information provided in updating its findings. Copies of the companies' responses can be found in the annex to this report.

Researchers also wrote to the DRC authorities including the Prime Minister, the Ministry of Mines and the governor of Lualaba. A response received from the Minister of Mines is also incorporated in the research findings and annexed to this report.⁶

ACKNOWLEDGMENTS

Amnesty International and IBGDH would like to thank the many individuals and organizations in the DRC and beyond who agreed to share their stories for this report and who provided expert insight and inspiration. Researchers would also like to extend special thanks to students and faculty from Human Rights Litigation and Advocacy Clinic of the University of Minnesota Law School who conducted extensive background research that informed case studies in this report.

Amnesty International and IBGDH would also like to express their gratitude to the 11th Hour Project, which partially funded the research for this report.

⁶ Ministry of Mines, DRC, Letter to Amnesty International and IBGDH, 3 December 2022, annexed (in French).

BACKGROUND

The DRC, Sub-Saharan Africa's largest country, boasts an abundance of natural resources. European colonizers exploited these resources for more than a century. Their legacy is still being felt today. The DRC's natural wealth is sometimes described as a "geological scandal," but as the Congolese historian, Georges Nzongola-Ntalaja puts it, "the real scandal... is that in 110 years of mineral extraction, the wealth of the country has not been used to the benefit of the great majority of its people. Since the days of King Leopold, it has gone to serve the interests of the country's rulers and those of their political allies and business partners in the international community."⁷

A LEGACY OF MINING AND EXPLOITATION

Belgium's oppressive colonial rule launched an era of intensive resource extraction. In 1885, a group of European investors led by Belgian King Leopold II founded the Congo Free State, which became notorious for its greed and violence.⁸ Reports of the vicious and cruel treatment of rubber plantation workers and members of communities forced to harvest wild rubber from the rainforest eventually sparked international outrage, contributing to the Belgian government taking control of the Congo Free State in 1908.

The industrialization of mining in the southern "Copperbelt" of the DRC began with the creation of the Upper Katanga Mining Union (Union Minière du Haut Katanga or UMHK) in 1906. UMHK controlled thousands of square kilometres of the then southern province of Katanga (a region larger in size than Belgium) and benefited from a 99-year monopoly.⁹ The company quickly identified vast copper and other deposits, ushering in decades of extraction.

On 30 June 1960, the DRC won its independence from Belgium, and in 1967, President Mobutu Sese Seko nationalized UMHK and renamed it *Générale des Carrières et des Mines SA* (Gécamines). High copper prices in the 1970s and 1980s helped finance President Mobutu's regime. Gécamines was the largest contributor to the state treasury and was responsible for almost all foreign exchange receipts to the state budget. The company also employed more than 34,000 workers, for whom it built houses and provided free water and electricity, as well as ran free hospitals and schools.¹⁰

However, in the 1990s the global price of copper plummeted. Then, as the regime of President Mobutu collapsed, so did Gécamines. The company stopped paying salaries and employees were forced to fend for themselves.¹¹

7 Georges Nzongola-Ntalaja, *The Congo: From Leopold to Kabila*, Zed Books, 2003, p. 28.

8 Nzongola-Ntalaja, *The Congo* (previously cited), Chapter 1.

9 Jason Stearns, *Dancing in the Glory of Monsters: The Collapse of the Congo and the Great War of Africa*, New York: PublicAffairs, 2011, p. 288.

10 Générale des Carrières et des Mines (Gécamines), "Notre Histoire," <https://www.gecamines.cd/histoire.html> (accessed on 24 July 2023, in French).

11 New York Times, "Zairian Rebels' New Allies: Men Armed with Briefcases," 17 April 1997, <http://www.nytimes.com/1997/04/17/world/zairian-rebels-new-allies-men-armed-with-briefcases.html> (accessed on 24 July 2023); Cahiers d'études africaines, "The Collapse of Gécamines," Issue 2006/1 (181), http://www.cairn.info/article.php?ID_ARTICLE=CEA_181_0115



GLOBAL PRICE OF

COPPER

1990s

**IN THE 1990S THE GLOBAL PRICE OF COPPER PLUMMETED
AS THE REGIME OF PRESIDENT MOBUTU COLLAPSED, SO DID GÉCAMINES.**

From 1998 to 2003, the country was engulfed by war, as Rwanda, Uganda and Burundi sought to overthrow President Mobutu's successor, Laurent Kabila. With little chance of reviving the industrial mining sector while fighting continued, Kabila encouraged the inhabitants of the mine towns to dig for themselves. This gave rise to so-called artisanal mining.¹² In 2002, the government published a new Mining Code. The aim was to revive the mining sector by attracting foreign companies. Gécamines still owns many concessions, but has leased many to other companies, and as a result, the operations at the major industrial mines are now conducted by western and Chinese companies (which often operate through joint ventures with the state-owned company).

Human rights and anti-corruption organizations have drawn attention to a wide range of problems relating to these mining operations.¹³ Amnesty International and IBGDH have both, for example, previously documented how the expansion of industrial mines has resulted in human rights abuses, including forced evictions.¹⁴

12 Öko-Institut e.V., "Social impacts of artisanal cobalt mining in Katanga, Democratic Republic of Congo," November 2011, p. 16, <http://www.oeko.de/oekodoc/1294/2011-419-en.pdf>

13 See, for example, Rights and Accountability in Development (RAID), "Exploitation of workers in DR Congo taints electric vehicles," November 2021, https://www.raid-uk.org/sites/default/files/report_road_to_ruin_evs_cobalt_workers_nov_2021.pdf; IndustriALL Global Union and The Europe Third-World Centre, "Official statement to the UN Human Rights Council" 38th Session Item 4, 27 June 2018, <https://www.industrial-union.org/sites/default/files/uploads/documents/2018/SWITZERLAND/unhrc.statement.pdf>; Resource Matters and Science Po, "See No Evil, Speak No Evil," October 2019, available at <https://www.business-humanrights.org/en/latest-news/resource-matters-report-see-no-evil-speak-no-evil/>; Afrewatch, "The Social and Environmental Issues Caused by Sicominés Mining in Lualaba: The Unbearable Living Conditions in Yenge and Kapanga Villages," February 2022, https://afrewatch.org/wp-content/uploads/2022/02/Rapport_Sicomines_Version_Anglaise.pdf; The Carter Center, "A State Affair: Privatizing Congo's Copper Sector", 2017, https://www.cartercenter.org/resources/pdfs/news/peace_publications/democracy/congo-report-carter-center-nov-2017.pdf; Global Witness, "The Deal for Deziwa," August 2020, <https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/deal-deziwa/>

14 See Amnesty International: *Profits and Loss: Mining and Human Rights in Katanga, Democratic Republic of the Congo* (Index: AFR 62/001/2013); Amnesty International, *Bulldozed: How a mining company buried the truth about forced evictions in the Democratic Republic of the Congo* (Index: AFR 62/003/2014); Amnesty International and Afrewatch, "This is What We Die For": *Human rights abuses in the Democratic Republic of the Congo power the global trade in cobalt* (Index: AFR 62/3183/2016); Amnesty International, *Time to Recharge: Corporate action and inaction to tackle abuses in the cobalt supply chain* (Index: AFR 62/7395/2017); Amnesty International, *DRC: Crisis in mines requires sustainable solution* (Index: AFR 62/0772/2019); and IBGDH, *Exploitation du cuivre et du cobalt (2C) dans la province du Lualaba: un danger pour les droits humains*, July 2022, (accessed 9 July 2023). (All documents previously cited).



© ↑ This sculpture, known as the "Copper Eaters," stands at the centre of the "Mwangeji" round-about in Kolwezi, and symbolizes the region's history of mining exploitation. © Amnesty International (photographer: Richard Kent)

KOLWEZI, CITY OF MINES

Kolwezi is the capital of Lualaba province in the south of the DRC, the western portion of what used to be the province of Katanga.¹⁵

The colonial mining company UMKH began operations in Kolwezi in 1921.¹⁶ Their first mine in the region was at Ruwe, where the company extracted gold, silver, copper and other minerals. This later became the Mutoshi copper mine.¹⁷ Soon after, UMHK also started exploiting copper deposits at mine sites called Musonoie and Kolwezi. In 1937 the company decided to build an administrative centre, with separate neighbourhoods for managers and workers there. It constructed these within a kilometre of its ever-growing mines.

Today, Kolwezi has grown into a city of at least half a million, including many people who have moved there to work as artisanal miners.¹⁸ It remains dominated, physically and economically, by the mining industry, and the vast mines around which its neighbourhoods have been built. In 1986, a study found that three quarters of the urban space in Kolwezi (around 6,500 hectares at the time) was in fact

15 In June 2015 the government subdivided the DRC's original 11 provinces into 26. The southern section of the Katanga province, through which the Copperbelt runs, was divided into the new provinces of Haut-Katanga and Lualaba. See Radio Okapi, *Découpage territorial : procédures d'installation de nouvelles provinces*, 13 July 2015, <http://www.radiookapi.net/actualite/2015/07/13/dcoupage-territorial-procedures-dinstallation-de-nouvelles-provinces> (accessed on 24 July 2023, in French).

16 Bruneau J-C and F-K Mansila, "Kolwezi: L'Espace Habité et ses Problèmes Dans Le Premier Centre Minier Du Zaire ["Kolwezi: Living Space and its Problems in Zaire's First Mining Centre"], 1986, *Cahiers des Sciences Humaines*, p. 219, https://horizon.documentation.ird.fr/exl-doc/pleins_textes/pleins_textes_4/sci_hum/23506.pdf. See also Centre National d'Etudes Spatiales (CNES), "République Démocratique Du Congo - Kolwezi, une Ville Au Cœur Des Concessions Minières : Enjeux Géopolitiques et de Développement ["Democratic Republic of Congo - Kolwezi, a city at the heart of mining concessions: geopolitical and development issues"], <https://geoimage.cnes.fr/fr/geoimage/republique-democratique-du-congo-kolwezi-une-ville-au-coeur-des-concessions-minieres-enjeux>

17 USGS, "Ruwe," Mineral Resource Data System, https://mrddata.usgs.gov/mrds/show-mrds.php?dep_id=10098402, (accessed on 13 July 2023).

18 In 2016 an estimate of 572,942 people lived in Kolwezi according to the Development Indicators Analysis Unit (Cellule d'Analyses des Indicateurs de Développement), *Ville de Kolwezi - Fiche d'identité de la ville* [City of Kolwezi - City ID], cited by RAID, "DRC: Congo's Victims of Corruption," January 2020, <https://www.raid-uk.org/sites/default/files/raid-congosvictimsofcorruptionfullreportfinal.pdf>

covered by mines and related infrastructure.¹⁹ A map maintained by the DRC's Ministry of Mines shows that most of the city remains close to mines, or on land containing potentially rich mineral deposits.²⁰ Because nearly all of Kolwezi is part of a mining concession or is owned by Gécamines, it is possible that most of the city could be sold off for mining operations in the future, putting nearly all its residents at risk of eviction. A study conducted from 1972 to 1974 by the Urban Planning Office (Bureau d'Étude d'Aménagement et d'Urbanisme) in Lubumbashi studied the feasibility of moving Kolwezi and proposed that the city be reconstructed to the east of the Mutoshi mine.²¹ In 1986, the government took note of this plan, and made modifications but did not implement it.²²

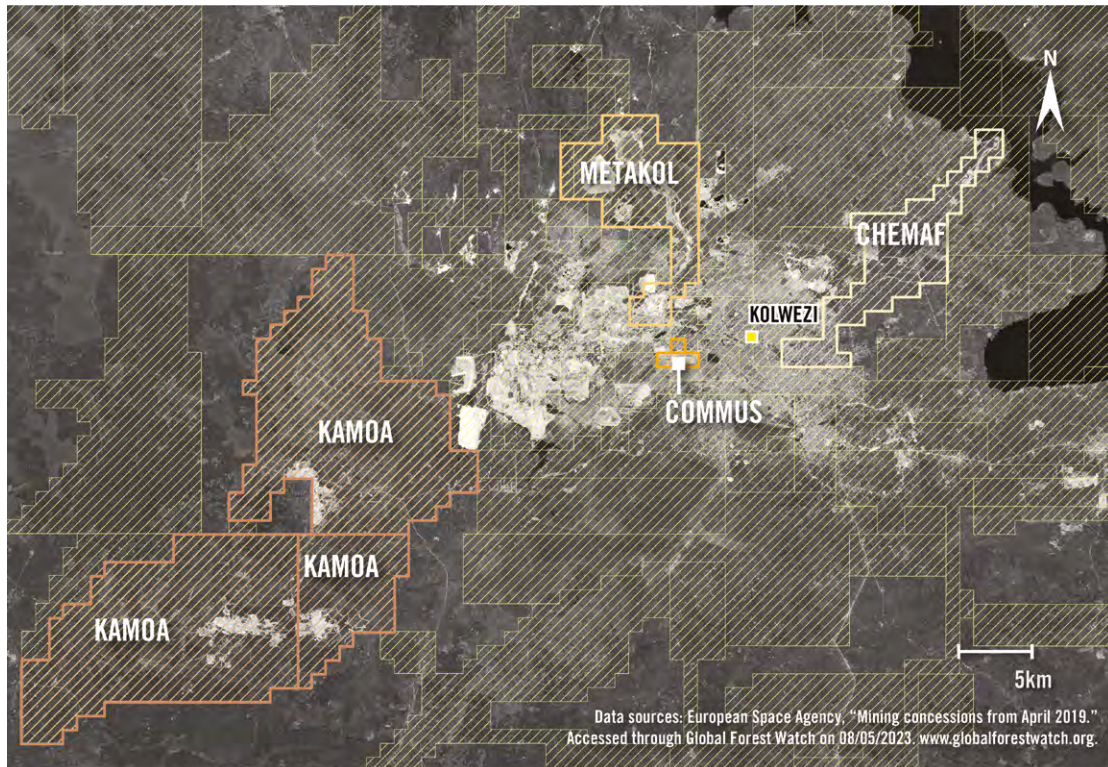


19 Bruneau J-C and F-K Mansila, Kolwezi (previously cited), p. 219.

20 Ministry of Mines, DRC, "Cartes des Titres Miniers et Occurrences Minière" ["Maps of mining titles and opportunities"], November 2022, available at <https://www.arcgis.com/apps/instant/sidebar/index.html?appid=5f33862234ff4d46b238524c095096ac> (24 July 2023).

21 Bruneau J-C and F-K Mansila, Kolwezi (previously cited), pp. 217-229.

22 Bruneau J-C and F-K Mansila, Kolwezi (previously cited), p. 226. See also CNES, DRC - Kolwezi, (previously cited); Kristien Greenen, "The city on a pile of natural resources," *Work in Mining*, 30 May 2017, <http://www.workinmining.ulg.ac.be/blog/the-city-on-a-pile-of-natural-resources> (accessed on 24 July 2023).

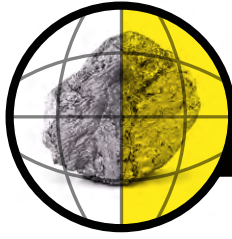


© ↑ Above is a map of all the mining exploration and exploitation licenses as of April 2019—shown with hatched polygons. It indicates almost the entire area in and around Kolwezi is permitted. More current licenses and permits can be seen on the Ministry of Mines' website: <http://drcllicences.cami.cd/en/>

The issue has gained prominence again in recent years, with the expansion of several mines, and the discovery of new deposits under some residential areas. In 2014 residents of the Kasulo neighbourhood discovered that their homes sat above a rich seam of heterogenite ore, which contains cobalt.²³ Residents and artisanal miners dug hundreds of tunnels to access this valuable ore. In 2017 the government moved inhabitants away from Kasulo, as the site became an authorized mining zone.²⁴

23 Amnesty International and Afrewatch, “*This is What We Die For*” (previously cited), p. 19.

24 IBGDH, “Rapport d’enquête sur la contribution de l’entreprise Congo Dongfang International Mining au développement local de Kasulo” [“Investigation report on Congo Dongfang International Mining’s contribution to the local development in Kasulo”], November 2019, available at https://congominer.org/system/attachments/assets/000/001/699/original/RAPPORT_d'enquete_kasulo_version_FINALE_ET_PUBLIE.pdf?1575458365



THE DRC HOLDS APPROXIMATELY
HALF OF THE WORLD'S COBALT RESERVES



AND ACCOUNTS FOR MORE THAN
70% OF GLOBAL PRODUCTION

KOLWEZI'S ROLE IN THE GLOBAL ENERGY TRANSITION

There is consensus that burning fossil fuels is the main cause of climate change, harming people and destroying biodiversity, among other impacts. The climate emergency has catalysed international efforts to decarbonize the global economy and prompted states to invest in renewable energy sources.²⁵

The progressive electrification of global transportation systems—including increased electric vehicle (EV) manufacturing—requires vast and increasing amounts of copper and cobalt.²⁶ Copper is the most widely used mineral in clean energy technologies. Cobalt is an essential mineral for most lithium-ion battery types. According to a 2021 assessment by the International Energy Agency, demand for cobalt, as a result in the growth of EVs is predicted to increase by between seven and twenty-fold by 2040.²⁷

The DRC holds the seventh largest reserves of copper globally and is the third largest producer.²⁸ It also holds approximately half of the world's cobalt reserves and accounts for more than 70% of global production. Many of the country's most productive cobalt and copper mines are located in and around Kolwezi, which has also seen the development or expansion of many mines as global demand for these two critical minerals grows.²⁹

25 Amnesty International, "What We Do," Energy Transition, <https://www.amnesty.org/en/what-we-do/climate-change/energy-transition/> (accessed on 12 July 2023).

26 International Energy Agency (IEA), *The Role of Critical Minerals in Clean Energy Transitions*, 2021, <https://iea.blob.core.windows.net/assets/ffd2a83b-8c30-4e9d-980a-52b6d9a86fdc/TheRoleofCriticalMineralsinCleanEnergyTransitions.pdf>, p. 104

27 IEA, *Critical Minerals* (previously cited), p. 135.

28 USGS, "Mineral Commodity Summary: Copper 2022," 31 January 2022, <https://pubs.usgs.gov/periodicals/mcs2022/mcs2022.pdf>

29 Andrew L. Gulley, "One hundred years of cobalt production in the Democratic Republic of the Congo", in *Resources Policy: Volume 79*, December 2022, <https://www.sciencedirect.com/science/article/pii/S0301420722004500?via%3Dihub>

LEGAL FRAMEWORK

FORCED EVICTIONS UNDER INTERNATIONAL LAW

The DRC's Constitution recognizes that: "Treaties and international agreements duly entered into have authority over domestic laws as soon as they are published, provided that the other party [to the agreement] complies with it."³⁰ The DRC is a party to several core UN human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (ICESCR).³¹ Article 11 of the ICESCR guarantees the right to adequate housing. The UN Committee on Economic, Social and Cultural Rights (CESCR), the expert body that provides authoritative guidance on the implementation of the ICESCR, has clarified the obligations of States Parties to respect, protect and fulfil the right to adequate housing.³² Forced evictions are a violation of the right to adequate housing and other human rights.

A forced eviction is the removal of people against their will from the homes or land they occupy, without legal protections and other safeguards. Under international human rights law, states must ensure that evictions only occur in exceptional circumstances and require full justification given their adverse impact on a wide range of internationally recognized human rights. Evictions may only be carried out as a last resort once all other feasible alternatives have been explored in genuine consultation with all affected people and appropriate procedural protections are in place. Such procedural protections and safeguards include but are not limited to:³³

- An opportunity for genuine consultation with all those affected;
- Adequate and reasonable notice for affected people prior to the eviction;
- Accessible information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
- Government officials or their representatives to be present during the eviction;
- Anyone and everyone carrying out the eviction to be properly identified;
- Evictions not to take place in particularly bad weather or at night unless affected people consent;
- Provision of recourse mechanisms and legal remedies;
- Provision, where possible, of legal aid to people who are in need of it to seek redress from the courts;
- Compensation for all losses.

30 DRC, Constitution de la République Démocratique du Congo [Constitution of the Democratic Republic of the Congo], 2006, Article 215 (unofficial English translation available at [https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/73054/133757/F-418101257/COD-73054%20\(EN\).pdf](https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/73054/133757/F-418101257/COD-73054%20(EN).pdf)).

31 The DRC ratified the ICESCR in 1976.

32 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right to Adequate Housing, 13 December 1991, UN Doc E/1992/23, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en, Article 11, para. 1; CESCR, General Comment 7: The Right to Adequate Housing (Article 11.1): Forced Evictions," 20 May 1997, UN Doc E/1998/22, Annex IV, <https://www.refworld.org/docid/47a70799d.html>

33 CESCR, General Comment 7, para. 15.



THE REMOVAL OF PEOPLE AGAINST THEIR WILL FROM THE HOMES OR LAND THEY OCCUPY, WITHOUT LEGAL PROTECTIONS AND OTHER SAFEGUARDS.

In situations where those affected are unable to provide for themselves, governments must “take all appropriate measures, to the maximum of [their] available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.” No one should be rendered homeless or vulnerable to other human rights violations as a result of evictions.³⁴

The African Commission on Human and People’s Rights has affirmed that forced evictions contravene the African Charter, in particular articles 14 and 16, which guarantee the right to property and the right to health, and article 18(1) on the state’s duty to protect the family.³⁵

The UN Basic Principles and Guidelines on Development-Based Evictions and Displacement (UN Basic Principles on Evictions), issued by the UN Special Rapporteur on adequate housing in 2007, provide a helpful framework to assess the legality of evictions in the mining sector. They recognize that: “All persons, groups and communities have the right to resettlement, which includes the right to alternative land of better or equal quality and housing that must satisfy the following criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education.”³⁶

They also provide that all people being evicted, with or without land title, are entitled to compensation for the loss, salvage and transport of their properties, including the original dwelling and land lost or damaged in the process.³⁷ States must also ensure that adequate and effective legal or other appropriate remedies are available to affected groups.³⁸

34 CESCR, General Comment 7, para. 16.

35 The African Commission on Human and Peoples’ Rights clarified that “although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, cited under Article 16, the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health, and family life are adversely affected. It is thus noted that the combined effect of Articles 14, 16 and 18(1) reads into the [African] Charter a right to shelter or housing.” See *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Communication 155/96, <https://www.eschr-net.org/sites/default/files/serac.pdf>, para. 60.

36 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement (UN Basic Principles on Evictions), 5 February 2007, A/HRC/4/18, para. 16

37 UN Basic Principles on Evictions, para. 61.

38 UN Basic Principles on Evictions, paras 17 and 43.

FORCED EVICTIONS UNDER CONGOLESE LAW

The DRC's 2006 Constitution (in its 2011 amended version) protects important economic and social rights. Article 34 provides that, "private property is sacred," and establishes that: "One may only be deprived of [his / her / their] property for reasons of public utility and in return for a just and prior indemnity conceded under the conditions established by the law."³⁹

Article 48 guarantees the rights to decent housing, access to both drinking water and "electric energy,"⁴⁰ which is an essential legal protection for the communities featured in this report.

Article 60 also provides that, "respect for human rights and fundamental freedoms is binding on public authorities and on every person," thereby creating a firm obligation and standard of conduct for both state and non-state actors such as mining operators.⁴¹

MINING CODE AND REGULATIONS

The mining sector in the DRC is governed by the country's Mining Code, adopted in 2002 and amended in 2018.⁴² In a letter responding to Amnesty International and IBGDH's preliminary findings, the Ministry of Mines stressed that the Mining Code was revised "to ensure that the human rights of communities who live on the frontline of mining sites are scrupulously and entirely respected during the establishment of any new mining project."⁴³ The earlier version established that mining companies must "repair the damage caused by the works...that they carry out within the scope of their mining activities."⁴⁴ It established rules on compensation for those whose land or property was affected by mining operations, amounting "either to the rent or the value of the land at the time of its occupation, plus 50%."⁴⁵

Since 2018, the amended Mining Code has required companies to craft "terms of reference" ("*cahier des charges*" or ToR) in consultation with affected communities, at least six months before the beginning of mining operations.⁴⁶ These ToR define the responsibility of mining operators towards communities affected by their activities. The Code further states that "in the event of a displacement of population, the mining operator is obliged to proceed beforehand with indemnification, compensation and resettlement of affected communities."⁴⁷

The country's Mining Regulations, also amended in 2018, outline the rules for how companies should operate in accordance with the Mining Code.⁴⁸ Article 477 of the Mining Regulations requires companies licensed to conduct mining operations to:⁴⁹

39 DRC, Constitution, 2006, Article 34. Although under Congolese law, land is the "exclusive, inalienable and imprescriptible property of the State" (pursuant to Article 9 of the Constitution and Article 53 of Law 73/021 of 20 July 1973), Congolese people's land rights are similar to private property rights and protected under Article 34 of the Constitution. Congolese law also recognizes "customary rights" to local communities, exercised collectively or individually, and not subject to any formalities such as registration certificates or title deeds (pursuant to Article 18 of Law 11/022 of 24 December 2011 on the fundamental principles of agriculture).

40 DRC, Constitution, Article 48.

41 DRC, Constitution, Article 60.

42 DRC, Code Minier [Mining Code], Law 007/2002 of July 2002 as amended by Law 18/001 of 9 March 2018, available at https://eiti.org/sites/default/files/attachments/j_o_ndeg_speical_du_28_mars_2018_code_minier.pdf (in French).

43 Ministry of Mines, DRC, Letter to Amnesty International and IBGDH, 3 December 2022, annexed (in French).

44 DRC, Mining Code, Article 280.

45 DRC, Mining Code, Article 281.

46 DRC, Mining Code, Article 285 *septies*.

47 DRC, Mining Code, Article 281.

48 DRC, Décret 038/2003 du 26 mars 2003 portant Règlement minier [Decree 038/2003 of 26 March 2003 spelling out mining regulations] as amended by Decree 18/024 of 08 June 2018, Articles 477-480 bis and Annex XVIII, available at https://congominer.org/system/attachments/assets/000/001/550/original/J.O._n%C2%B0_sp%C3%A9cial_du_12_juin_2018_REGLEMENT_MINIER_Textes_coordonn%C3%A9s.pdf?1553851275 (in French).

49 DRC, Mining Regulations, Article 477.

- Assess communities' concerns about the impacts of the mining project;
- Develop a plan for consultation;
- Provide information about the mining project and the rehabilitation and mitigation measures for environmental impacts;
- Maintain a constructive dialogue with mining-impacted communities.

Annex XVIII of the Mining Regulations, entitled the “Directive on Relocation, Indemnification, Compensation, Displacement and Resettlement of Communities Affected by Mining Projects” provides a detailed framework for conducting evictions in the mining sector. It expressly acknowledges that:⁵⁰

“The concessions granted to mining investors often cover areas occupied by populations who use them as sources of livelihood.

Thus, the deployment of mining operations generally leads to the forced displacement of surrounding communities as a last resort when industrial mining activities and communities cannot coexist. This displacement involves indemnification, compensation, and the resettlement of the affected communities.”

At the inception of a project, this directive requires mining operators to craft a resettlement plan, in consultation with affected communities, assessing all alternative options to evictions, including a compensation scale and a description of available grievance mechanisms.⁵¹ It also outlines the principles for mining companies undertaking evictions to follow. These include:⁵²

- Consultation and participation of mining-impacted communities during all stages and phases of the eviction and resettlement process;
- Respect for human rights;
- The disclosure and availability of all information on the eviction process, the location and resettlement of local communities affected;
- Identification and valuation of lost property;
- Payment of damages;
- Compensation prior to the eviction;
- A reasonable notice period;
- The right to remedy, and the creation of living conditions equivalent or superior to communities' standard of living prior to the eviction.

⁵⁰ DRC, Mining Regulations, Annex XVIII, paras 1-2.

⁵¹ DRC, Mining Regulations, Annex XVIII, Articles 9 and 27, and outline of standard resettlement plan attached to Annex XVIII.

⁵² DRC Mining Regulations, Annex XVIII, Article 3.

The Directive also requires licensees to systematically provide in-kind compensation as follows:⁵³

“The loss of housing, community infrastructure and land access rights will be compensated for by the construction of adequate new housing and infrastructure and by the provision of alternative arable land.”

It requires mining operators to pay affected communities individually, in the presence of state authorities and to record such payments through written documentation, and to monitor the implementation of their resettlement plan after the eviction.⁵⁴

The Mining Code also grants the Prime Minister the power to recognize “prohibited areas” where mining activities are not permitted to, among others, safeguard national security, public safety, or where mining would be incompatible with “other existing or planned uses of the soil or subsoil” or environmental protection.⁵⁵

PROVINCIAL REGULATIONS

In August 2017, the governor of Lualaba created the “Provincial Relocation Commission” (Commission provinciale de délocalisation) to increase the province’s oversight over evictions.⁵⁶ Companies planning to evict must refer their eviction and resettlement plans to the Commission, pay the Commission an administrative fee and compensate all technical experts (state employees) commissioned to appraise potential losses before an eviction.⁵⁷

It is a hybrid body composed of representatives of several provincial Ministries, the National Human Rights Commission and civil society.⁵⁸ As of February 2022, the Commission said it had supervised the eviction of over 750 households, and 205 were ongoing when researchers met with its President.⁵⁹

In August 2022, the governor of Lualaba also adopted a provincial decree strengthening rules on evictions, including on the need for companies to be transparent.⁶⁰ The decree recognized the customary land rights of local communities and granted powers to new bodies to oversee and monitor evictions.⁶¹

53 DRC, Mining Regulations, Annex XVIII, Article 18.

54 DRC Mining Regulations, Annex XVIII, Articles 22- 26.

55 DRC Mining Code, Article 6.

56 The Commission includes representatives of the provincial Ministries of Mines, Interior, Urban Planning, Infrastructure and Public Works, Agriculture, Environment and Gender and Humanitarian and Social Affairs. See Governor of Lualaba, DRC, Arrêté Provincial n°2017/GOUV.P.L.BA/031 du 11/08/2017 portant creation de la commission provinciale de délocalisation dans la province du Lualaba [Provincial Decree No. 2017/GOUV/P.LBA/031 creating the provincial relocation committee in the Lualaba province], 11 August 2017, on file with Amnesty International (in French).

57 Researchers were not able to obtain details on the amounts, terms or scale of this administrative fee. However, any unregulated payment from mining operators to the Commission risks undermining its impartiality.

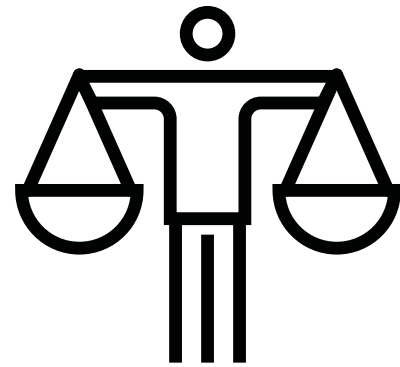
58 Lualaba Decree 2017/Gouv/P.LBA/031 (previously cited), Article 2.

59 Amnesty International and IBGDH interview in person with President of Lualaba’s Relocation Commission, 25 February 2022, Kolwezi.

60 Lualaba Province, Edit provincial 025 du 30 août 2022 portant modalités d’indemnisation, de compensation, et de réinstallation des communautés affectées par des projets dans la province du Lualaba [Provincial Decree 025 of 30 August 2022 setting modalities of compensation, indemnification and resettlement of communities affected by projects in the Lualaba province], on file with Amnesty International (in French).

61 Lualaba Decree 025 (previously cited), Articles 11, 7 and 24.

HUMAN RIGHTS IN THE CONTEXT OF BUSINESS ACTIVITIES



DRC'S DUTY TO PROTECT

States have an obligation, under international law, to respect, protect and fulfil human rights. The UN Guiding Principles on Business and Human Rights (UN Guiding Principles) have explicitly recognized that such duty applies in the context of corporate activities.⁶² The UN Guiding Principles were endorsed by the UN Human Rights Council on 16 June 2011 through a unanimous resolution. They are a key internationally recognized standard for both States and corporate actors to observe in the context of business-related human rights abuses.

The UN Guiding Principles provide that States should enforce laws that are aimed at, or have the effect of, requiring companies to respect human rights.⁶³ Where a company is controlled by the State, an abuse of human rights by such entity may entail a violation of the State's own international law obligations. The fact that state-owned companies may bear the same human rights obligations as states is particularly important in the DRC, given Gécamines' ownership stakes in joint-ventures operating industrial mining projects.

CORPORATE RESPONSIBILITY TO RESPECT

Companies have a responsibility to respect all human rights wherever they operate and throughout their operations. This widely recognized standard of expected conduct is set out in the UN Guiding Principles. This corporate responsibility to respect human rights is independent of a state's own human rights obligations and exists over and above compliance with national laws and regulations protecting human rights.⁶⁴

The UN Guiding Principles establish that to meet their corporate responsibility to respect, companies should have in place an ongoing and proactive human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on the rights of communities affected by their activities. When conducting human rights due diligence, a company may identify that it may cause or contribute to—or already be causing or contributing to—human rights abuse. In these cases, companies must cease or prevent the adverse human rights impacts.⁶⁵ In the context of large industrial mining projects, if a company's activities would require the displacement of local communities, but the mining operator cannot carry out evictions that would afford adequate procedural safeguards and effective remediation, the mining operator should halt it.

62 Office of the High Commissioner for Human Rights (OHCHR), *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (UN Guiding Principles), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/121/90/PDF/G1112190.pdf?OpenElement>, UN Doc HR/PUB/11/04, Principle 1.

63 UN Guiding Principles, Principle 3 (a).

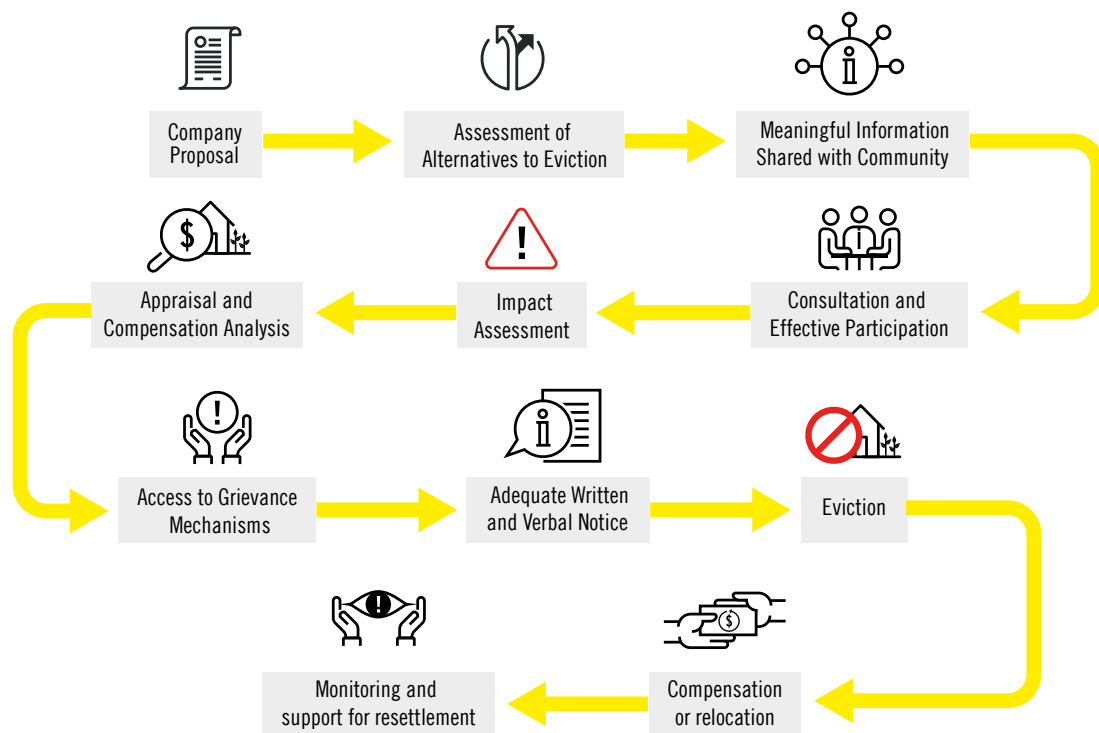
64 UN Guiding Principles, Principle 11 (including Commentary).

65 UN Guiding Principles, Commentary to Principle 19.

THE RIGHT TO REMEDY

When human rights violations occur, international law requires that the perpetrator is held accountable and the victim receives an effective remedy. The right to an effective remedy lies at the very core of international human rights law. It encompasses survivors' right to: equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.⁶⁶

The UN Guiding Principles also establish that states must take “appropriate steps to prevent, investigate, punish and redress” corporate harm within their territory or jurisdiction.⁶⁷ They also make clear that “where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation.”⁶⁸ Therefore, mining operators cannot, by definition, meet their responsibility to respect human rights if they cause or contribute to forcibly evicting communities to make way for extractive activities and subsequently fail to remedy their adverse impact.⁶⁹



⌚ ↑ Procedural safeguards mining operators must observe when conducting evictions, in line with Congolese law and international human rights standards.

66 UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (UN Basic Principles and Guidelines on the Right to a Remedy), UN Doc A/RES/60/147, 21 March 2006, Principle 11 “Victims’ right to remedies.” See also Amnesty International, *Injustice Incorporated: Corporate Abuses and the Human Right to Remedy* (Index: POL 30/001/2014), 7 March 2014, <https://www.amnesty.org/en/documents/POL30/001/2014/en>, p. 19.

67 UN Guiding Principles, Principle 25.

68 UN Guiding Principles, Principle 22.

69 OHCHR, *Frequently Asked Questions about the UN Guiding Principles on Business and Human Rights*, (UN Guiding Principles FAQ), 2014, <https://www.ohchr.org/en/publications/special-issue-publications/frequently-asked-questions-about-guiding-principles>, Question 35, p. 36.

CASE STUDIES

The case studies that follow illustrate the various adverse human rights impacts that the expansion of industrial mining projects extracting copper and cobalt have on communities living in areas affected by mining in the Lualaba province and therefore on the frontline of energy transition mining. Amnesty International and IBGDH's research documents the DRC national and provincial governments' failure to protect mining-impacted communities from human rights abuses and risks that arise at mining sites, as well as corporate practices that fall short of businesses' responsibility to respect human rights.

CASE STUDY 1

KOLWEZI COPPER AND COBALT MINE

Cité Gécamines is a residential neighbourhood, west of Kolwezi's city centre, originally built to house mine workers. In 2017, it was home to nearly 39,000 people. From 1963 to 2015, the southern boundary of Cité Gécamines was a disused open pit mine.

CITÉ GÉCAMINES

Cité Gécamines is a residential neighbourhood, west of Kolwezi's city centre. It is a neighbourhood of single storey houses, each within their own walled compound. During the colonial era, the Belgian mining company UMHK built the neighbourhood for its employees. In 2017, it was comprised of over 3200 houses and home to nearly 39,000 people. As well as newer residents, Cité Gamines remains home to current and former employees of the state mining company Gécamines, which succeeded UMHK.⁷⁰

From 1963-2015, the southern boundary of the Cité Gécamines was a disused open pit mine, Musonoie, much of which had become a lake.⁷¹ Workers then began to rehabilitate the mine. As it has grown, the residents of Cité Gécamines, as well as other neighbourhoods bordering the mine, have faced evictions. One of them, Edmond Musans, 62, worked for Gécamines from 1978 until 2015. He said that he bought a plot with a standard one-bedroom house from the company in 1994. While the house was small, it had access to water and electricity and was close to a hospital. Then he was told to leave. "We did not ask to be moved, the company and the government came and told us: 'There are minerals here.'"⁷²

70 IBGDH report on COMMUS and Kamao, July 2022 (previously cited), p. 9.

71 IBGDH report on COMMUS and Kamao, July 2022 (previously cited), p. 17.

72 Amnesty International and IBGDH interview with Edmond Musans, 25 February 2022, Kolwezi.



© ↑ Drone photograph of the neighborhood of Gécamines Kolwezi, on the edge of the Kolwezi Copper and Cobalt Mine operated by COMMUS, September 2022 © Amnesty International (videographers: Reportage Sans Frontières)

The mine is operated by COMMUS, a joint venture between Chinese multinational company Zijin Mining Group Ltd. (Zijin Mining), and Gécamines.⁷³

To document this case study, researchers have drawn on IBDGH's close knowledge of the community, which it has been supporting since 2015. In addition, they reviewed numerous letters between the former residents, the company and government officials. They also interviewed six former residents and visited the site. They requested meetings with COMMUS and sent letters requesting information to its parent company. They both replied to findings of this report in a letter dated 9 May 2023, referenced throughout this case study. Researchers also reviewed Zijin Mining's publicly available policies and pledges and its annual sustainability reports. COMMUS does not have its own website.

“We did not ask to be moved, the company and the government came and told us: ‘There are minerals here.’”

Edmond Musans

73 Zijin Mining Group Ltd. (Zijin Mining) purchased its share in two stages. See, Zijin Mining, “Proposed Acquisition of 51% Shareholding in La Compagnie Minière, de Musonoi Global SAS”, 3 November 2014, <https://www.zijinmining.com/Portals/1/LTN201411032180.pdf>; and Zijin Mining, “History”, <https://www.zijinmining.com/about/history.htm> (accessed on 13 July 2023).

TIMELINE: Kolwezi copper and cobalt mine

DATE	Event
1963	Mining operations at Musonoie end after more than 40 years of production, and the site is abandoned. ⁷⁴
November 2005	Gécamines and - China National Overseas Engineering Corporation Co. Ltd. create COMMUS. ⁷⁵
2011	COMMUS begins exploration of the mine, including potential expansion. ⁷⁶
2012	Residents of Cité Gécamines see COMMUS agents and government officials marking houses with red crosses. COMMUS asks city council of Kolwezi to conduct a preliminary impact assessment of renewed mining. ⁷⁷
3 November 2014	Zijin Mining acquires a majority stake in COMMUS. ⁷⁸
19 January 2015	COMMUS requests the city authorities to oversee the eviction of families to make way for the mine expansion. ⁷⁹
10 February 2015	Kolwezi's mayor creates a municipal relocation commission to oversee COMMUS evictions. ⁸⁰
April 2015	Construction of the Kolwezi copper and cobalt mine infrastructure begins. Residents complain to the authorities that COMMUS started exploration activities without informing them. ⁸¹
20 May 2015	Ministry of Mines temporarily asks COMMUS to suspend all evictions and summons COMMUS' senior management to Kinshasa for discussions. ⁸²

74 IBGDH report on COMMUS and Kamoia, July 2022 (previously cited), p. 17.

75 The initial corporate entity was known as Compagnie Minière de Musonoie SPRL, it is now registered as Compagnie Minière de Musonoie Global SAS (COMMUS). See "Contrat de création de société entre la Générale des Carrières et des Mines et China National Overseas Engineering Corporation relatif à l'exploitation du gisement de Musonoie Global" ["Contract to create a company between Générale des Carrières et des Mines and China National Overseas Engineering Corporation relating to the exploitation of the Musonoie Global deposit"], November 2005, <https://congominer.org/system/attachments/assets/000/000/253/original/17-COMMUS-2005-ContratPartenariatCessionCOVEC-Gecamines.pdf?1430928225>.

76 Zijin Mining, *2015 Investor circular, "Background and Feasibility of the Project"*, 2015, available at <https://minedocs.com/21/Zijin-Mining-Circular-08032015.pdf>, p. 38.

77 COMMUS, Letter to DRC's Minister of Mines, 28 May 2015, on file with Amnesty International (in French).

78 Zijin Mining, "Proposed Acquisition of 51% Shareholding in La Compagnie Minière de Musonoie Global SAS," 3 November 2014, <https://www.zijinmining.com/Portals/1/LTN201411032180.pdf>

79 COMMUS, Letter to the mayor of Kolwezi, 19 January 2015, on file with Amnesty International (in French).

80 Mayor of Kolwezi, Urban Decree 2015/03/VK/BM, on file with Amnesty International (in French).

81 IBGDH report on COMMUS and Kamoia, July 2022 (previously cited), p. 22.

82 Ministry of Mines, DRC, Southern Katanga Provincial Division, Letter to COMMUS, 20 May 2015, on file at Amnesty International (in French).

Timeline continued from previous page

DATE	Event
October 2015	COMMUS starts work on the mine. ⁸³
30 August 2016	The municipal relocation commission convenes meeting between COMMUS and residents who sign an agreement regarding their eviction. ⁸⁴ COMMUS distributes compensation cheques.
September 2016	Evictees of Cité Gécamines lodge a complaint against COMMUS before the Commissioner General of Planning, Housing, Land Affairs and Development. ⁸⁵
4 July 2018	Governor of Lualaba urges COMMUS to resume evictions under the oversight of the province's Relocation Commission. ⁸⁶



© ↑ At the time the data was accessed, the COMMUS concession discussed in this report was demarcated to encompass over 3km² of land.

83 COMMUS, Letter CMS/15/004 to the Mayor of Kolwezi, 19 January 2015, on file at Amnesty International (in French).

84 Amnesty International and IBGDH interviews in person with Michel Ndoni, Crispin Mwenda and "Claudia" (name changed for security reasons), 21 February 2022, Kolwezi.

85 IBGDH report on COMMUS and Kamoia, July 2022 (previously cited), p. 17.

86 Governor of Lualaba, Letter to COMMUS SA, 4 July 2018, on file with Amnesty International (in French).



THE KOLWEZI COPPER AND COBALT MINE

COMMUS operates the Kolwezi copper and cobalt mine. The site covers an area of 3,359km² and is surrounded by residential areas.⁸⁷ Developed during the colonial era, production at the mine ended in 1963.⁸⁸

COMMUS was created in 2005 as a joint venture between Gécamines and a Chinese state-owned enterprise, China National Overseas Engineering Corporation, to explore and resume the extraction of copper and cobalt from the abandoned Musonoie quarry and neighbouring areas covered by its exploration permits.⁸⁹ In November 2014, Zijin Mining acquired a majority stake in COMMUS (51%) and increased its capital investment to 72% in 2016.⁹⁰ Zijin Mining's shares are listed on both the Hong Kong and Shanghai Stock Exchanges. Gécamines remains a minority owner of this project. After several years of construction work starting in 2015, production resumed in June 2017.⁹¹ In 2022, the mine produced over 128,000 tonnes of copper and 2,506 tonnes of cobalt. Zijin Mining states that all its subsidiaries, including COMMUS, are expected to comply with the corporate group's human rights standards.⁹² Zijin Mining's website stresses that the companies in its group are dedicated to "protecting and respecting the personal and property safety, as well as basic freedoms and human rights of (...) communities, and other stakeholders who may be affected by our production and operations."⁹³ Zijin Mining also stated its commitment to conducting human rights due diligence in line with the UN Guiding Principles. The company further claims that before a project starts, Zijin Mining "will carry out community impact assessment (...) [and] identify affected groups and assess the social impact and potential risks in the area where the project operates."⁹⁴ Its website states that the company has in place communication and compliance mechanisms available to all local communities affected by its operations.

87 The activities of the Kolwezi copper and cobalt mine affect, among others, the neighbourhoods of Biashara, Kanina, Gécamines-Kolwezi, Musonoie, Tambwe-Munana, Methodist camp and nearby villages including Kepepa, Musalo, Pierre-muteba et Tshabula. See Zijin Mining, "Kolwezi Copper Mine," <https://www.zijinmining.com/global/program-detail-71736.htm> (accessed on 13 July 2023).

88 IBGDH report on COMMUS and Kamoia, July 2022 (previously cited), p. 17.

89 Zijin Mining, "History," (accessed on 13 July 2023)

90 Zijin Mining, "History," (accessed on 13 July 2023).

91 Zijin Mining, 2017 Environmental, Social and Governance Report, 26 July 2018, <https://minedocs.com/21/Zijin-Mining-EIS-2017.pdf>

92 Zijin Mining, "Human Rights," <https://www.zijinmining.com/sustainable/human-rights.htm> (accessed on 13 July 2023).

93 Zijin Mining, "Security and Human Rights," https://www.zijinmining.com/sustainable/Security_and_Human_Rights.htm (accessed on 13 July 2023).

94 Zijin Mining, "Community Engagement," <https://www.zijinmining.com/sustainable/community-participation.htm> (accessed on 13 July 2023).

NO INFORMATION

COMMUS has not published or shared its plans to expand the mine or any impact assessment reports that it may have conducted.⁹⁵ Zijin Mining has also never published relevant details on its website. Its four most recent annual sustainability reports, which are available on its website, do not mention any relevant information on the mine expansion or need for eviction of nearby communities.⁹⁶



📷 ↑ House marked for eviction in the neighborhood of Gécamines, Kolwezi, on the edge of the open-pit of the Kolwezi copper and cobalt mine, operated by COMMUS © Amnesty International (photographer: Richard Kent)

Given the location of the mine, close to Kolwezi's city centre, the fact that the concession covers more than 3km² and that many homes actually sit within the area covered by COMMUS' exploration permits, many thousands of people are potentially affected. The fear of losing their homes to the expansion of COMMUS' giant mine has hung over the residents of Cité Gécamines since 2012. That's when, without any warning, staff working for the municipality began painting red crosses on the walls and gates of their houses.⁹⁷ "They started to put up crosses, barriers, to scare people. We were patient, we saw it, we wondered. We were only told, 'wait,' recalled Michel Ndoni, 45, who owned house 21A on Kinkole Avenue.⁹⁸

95 In an email to Amnesty International, the company stated that "COMMUS's latest social and environmental impact study is being reviewed by the Ministry of Mines and other related government bodies. Revisions are "being made from time to time in this process, based on ongoing deliberations. It is therefore not convenient for the company to provide it to you before its final approval by the government." See COMMUS, Email to Amnesty International, 2 July 2023, on file with Amnesty International.

96 Zijin Mining, "Reports and Policies," https://www.zijinmining.com/sustainable/Reports_and_Policies.htm (accessed on 13 July 2023).

97 Correspondence from COMMUS shows that the company commissioned municipal agents to conduct a scoping study and preliminary assessment of individuals at risk of eviction starting 2012. COMMUS, Letter to DRC's Minister of Mines, 28 May 2015, on file with Amnesty International (in French).

98 Amnesty International and IBGDH interview in person with Michel Ndoni, 21 February 2022, Kolwezi.



↑ Satellite image of the Musonoie quarry, 7 July 2009



↑ Satellite image of the Musonoie quarry, where COMMUS now operates the Kolwezi copper and cobalt mine, 8 May 2023

The wait for further information lasted several more years. Without the community knowing what was in store, COMMUS was developing plans to develop the site and evict many residents. In November 2014, Zijin Mining acquired a majority stake in COMMUS. Shortly afterwards, in January 2015, COMMUS notified Kolwezi's city council that construction work to drain the open pit would start later that year. In this letter, which was only later passed on to civil society groups, the company admitted that their activities would affect neighbouring communities, including, "sound of machinery, dust from digging" and stressed that, "security risks would arise if [mining-impacted communities] were not evicted sooner

rather than later.” COMMUS asked the city council to instruct residents at risk to stop building homes near the mine and to create a committee to help manage the eviction process.⁹⁹

Accordingly, in February 2015, the mayor of Kolwezi established a municipal relocation commission to oversee the eviction of communities living near the mine.¹⁰⁰ IBGDH and other groups complained about COMMUS’ failure to provide adequate information to communities at risk and to effectively consult with them.¹⁰¹ A few weeks later, the Ministry of Mines ordered COMMUS to halt plans to evict community members and summoned its executives to Kinshasa.¹⁰²

In a reply to the Ministry of Mines, COMMUS claimed that it had in fact shared relevant information with the community.¹⁰³ It wrote that it had organized a meeting with Kolwezi’s mayor and other local officials, as well as representatives of churches and the community. COMMUS also wrote that in compliance with local laws, it had commissioned an environmental impact study, and guaranteed to establish a compensation system in accordance with the law. COMMUS later explained that, “after gaining a full understanding of these activities, the Ministry of Mines allowed us to continue with the relocation work.”¹⁰⁴

In its letter to Amnesty International and IBGDH, the company further explained that at all stages its “relocation work has been led and supervised by the Provincial Relocation Committee,” which supervised “the relocation process based on community consultation and participation; ensures information transparency for relocation; and provides technical consultation.”¹⁰⁵ The company clarified that civil society groups, as well as the national human rights commission, “took part in and supervised the relocation processes as third parties, to ensure the compliance and transparency of the process”. The company also outlined measures it has taken since 2022 to consult community members and share relevant information.

However, the company’s claims that it consulted the affected population are not supported by the accounts of community members, or civil society groups representing them, such as IBGDH. For example on 29 September 2015, 207 residents of five communities living next to the mine, including Cité Gécamines, signed a letter sent to the mayor of Kolwezi and COMMUS’ General Manager, stating that, “we don’t want you to get involved in a relocation process that doesn’t take into account the opinions and concerns neither of the true victims nor the social organizations and work to protect the rights of the communities.”¹⁰⁶

99 COMMUS, Letter to the mayor of Kolwezi, 19 January 2015, on file with Amnesty International (in French).

100 Mayor of Kolwezi, Urban Decree 2015/03/VK/BM creating a commission for the relocation of residents living on COMMUS’ security line, 10 February 2015, on file with Amnesty International (in French).

101 Kolwezi civil society collective, Letter to the governor of Lualaba, 5 May 2015, on file with Amnesty International (in French).

102 Ministry of Mines, DRC, Southern Katanga Provincial Division, Letter to COMMUS, 20 May 2015, on file at Amnesty International (in French).

103 COMMUS, Letter to the governor of Katanga Province and other state authorities, 28 May 2015, on file with Amnesty International (in French).

104 Amnesty International and IBGDH asked COMMUS for evidence that this permission had been received. The company responded in an email that, “after receiving documents ordering the suspension of relocation activities from the Ministry of Mines, COMMUS immediately sent personnel to Kinshasa and reported to the then Minister of Mines on its relocation activities, and obtained permission to resume the activities from the Minister. Unfortunately, after an internal search and inquiry with the Ministry of Mines, we failed to find the documents from then. The company did submit afterwards a written report to the Ministry of Mines and the Provincial Department of Mining on the relocation activities. The Ministry of Mines also sent a working group for on-site inspection and supervision. These serve as evidence that the Ministry of Mines was fully informed and cognizant of how the company’s relocation activities were carried out.” COMMUS, Email to Amnesty International and IBGDH, 2 July 2023, on file with Amnesty International.

105 COMMUS, Letter to Amnesty International and IBGDH, 9 May 2023, p. 2, annexed.

106 Conseil des Opprimés Victimes pour la Revendation Pacifique (COVRP), Letter to the mayor of Kolwezi and Managing Director of COMMUS, 29 September 2015, on file with Amnesty International (in French).

FIRST WAVE (2016)

A first wave of evictions, affecting 56 households, took place in 2016.¹⁰⁷ Three former residents of Kinkole Avenue, a street now fully eroded by the open pit, recounted that in August 2016, a municipal agent (agent de la commune) visited their part of town without prior notice and asked them to attend a meeting at a nearby school with COMMUS and local government officials to be held the same day.¹⁰⁸ After waiting several hours to receive further information, residents were met by COMMUS' legal attaché and representatives of the municipal and provincial government (land registry, urban planning and city council, among others). COMMUS' legal attaché handed out an agreement protocol (protocol d'accord) to participants, asking them to read and sign it.



© ↑ Michel Ndoni (left), Crispin Mwenda (top right) and Zachary Mundeke (bottom right) owned a house on Kinkole Avenue and were evicted and compensated by COMMUS in 2016. © Amnesty International (photographer: Richard Kent)

Crispin Mwenda, 63, said that evictees were not allowed to keep a copy of this document. He recalled that, “in the agreement protocol, there was no amount [specified for compensation] and there were legal terms that were beyond [our understanding]. Despite the fact that I am educated, I did not understand much. (...) They refused to respond to my questions or to give us copies. They said that everything would be alright, and that in any case, we would have the right to challenge this.”¹⁰⁹

Residents were then called one by one into a room, said Crispin Mwenda.¹¹⁰ There, a representative from the provincial land registry checked off the name of residents from a list before COMMUS handed out cheques with an amount dictated by provincial government officials.¹¹¹ Crispin Mwenda added that he was not aware of how the compensation amounts had been determined.¹¹² The residents of Kinkole

107 COMMUS, Letter to Amnesty International and IBGDH, 9 May 2023, annexed.

108 Amnesty International and IBGDH interviews in person with “Claudia,” Crispin Mwenda and Michel Ndoni (name changed for security reasons), 21 February 2022, Kolwezi.

109 Amnesty International and IBGDH interview in person with Crispin Mwenda, 21 February 2022, Kolwezi.

110 Amnesty International and IBGDH interviews in person with Crispin Mwenda and Michel Ndoni, 21 February 2022, Kolwezi.

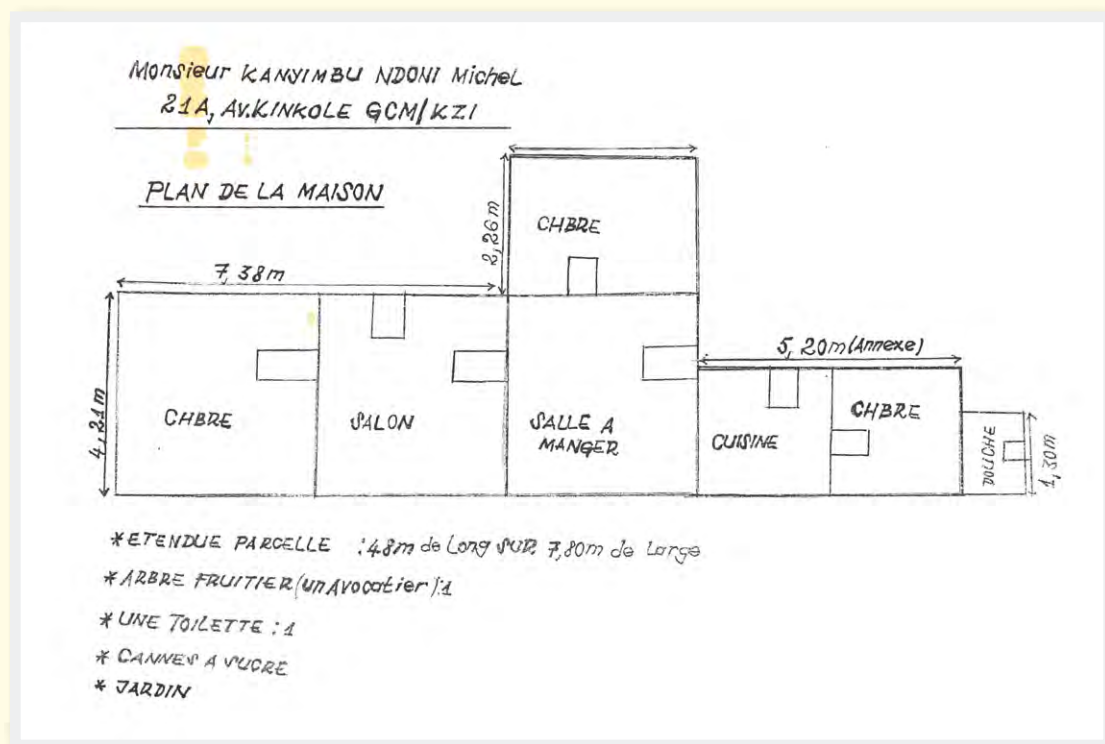
111 Amnesty International and IBGDH interviews in person with “Claudia” and Michel Ndoni, 21 February 2022, Kolwezi.

112 Amnesty International and IBGDH interview in person with Crispin Mwenda, 21 February 2022, Kolwezi.

Avenue recalled that provincial authorities pressured them to accept the sum offered by the company, while giving them assurances that there would be avenues for compensation amounts to be revised in the future.¹¹³

In response, COMMUS explained that, “compensation standards of COMMUS were set to ensure the residents’ quality of life are not affected and that their livelihoods are compensated for. The compensation prices of COMMUS for housing and land were higher than market prices in the same period of time.” COMMUS added that after it was established in 2017, compensation was calculated by the Provincial Relocation Committee, “according to the national compensation standards,” and that, in line with the then Mining Code, amounts were then increased by 50 percent. The company also stated that, “if the provincial government or the provincial assembly receive any residents’ complaint on relocation, they can also question and intervene in the work of COMMUS and the Provincial Relocation Committee at any time to ensure the process is compliant and the compensations reasonable.”¹¹⁴

COMMUS confirmed that 2016 evictees’ compensation averaged over US\$50,000.¹¹⁵ However, residents of Kinkole Avenue said that these amounts did not reflect the real value of their properties and were insufficient to buy substitute housing in Kolwezi with the same amenities they had access to in Cité Gécamines. Michel Ndoni, for example, owned a 40 x 8 m² three-bedroom house on Kinkole Avenue. He described the amount he was offered as “a fixed and arbitrary sum,” insufficient for him to buy a house with the same amenities elsewhere in Kolwezi.



© ↑ June 2018, Michel Ndoni sent COMMUS a grievance letter, challenging the company's lack of transparency and low compensation, annexing this sketch of the house he owned on Kinkole Avenue.

113 Amnesty International and IBGDH interviews in person with Crispin Mwenda, Michel Ndoni and “Claudia,” 21 February 2022, Kolwezi.

114 COMMUS, Letter to Amnesty International and IBGDH, 9 May 2023, p. 2, annexed.

115 COMMUS, Letter to Amnesty International and IBGDH, 9 May 2023, p. 3, annexed.

Following the payment of compensation, 13 residents of Kinkole Avenue wrote to COMMUS complaining that they did not understand the terms of the agreement they signed, nor the calculation method behind the damages they received. In another letter dated 30 August 2016, the evictees asked COMMUS to provide them with copies of the agreement and to consider revising the compensation. According to this letter, “All we ask [COMMUS] is simply to respect us, to take into account our houses, plots, fruit trees... and finally, to pay us decently.”¹¹⁶

IBGDH and other civil society organizations escalated evictees’ concerns to the governor of Lualaba. Over the following two years, residents of Kinkole Avenue sought redress by writing letters and petitions to various authorities, including the national and provincial Ministries of Mines, the Congolese Environmental Agency, Lualaba’s Governor and Provincial Assembly, to no avail.¹¹⁷

In September 2019, COMMUS commissioned the destruction of the last homes on Kinkole Avenue despite ongoing dispute regarding compensation the company disbursed to its residents.¹¹⁸ According to Michel Ndoni, COMMUS’ legal attaché came with police officers who destroyed houses using bulldozers. Crispin Mwenda similarly recalled that:¹¹⁹

“After two years of arm-wrestling [...], Michel [Ndoni] called me and told me to come urgently. When I arrived on site, machines and police officers had already destroyed his house. They told us they’d destroy our home, but we wanted them to consider our grievances first. They did not notify us of the exact date of the demolition. I was hoping to remove a few doors and windows but they did not allow me to do so. A bulldozer arrived and demolished my house.”

In response, COMMUS claims that after accepting their compensation, these residents refused to vacate their houses. The company claims that: “In the nearly three years that followed, we tried to communicate with them about their relocation, but to no avail.” COMMUS stated that it eventually destroyed Michel Ndoni and Crispin Mwenda’s houses “for safety reasons and to safeguard our legitimate rights and interests.”¹²⁰

116 Evictees of Gécamines Kolwezi, Letter to COMMUS, 30 August 2016, on file with Amnesty International (in French).

117 IBGDH Press Release 04/IBGDH2017, 27 July 2019, available at <https://congominer.org/reports/1695-violation-du-droit-a-la-vie-compagnie-miniere-de-musonoie-commus>

118 COMMUS, Letter to Amnesty International and IBGDH, 9 May 2023, annexed.

119 Amnesty International and IBGDH interview in person with Crispin Mwenda, 21 February 2022, Kolwezi.

120 COMMUS, Letter to Amnesty International and IBGDH, 9 May 2023, annexed.

SUBSEQUENT WAVE (2021)

In 2020, COMMUS notified a second group of more than 200 households that they would be evicted in 2020.¹²¹

Two of the affected residents, Edmond Musans and Cécile Isaka, said that in 2021 technical experts from the provincial government conducted evaluations of their properties.¹²² Edmond Musans described the process as follows: first, representatives from the provincial land registry measured the house. Second, representatives from the provincial Agriculture, Fishing and Livestock Farming services assessed the number of fruit trees and other agricultural assets on his plot.¹²³ Edmond Musans and Cécile Isaka confirmed that at the end of the evaluation, provincial governmental officials asked them to sign a document and left with their measurements. Edmond Musans said he was able to discuss measurements taken by technical experts on site, but was not given any information about the government's calculation methods.¹²⁴



© ↑ Edmond Musans, standing in front of his house on the edge of the Kolwezi copper and cobalt mine operated by COMMUS, February 2022 (left); Ruins of Edmond Musans' demolished house, September 2022 (right) © Amnesty International (photographer: Jean-Mobert Senga)

The two evictees both spoke of how they had no say in the compensation amounts offered to them. “It’s becoming an imposition, you are called in, the sum is there, if that doesn’t work for you, the response is “you should be content with it.” We didn’t ask to be evicted, the company came to us, with the state saying “there are minerals to exploit.” Applicable rules regulating evictions are not respected,”¹²⁵ said Edmond Musans.

Both of their families disagreed with the evaluation of their homes and the compensation offered by COMMUS and asked provincial authorities to carry out a second appraisal. COMMUS confirmed that: “If any household disagrees with the amount of compensation, they can apply to the Provincial Relocation Committee at any time for re-measurement. The re-measurement is carried out by the technicians of the Provincial Cadastral Bureau.”¹²⁶ Second appraisals do not always lead to a re-evaluation of damages. For example, Edmond Musans explained that despite his grievances, COMMUS

121 Amnesty International and IBGDH interview in person with Edmond Musans, 25 February 2022, Kolwezi.

122 Amnesty International and IBGDH interview in person with Edmond Musans and Cécile Isaka, 25 February 2022, Kolwezi.

123 Amnesty International and IBGDH interview in person with Edmond Musans, Cité Gécamines, Kolwezi, 25 February 2022, Kolwezi.

124 Amnesty International and IBGDH interview in person with Edmond Musans and Cécile Isaka, 25 February 2022, Kolwezi.

125 Amnesty International and IBGDH interview in person with Edmond Musans, 25 February 2022, Kolwezi.

126 COMMUS, Letter to Amnesty International and IBGDH, 9 May 2023, annexed.

chose to offer his family the lowest compensation amount of the two assessments and provided no channels of communication for further discussion.¹²⁷ COMMUS explained that, “If residents have concerns over the re-examination, they can still express such concerns to the provincial government and provincial assembly.”¹²⁸

A group of residents, including Edmond Musans, then formed a committee to represent the interests of over 200 households at risk of eviction, seeking higher compensation from COMMUS. The committee shared its grievances with provincial authorities, to no avail.¹²⁹

When researchers returned to Cité Gécamines in September 2022, both Edmond Musans and Cécile Isaka had resigned themselves to accepting COMMUS’ compensation that they deemed insufficient, dismantled their own homes, salvaged materials, and left Cité Gécamines to rebuild elsewhere.



© ↑ Cécile Isaka showing crack in her house caused by the activities of the Kolwezi copper and cobalt mine operated by COMMUS, February 2022 (left); Ruins of Cécile Isaka’s house, September 2022 (right) © Amnesty International (photographer: Jean-Mobert Senga)

IMPACTS

Despite claims by the company that its compensation package was set to ensure living standards were not affected, none of the former residents of Cité Gécamines that researchers interviewed said that they were able to afford substitute housing with the same amenities as the houses that they were forced to leave. They all said that because of the insufficient compensation amounts, they had no choice but to build or buy another house in new neighbourhoods on the outskirts of Kolwezi, with worse access to electricity or running water. “When I lived in Gécamines, I had a large house, with electricity, water, nearby schools and a hospital. Now, I have a small house, that’s all I could afford with the compensation received. (...) Now, we have to drink water from wells which costs about 100 FC (US\$ 5 cents) per container and 200 (US\$ 10 cents) for transportation. We have almost no electricity, we are experiencing so many power cuts,” “Claudia” (pseudonym) explained.¹³⁰

127 Amnesty International and IBGDH interview in person with Edmond Musans, 25 February 2022, Kolwezi.

128 COMMUS, Letter to Amnesty International and IBGDH, p. 4, 9 May 2023, annexed.

129 Amnesty International and IBGDH interview in person with Edmond Musans, 25 February 2022, Kolwezi.

130 Amnesty International and IBGDH interview in person with “Claudia,” 25 February 2022, Kolwezi.

Similarly, Edmond Musans said that he had to buy a new house on the edge of the city:¹³¹

“It is unfortunate because there is no water, there is no hospital, there is no school nearby, the place is not urbanized, sometimes they give you power [intermittently], two days you have power, one day you don’t have power.”

As the open pit of the mine keeps expanding, an increasing number of residents of Cité Gécamines are awaiting eviction. Mining activity is having other impacts on them as well. In November 2020, IBGDH research showed that close to 150 houses had cracks and 11 houses had partially or entirely collapsed in the neighbourhood.¹³²

During their February 2022 field visit, researchers observed and photographed dozens of houses, as well as a school and a church that appeared to be severely damaged. Speaking before she moved out of her house, Cécile Isaka explained how her family was afraid of the house collapsing and how she believed the mining operations caused the cracks. “We are afraid because there are two large cracks in the house and we do not know how to repair it, for want of proper financial means (...) The cracks result from the quakes caused by nearby mining activities that occur up to five times a day since COMMUS started its mining operations. Every time, we run outside fearing that the house could collapse.”¹³³

COMMUS has failed to address these concerns. In a letter dated 24 April 2020, addressed to communities living near the open pit, the company argued that wall cracks and material damages that residents ascribed to COMMUS’ mining activities, preceded the beginning of the company’s activities.¹³⁴ In response to this report’s findings, the company similarly stressed that, “homes in the Gécamines Community were built in the 1950s and 1960s, most of which are over 60 years old. Many buildings constructed in the same period far from our mining area have also had cracks to different degrees or even collapsed.”¹³⁵ However, the company has also acknowledged that they have “designated specialists” who “regularly check the conditions of homes near our mining area and have addressed cracks through timely repair or relocation.”¹³⁶

131 Amnesty International and IBGDH interview in person with Edmond Musans, 7 September 2022, Kolwezi.

132 IBGDH has also documented impacts on families living in the neighbourhood of Tambwe-Munana, who have repeatedly complained about nuisance caused by open pit mining including but not limited to increased levels of dust, risks that houses would collapse, noise pollution, and overspill of sewage water. See IBGDH report on COMMUS and Kamoa, July 2022 (previously cited), p. 22; IBGDH and CODED, Letter to DRC’s Ministry of Mines, 28 September 2018, on file with Amnesty International (in French); and IBGDH, Memorandum to Lualaba’s Governor, 28 January 2019, on file with Amnesty International (in French).

133 Amnesty International and IBGDH interview in person with Cécile Isaka, 25 February 2022, Kolwezi.

134 COMMUS, Letter to residents of Cité Gécamines, 14 April 2020, on file with Amnesty International (in French).

135 COMMUS, Letter to Amnesty International and IBGDH, 9 May 2023, p. 7, annexed.

136 COMMUS, Letter to Amnesty International and IBGDH, 9 May 2023, p. 8, annexed.

CONCLUSION

Zijin Mining acquired a majority stake in COMMUS in November 2014. From then on, COMMUS claims it has been, “advancing land acquisition and relocation in a harmonious and orderly manner, with plans and steps in place and in strict accordance with local laws and regulations, protecting the legitimate rights and interests of affected residents in the Gécamines Community and ensuring procedures and processes are valid and compliant with regulations.”¹³⁷

However, Amnesty International and IBGDH research highlights ways in which evictions carried out by COMMUS from 2016 to 2021 have not followed due process requirements and legal safeguards prescribed by international human rights standards, nor the protections enshrined in the DRC’s revised Mining Code and Regulations. These establish the need for companies to meaningfully consult impacted communities and share relevant information about mining activities and the eviction process.¹³⁸

The CESCR has stressed that opportunities for genuine consultation with affected people are a key legal and procedural safeguard against forced evictions.¹³⁹ The UN Basic Principles on Evictions also require that any decision relating to evictions be announced in writing, in the local language to all individuals concerned, sufficiently in advance and contain, among others, a detailed justification for the decision.¹⁴⁰

Residents of Cité Gécamines report seeing local government officials marking houses awaiting eviction with red crosses as early as 2012, although they did not receive any information about COMMUS’ activities until 2015. Despite repeated calls from affected communities and civil society for more transparency, information about COMMUS’ operations and resettlement plans and details about the company’s modalities of compensation, local authorities failed to facilitate meaningful consultations and address evictees’ concerns. Instead, they allowed COMMUS to proceed without ensuring the company secured the informed consent of communities at risk.

Residents of Kinkole Avenue remembered that the municipality asked them to attend a meeting convened the same day, where COMMUS paid out monetary compensation for the material damage residents would incur as a result of the eviction. Residents had no time to prepare for this exchange. Local and provincial authorities therefore failed to give evictees adequate prior notice before the company disbursed monetary damages. Congolese law sets clear rules on compensation, which the company said it had followed.

But due to the lack of meaningful consultation and lack of access to information residents of Cité Gécamines all shared that they felt coerced to accept compensation amounts that they deemed unfair and insufficient. They all complained that COMMUS’ compensation forced them to buy substitute homes on the outskirts of Kolwezi, in neighbourhoods with worse access to essential services.

The Mining Code provides that mining operators must repair damages caused by their construction work, and makes clear that “in the event of a transfer of a mining right (...) the liability for damages resulting from work performed prior to the transfer shall be borne jointly and severally by the former and the new holder.”¹⁴¹ According to residents, COMMUS’ activities seem to cause severe material damage to homes and other buildings around the mine.

137 COMMUS, Letter to Amnesty International and IBGDH, 9 May 2023, p. 1, annexed.

138 DRC, Mining Regulations, Article 477.

139 CESCR, General Comment 7, para. 15.

140 CESCR, General Comment 7, para. 15.

141 DRC, Mining Code, Articles 280 and 285 bis.

Finally, Congolese law requires mining operators to establish and share information about available operational-level grievance mechanisms,¹⁴² and to maintain a constructive dialogue with mining impacted communities.¹⁴³ All residents of Cité Gécamines interviewed told researchers that following the payment of monetary compensation, COMMUS closed communication channels with affected groups.

STATE'S FAILURE TO PROTECT

The UN Guiding Principles establish that states have a duty to protect human rights in the context of business activities.¹⁴⁴ Congolese national authorities temporarily responded to calls from residents of Cité Gécamines for COMMUS to halt evictions, but then allowed it to go ahead, without requiring COMMUS to take any steps to address the grievances of Kolwezi residents affected by its operations.

Research by Amnesty International and IBGDH shows that the state authorities, following some negotiations, allowed COMMUS to proceed with evictions without properly informing or meaningfully consulting with affected communities—a key safeguard against forced evictions. Provincial authorities failed to protect residents' constitutional right to decent housing and breached their constitutional duty to respect international human rights law and standards. The province of Lualaba should take concrete measures to protect the rights and interests of communities affected by the expansion of the COMMUS mine. It should listen to the concerns of the evictees and individuals at risk before, during and after any eviction, monitor COMMUS' response, and compel the company to remediate any harm it has caused.

CORPORATE RESPONSIBILITY

COMMUS has explained that the eviction of residents of Cité Gécamines was run by provincial authorities. But companies have their own, independent, responsibility to respect human rights.

Any human rights due diligence process would have identified the likely harm caused by the expansion of the mine, the need for meaningful consultation, and the critical importance of sharing all relevant information with affected communities in a timely manner. Yet COMMUS and its parent Zijin Mining have provided virtually no information to the public about their plans. COMMUS' letters to the government do show that the company was aware of applicable domestic laws and the need to consult the communities. In a letter to the Ministry of Mines, dated 28 May 2015, the company claims to have held a town hall consultation with local government, church, and community representatives.¹⁴⁵ But residents of the area interviewed for this research denied being aware of this meeting, and in September 2015, 207 residents of five communities living next to the mine, including Cité Gécamines, signed a letter sent to the mayor of Kolwezi denying they had been consulted.¹⁴⁶

Interviewees all complained about the compensation sums they were given. COMMUS disputes this. But the evictees have no trust in a process that lacked transparency and complain that the eviction has left them worse off than before. Thousands more people face the prospect of eviction as COMMUS expands the operations of the Kolwezi copper and cobalt mine. Some are living in houses that they say have been damaged by the mine's operations, but contrary to the requirements of the Mining Code, they say that COMMUS does not take any responsibility for them.

142 DRC, Mining Regulations, Annex XVIII, Article 20.

143 DRC, Mining Regulations, Article 477.

144 UN Guiding Principles, para. 1.

145 COMMUS, Letter to Ministry of Mines, 28 May 2015, on file with Amnesty International (in French).

146 COVRP, Letter to the mayor of Kolwezi (previously cited).



© ↑ Children playing on the edge of the open pit of the Kolwezi copper and cobalt mine operated by COMMUS, in the neighborhood of Gécamines Kolwezi, February 2022 © Amnesty International (Jean-Mobert Senga)

In response to these findings, COMMUS wrote that it is currently looking to improve its disclosure of information, and for example is building its own website, where the “public will be able to access information related to COMMUS more easily and communicate with us about their concerns by leaving messages. We are actively exploring the publication of reports to disclose information that is of interest to community residents, so that the communities can have a better understanding of our operations and the trust between us can be strengthened.”¹⁴⁷

This commitment is a welcome acknowledgment that this is a critical issue that the company needs to improve. COMMUS must urgently publish its plans for the further development of the site, as well any environmental and social impact assessment reports it has conducted, and resettlement plans for communities most at risk. It must engage with former and current residents and their representatives in civil society. The value of the houses and land that have already been dispossessed should be reassessed so that adequate compensation is paid.

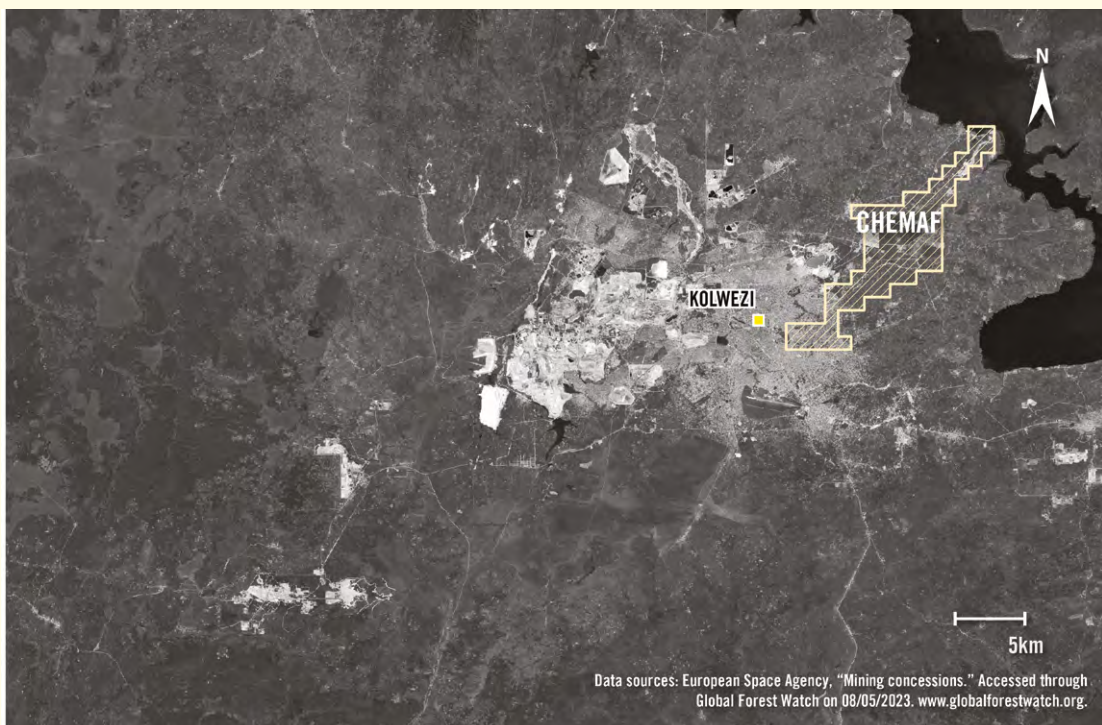
147 COMMUS, Letter to Amnesty International and IBGDH, 9 May 2023, p. 8, annexed.


MUTOSHI MINE

Mukumbi was an informal settlement of located about 5km north-east of Kolwezi. According to former residents, it was home to artisanal miners and farmers and their families who moved to the site from around 2010 onwards.¹⁴⁸ Mukumbi was located within a copper and cobalt mining concession, known as Mutoshi, acquired in 2015 by the DRC-registered mining company Chemaf. Former residents described being forcibly evicted from Mukumbi in November 2016.

Amnesty International and IBHGDH spoke with 14 former residents of Mukumbi, during two visits to neighbouring communities in February and September 2022. Researchers also visited and spoke with residents of several villages around the location of Mukumbi on or near the Mutoshi concession.

They also reviewed court records and letters in which former residents relayed their grievances to national, provincial and local authorities and the company, along with settlement agreements Chemaf and evictees entered into. They also analysed satellite imagery from 2009 to 2023 over the Mukumbi village area to record changes over time. The imagery was also used to show new construction at and around the old Anvil mining plant site. Researchers met a representative of Chemaf at Mutoshi in September 2022 and exchanged letters with the company. They also reviewed several court records regarding a criminal complaint and investigation initiated by Mukumbi residents against Chemaf following the raid. The company's replies are reflected in the text and annexed to this report.



 ↑ At the time the data was accessed, the CHEMAF concession was demarcated to encompass over 57km² of land.

148 Amnesty International and IBGDH focus group interviews in person with former residents of Mukumbi, Kanfufu.

TIMELINE: Mutoshi mine

DATE	Event
2004	Canadian company Anvil Mining Ltd. acquires majority stake in the Mutoshi mining project. ¹⁴⁹
2013	Satellite imagery shows approximately 85 structures built at Mukumbi. ¹⁵⁰
June 2015	Chemaf acquires the lease of the Mutoshi concession. ¹⁵¹
May 2016	Satellite imagery shows that Mukumbi has grown considerably, with hundreds of structures. ¹⁵²
November 2016	Former residents of Mukumbi report that the settlement was burnt down by soldiers of the Republican Guard. ¹⁵³ A partial satellite image from 7 November 2016 shows all structures visible in May 2016 are gone in the area that is visible (the rest is obscured by clouds). ¹⁵⁴
September 2017	Long scrapes—likely dug with machines—are visible on the soil where the village once stood on the Mutoshi concession. ¹⁵⁵
March 2018	Chemaf claims to begin construction of the Mutoshi processing plant where Mukumbi was once located. ¹⁵⁶

149 Anvil Mining, “Anvil Mining to Acquire 70% Interest in Mutoshi Copper-Cobalt Project, Kolwezi Region, DRC,” 17 November 2004, <https://www.asx.com.au/asxpdf/20041118/pdf/3nqmqx48csl49.pdf>

150 Satellite image obtained and analysed by Amnesty International’s Evidence Lab, 27 April 2013, Skywatch © 2023 CNES/Airbus.

151 Chemaf, “Mutoshi Project,” <https://www.chemaf.com/mutoshi-project> (accessed on 13 July 2023).

152 Satellite image obtained and analysed by Amnesty International’s Evidence Lab, 6 May 2016, Google Earth © 2023 CNES/Airbus.

153 Amnesty International and IBGDH interviews in person with former residents; 22 February and 20 September 2022.

154 Satellite image obtained and analysed by Amnesty International’s Evidence Lab, 7 November 2016, © Maxar Technologies.

155 Chemaf, Letter to Amnesty International and IBGDH, 14 December 2022, p. 3, annexed.

156 Chemaf, Letters to Amnesty International and IBGDH, 14 December 2022 and 9 May 2023, annexed.

Timeline continued from previous page

DATE	Event
February 2019	Customary chiefs of Mukumbi and nearby villages write letter to Lualaba's Governor stating that Chemaf forcibly evicted communities living on and around the Mutoshi processing plant. ¹⁵⁷
December 2019	Chemaf agrees to enter into a settlement agreement and compensate former residents of Mukumbi. ¹⁵⁸
February 2020	Provincial government disburses Chemaf's settlement payments to evictees of Mukumbi. ¹⁵⁹
September 2020	Evictees organize a demonstration and return to Mukumbi. Police arrest and detain a group of evictees of Mukumbi for 10 days. ¹⁶⁰

157 Letter from chiefs of Mukumbi and nearby villages to Lualaba's governor regarding Damage Claim (« Réclamation d'indemnité) for the villages of Ngonga, Mukumbi and others, No. MINEDUC 03/MUTSH/NGO/LB/019, 12 February 2019.

158 Chemaf, Letter to Amnesty International and IBGDH, 14 December 2022, annexed. See also Acte transactionnel d'indemnisation [Settlement agreement between former residents of Mukumbi and Chemaf]], February 2020, annexed (in French).

159 Amnesty International and IBGDH focus group interviews in person with former residents of Mukumbi, 24 February 2022, Kanfufu. See also, Amnesty International and IBGDH interview in person with Joseph Kitenge, 20 September 2022, Kolwezi.

160 Wangu, "Lualaba/Village Mukumbi: Le retour au bercail des ex-habitants, jadis délocalisés" ["Lualaba/Village Mukumbi: Former relocated residents return home"], 4 September 2020, <https://www.wangu.info/proximite/lualaba-village-mukumbi-le-retour-au-bercail-des-ex-habitants-jadis-delocalises/> (accessed on 24 July 2023).



THE MUTOSHI MINE

Mutoshi is a copper and cobalt mining project, north-east of the city of Kolwezi. It covers an area of 105km².¹⁶¹ Mutoshi's operator is a DRC-registered company Chemical of Africa SA ("Chemaf"). The Mutoshi concession is contained within the boundaries of exploitation permits PE2604 (held by Gécamines and in turn leased to Chemaf) and PE2756 (held by Chemaf).¹⁶² Chemaf is a privately-owned mining company, the parent company of which, Chemaf Resources Ltd., is headquartered in Dubai.¹⁶³ Chemaf has over 100 mining concessions throughout the DRC.¹⁶⁴

Chemaf acquired the lease of the Mutoshi mining project in June 2015. The company estimates that it holds approximately 300,000 tonnes of cobalt. The company has been building a plant with the capacity to process close to 20,000 tonnes of copper and 16,000 tonnes of cobalt annually. Chemaf is currently developing Mutoshi so that industrial mining operations can begin by the third quarter of 2023.¹⁶⁵

Since the acquisition of the Mutoshi mining project, Chemaf has acknowledged that "the concession incorporates multiple communities—many of whom depend on illegal / unregulated artisanal and small scale mining (ASM) and sell to local traders."¹⁶⁶ As a result, in January 2018, the company launched the Mutoshi ASM Pilot Project, a "responsible sourcing initiative" established in collaboration with the Trafigura Group Ltd. (Trafigura), a global commodities trading company.¹⁶⁷

In 2022, Chemaf struck a US\$600 million financing deal with Trafigura to fund, among others, the completion of the Mutoshi mine.¹⁶⁸ As part of this funding agreement, Trafigura has agreed to market all the cobalt produced from assets operated by Chemaf.

In 2019, Chemaf adopted a Responsible Minerals Sourcing policy that it claims is in line with the OECD Guidance for Responsible Supply chains of Minerals from Conflict-Affected Areas.¹⁶⁹ In September 2022, Chemaf also adopted a human rights policy that explicitly commits the company to following international best practices in "the resettlement and relocation of people or communities" affected by its activities.¹⁷⁰

161 Chemaf, Letter to Amnesty International and IBGDH, 9 May 2023, annexed.

162 Chemaf, "Mutoshi Project," <https://www.chemaf.com/mutoshi-project> (accessed on 13 July 2023). See also Chemaf Media, "Mutoshi," 11 July 2022, https://www.youtube.com/watch?v=H8LzoZmqG_Y

163 Chemaf, "Development through responsible mining in the DRC," <https://www.chemaf.com/> (accessed 18 July 2023). Chemaf's parent company, Chemaf Resources Ltd, is registered on the Isle of Man, a British Crown Dependency, https://www.linkedin.com/company/chemafresourcesltd/?trk=ppro_cprof (accessed on 24 July 2023).

164 Chemaf, "Bringing Mutoshi Back to Life, Development of the Mutoshi cobalt-copper project DRC," 2 July 2018, https://www.deutsche-rohstoffagentur.de/DERA/DE/Downloads/vortrag-kobalt-nicolle.pdf?__blob=publicationFile&v=3

165 Chemaf, "Mutoshi Project," <https://www.chemaf.com/mutoshi-project> (accessed on 13 July 2023).

166 Chemaf, "Bringing Mutoshi Back to Life, Development of the Mutoshi cobalt-copper project DRC," 2 July 2018, https://www.deutsche-rohstoffagentur.de/DERA/DE/Downloads/vortrag-kobalt-nicolle.pdf?__blob=publicationFile&v=3

167 Trafigura Group, "The Mutoshi Pilot Project," December 2019, https://www.trafigura.com/media/2433/2019_trafigura_the_mutoshi-pilot_project.pdf, p. 10.

168 Trafigura Group, "Shalina Resources Ltd concludes significant financing and marketing transaction with Trafigura enabling new supplies of cobalt hydroxide and copper cathode at a time of growing global demand," 19 January 2022, <https://www.trafigura.com/press-releases/shalina-resources-ltd-concludes-significant-financing-and-marketing-transaction-with-trafigura-enabling-new-supplies-of-cobalt-hydroxide-and-copper-cathode-at-a-time-of-growing-global-demand/>

169 Chemaf, "2019 report on due diligence activities for Chemaf's copper and cobalt supply chain," February 2020, <https://www.chemaf.com/uploads/content/due-diligence-activities-report-2019.pdf>

170 Chemaf, Human rights Policy, 24 September 2022, <https://www.chemaf.com/uploads/content/human-rights-policy-chemaf-cs.pdf>, p. 3.

MUKUMBI

Former residents interviewed by Amnesty International and IBGDH explained that starting in the early 2000's, Mukumbi became home to artisanal miners who settled close to the Mutoshi industrial mining project.¹⁷¹ The first available satellite images showing houses at Mukumbi date back to 2013, two years before Chemaf acquired the lease to the concession.¹⁷² Interviewees estimate that by 2016 the settlement was comprised of several thousands of people.¹⁷³

Joseph Kitenge said that he moved to Mukumbi after 2010 and described the settlement as a vibrant place.¹⁷⁴ "It was a town with a lot of activities, a mix of people, there was a school and a health centre," he said.¹⁷⁵

In the course of this investigation, Chemaf's position on the existence of Mukumbi has changed. The company initially denied its existence. A senior Chemaf manager first told researchers: "Here, on Chemaf's concession, there's never been a village called Mukumbi."¹⁷⁶ Similarly, in response to preliminary findings, the company stated that: "Chemaf understands that Gécamines removed all settlements before Chemaf acquired the lease in June 2015...Chemaf first became aware of claims relating to the existence of a village called Mukumbi on the Mutoshi concession in late 2019."¹⁷⁷

However, satellite images show that the settlement not only existed but grew in size after Chemaf acquired the lease to the Mutoshi concession in June 2015. The satellite image below shows Mukumbi in May 2016. The settlement appears to be comprised of over 400 structures and is surrounded by agricultural fields. On the other side of the river, within eyesight of the settlement, is mine infrastructure Chemaf inherited from former mining operators.



© ↑ Former residents of the settlement of Mukumbi, evicted in 2016, interviewed in the town of Kanfufu, 24 February 2022 © Amnesty International (photographer: Candy Ofime)

171 Amnesty International and IBGDH focus group interviews in person with former residents of Mukumbi, 24 February 2022, Kanfufu.

172 Chemaf, Letter to Amnesty International and IBGDH, 14 December 2022, p. 3, annexed.

173 Amnesty International and IBGDH focus group interviews in person with former residents of Mukumbi, 24 February 2022, Kanfufu.

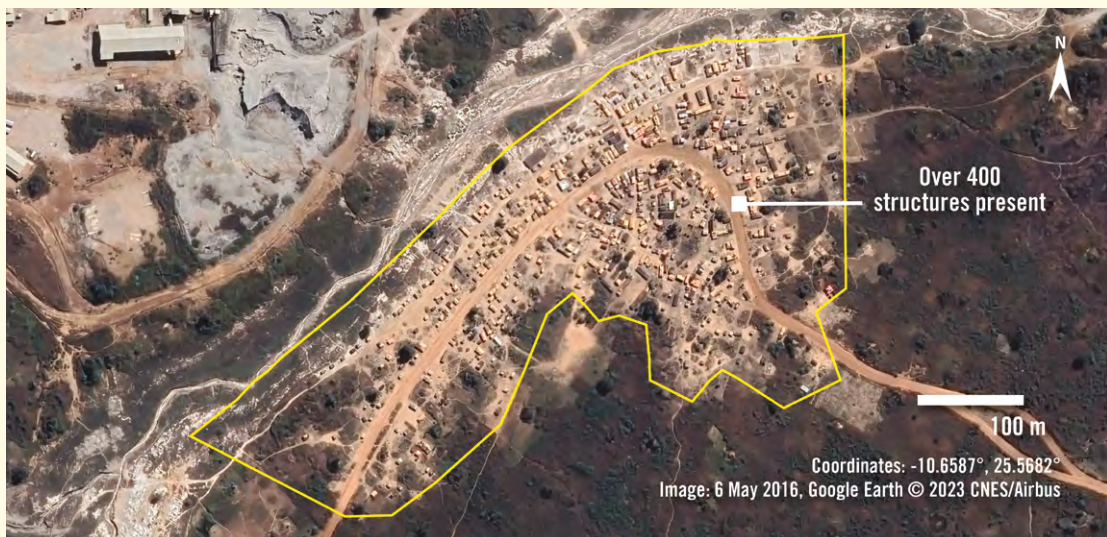
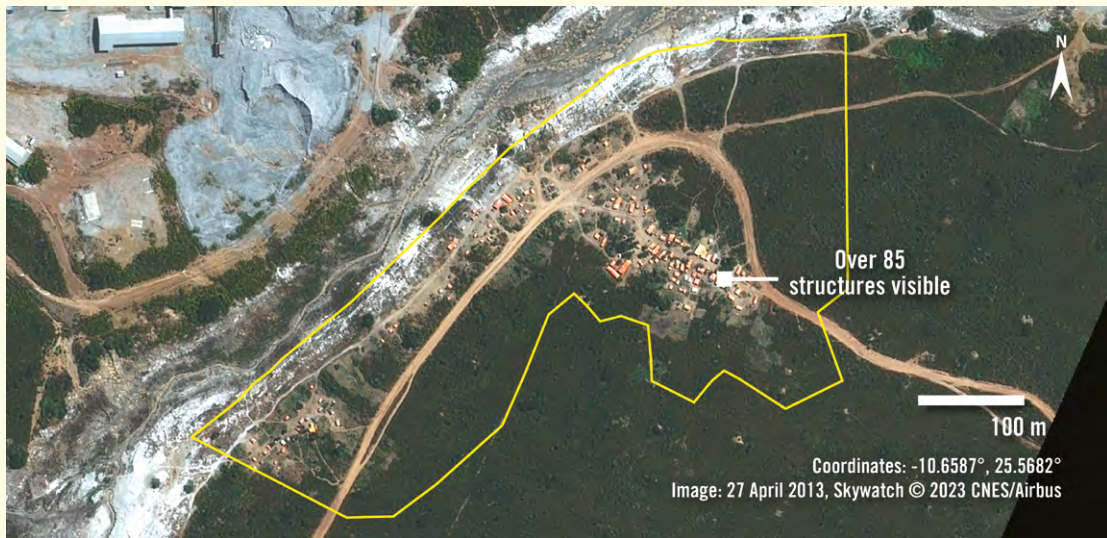
See also Amnesty International and IBGDH interview in person with Joseph Kitenge, 20 September 2022, Kolwezi.

174 Amnesty International and IBGDH interview in person with Joseph Kitenge, September 2022, Kolwezi.

175 Amnesty International and IBGDH interview in person with Joseph Kitenge, September 2022, Kolwezi.

176 Amnesty International and IBGDH interview with Chemaf's Business Development Manager, 9 September 2022, Kolwezi.

177 Chemaf, Letter to Amnesty International and IBGDH, 14 December 2022, annexed.



© ↑ **Mukumbi, DRC:** Satellite image from 7 July 2009 (top) shows the Mukumbi settlement area, before it was established. Satellite image from 27 April 2013 (middle) shows over 85 structures are present in the area. By 6 May 2016 (bottom), there are over 400 structures present

After reviewing the satellite images above, Chemaf revised its stance and explained:¹⁷⁸

“Chemaf does not dispute that a settlement is visible on the 2016 satellite imagery. Chemaf believes this settlement was one of many settlements for ASM miners involved in the illegal mining of the old Anvil Mining tailing dumps at the time. (...) Chemaf entirely disputes that it was involved in the removal of this settlement.”

In September 2022, researchers also drove around the Mutoshi processing plant and spoke with residents of the surrounding towns of Ngonga, Kabisonso and Mutakamari, from where Chemaf’s processing plant is visible at the very place where Mukumbi was located. These residents confirmed the existence of Mukumbi, describing it as a dynamic hub, where they used to buy and sell vegetables, school their children and seek medical care through the health centre.



© ↑ Photograph of Mukumbi’s health center, before the settlement’s destruction, shared by one of its former residents

178 Chemaf, Letter to Amnesty International and IBGDH, 9 May 2023, annexed.

THE DESTRUCTION OF MUKUMBI

There are conflicting accounts of what happened to Mukumbi. What follows first is a description of events by community members, who were present at the time. The report then puts forward supporting information from other sources, before considering Chemaf's argument that it was not involved in the destruction of the settlement.

Ernest Miji, Mukumbi's neighbourhood chief, described how, in 2015, after Chemaf acquired the lease of the Mutoshi concession, three individuals stating that they were representatives of Chemaf visited him along with two police officers, to notify him that it was time for residents to move away.¹⁷⁹ He stated that the company representatives visited four more times. Another former resident, Kanini Maska, remembered one of the warnings, saying, "Chemaf's representative told us: 'You need to leave the village now.' We asked him: 'Where would we go? It is our hometown, where we're raising our children, where we're farming land and where our kids are registered to go to school.'" ¹⁸⁰

Then, according to former residents, in November 2016, soldiers from an elite military force descended on the community.¹⁸¹ This was the feared Republican Guard (Garde Républicaine or GR), also known as the presidential guard because of its mandate to protect the head of state.¹⁸²

Ernest Miji recalled that the soldiers immediately set about destroying the village, which was largely made from wood and tarpaulin. "(It was) around 8:30 in the morning, I was surprised by children who told me: 'Dad, come see, they are burning houses,'" he said.¹⁸³

"I went out and saw the GR soldiers setting fire to the houses. I talked to the captain. I asked him, why are you burning people's houses? He said they were only carrying out orders. People were fleeing in all directions. They gave me a lighter and asked me to set fire to the church...I refused. They started to drag me, they hit me in the mouth with a stick. I went home soaked with blood. A few minutes later people came to tell me that they had just burned a child."

According to the child's uncle, Joseph Kitenge, the girl was two and half years old at the time and was severely burnt when the mattress she was lying on caught fire.¹⁸⁴ In 2022, researchers observed large, disfiguring scars up the right side of her body from the burns she suffered as a toddler.

"They would beat any resident who tried to stop them from burning down their houses," remembered Kiné Kinenkinda, a pastor.¹⁸⁵ "When they saw you in front of a house, they asked you to leave. As soon as you started to resist, they hit you and set fire to the house," he said.¹⁸⁶



© ↑ Joseph Kitenge and his niece, who was severely injured during the destruction of Mukumbi, interviewed in the town of Kanfufu, 24 February 2022 © Amnesty International (photographer: Candy Ofime)

179 Amnesty International and IBGDH focus group interview in person with former residents of Mukumbi (men), 24 February 2022, Kanfufu.

180 Amnesty International and IBGDH interview in person with former residents of Mukumbi (women), 24 February 2022, Kanfufu.

181 Amnesty International and IBGDH focus group interviews in person with former Mukumbi residents, 24 February 2022, Kanfufu.

182 As reported by the Congo Research Group, the 2011 Law on the Armed Forces limits the tasks of the guard: "It says the force can only be used to protect the president and distinguished guests of the republic, presidential facilities and provide an honor guard and escorts at the level of the presidency. It does not say the elite unit is allowed to protect businesses or mines belonging to the president's family." See: Congo Research Group and Pulitzer Center, *All the President's Wealth: The Kabila Family Business*, July 2017, <https://int.nyt.com/data/documenttools/2017-07-all-the-presidents-wealth-eng/468f6fc9a516a52b/full.pdf>, p. 11

183 Amnesty International and IBGDH interview in person with Ernest Miji, 24 February 2022, Kanfufu.

184 Amnesty International and IBGDH interview in person with Joseph Mwana Kitenge, 20 September 2022, Kolwezi.

185 Amnesty International and IBGDH focus group interview in person with former residents of Mukumbi (men), 24 February 2022, Kanfufu.

186 Amnesty International and IBGDH focus group interview with former residents of Mukumbi (men), 24 February 2022, Kanfufu.

Three of the former residents said that they also recalled seeing a senior Chemaf manager in Mukumbi, at the same time that the soldiers were burning houses and buildings.¹⁸⁷

SUPPORTING EVIDENCE

Amnesty International and IBGDH have gathered information that supports the claims by residents that they did not voluntarily leave the settlement in November 2016, but that their houses were set on fire by members of the Republic Guard.

A series of satellite images demonstrate that the settlement of Mukumbi contained several hundred structures, that it existed prior to, and after, Chemaf acquired the Mutoshi lease in 2015, and that it continued to exist until November 2016, when satellite imagery shows that all structures had disappeared.



☺ ↑ **Mukumbi, DRC:** Satellite image from 7 November 2016, shows most of the Mukumbi settlement area despite heavy cloud cover. There is debris visible on the ground that day. Similar features have been seen where inhabited areas have been left quickly or when structures are destroyed in a quick manner.

The image above confirms that by early November 2016, all buildings that once formed the settlement of Mukumbi were gone. While debris is visible on the image, Amnesty International was not able to independently verify allegations of arson through remote sensing.

However, one key corroborating piece of information comes from a member of staff of Chemaf. In a court submission from December 2019 filed in response to a criminal investigation into the raid, the Chemaf manager accused by residents of being present at the raid, described how, “after the settlement’s residents refused to leave, “inhabited straw-huts that were on the concession were burnt down.”¹⁸⁸

187 Amnesty International and IBGDH focus group interview with former residents of Mukumbi (men), 24 February 2022, Kanfufu.

188 See procedural history retraced in the decision Cour de Cassation [Supreme Court], *Gilbert Kafita Kyungu v. Ilunga Kalambay and Others*, RR. 1551, Ordinary Chamber, 7 July 2021, on file with Amnesty International (in French).

Furthermore, following protests by former community members in 2019, Chemaf made a payment of \$1.5 million to some of them.¹⁸⁹ The settlement agreement (annexed to this report) states in its preamble that:¹⁹⁰

“To take possession of its concession, in 2016, Chemaf evicted the residents of ‘Mukumbi village’ without any compensation.”

Members of neighbouring communities have also supported the account of the former residents of Mukumbi. In 2019, the chiefs of five neighbouring villages, along with Mukumbi’s chief, wrote to the governor of Lualaba and other authorities to complain that about the destruction of Mukumbi, including the health centre and school that were used by their population.¹⁹¹

Regarding the identity of the perpetrators, the former residents claim that soldiers of the Republican Guard carried out the destruction of their homes.¹⁹² Soldiers from this unit are recognizable because they wear different coloured berets and uniforms from the rest of the DRC’s army.¹⁹³

A news article from July 2015 similarly reported on the presence of this unit at Mutoshi. The article covered a meeting that took place between provincial authorities and the representatives of artisanal miners and traders working on the concession. It reported that miners and traders complained that since 4 July 2015, “Chemaf and the Republican Guard prohibited the diggers from entering the concession.”¹⁹⁴

In response, Chemaf said that it has “no relationship with the Republican Guard nor does it direct or instruct this group,” but said that the force had been present on the site before it acquired the concession.¹⁹⁵

Researchers did not obtain direct evidence of the involvement of military personnel or members of this specific unit in the destruction of the homes. However, circumstantial evidence suggests that the communities account is plausible. It has been widely reported that during the presidency of Joseph Kabila, the Republican Guard was present across the cobalt and copper mining region, including by protecting the business interests of his family.¹⁹⁶

The involvement of the public security forces in the demolitions of the homes of artisanal miners has been well documented by human rights groups. For example, Amnesty International documented how in 2009 police and army personnel were involved in destroying hundreds of houses in Kawama

189 Chemaf, Letter to Amnesty International and IBGDH, 14 December 2022, annexed.

190 Acte transactionnel d’indemnisation [Settlement agreement between former residents of Mukumbi and Chemaf], February 2020, annexed (in French).

191 Chiefs of Mukumbi and nearby villages, Letter to the governor of Lualaba, 12 February 2019, on file with Amnesty International (in French).

192 Researchers wrote to the DRC national and provincial authorities alleging that soldiers had been involved in this and other forced evictions and requested by letter further information, but they did not receive a response. Amnesty International and IBGDH, Letters to DRC’s Prime Minister and governor of Lualaba, 12 May 2023, on file with Amnesty International (in French).

193 Radio Okapi, “FARDC: une nouvelle tenue pour la garde rapprochée du chef de l’Etat” [FARDC: new uniform for the Head of State’s bodyguards], 17 May 2007, <https://www.radiookapi.net/sans-categorie/2007/05/17/fardc-une-nouvelle-tenue-pour-la-garde-rapprochee-du-chef-de-letat> (accessed on 24 July 2023); BBC, “Why Congo miners fear President Kabila’s guards,” 30 June 2016, <https://www.bbc.co.uk/news/av/world-africa-36671661> https://enoughproject.org/wp-content/uploads/PoweringDownCorruption_Enough_Oct2018-web.pdf, pp. 17-18.

194 Media Congo, “Katanga: Dix Mille Creuseurs Artisans De Kolwezi Contre Leur Délocalisation Dans Le Site De Mutoshi [Katanga: Ten thousand artisanal miners from Kolwezi oppose their relocation to the Mutoshi site],” 10 July 2015, https://www.mediacongo.net/article-actualite-11254_katanga_dix_mille_creuseurs_artisans_de_kolwezi_contre_leur_delocalisation_dans_le_site_de_mutoshi.html. (accessed 24 July 2023).

195 Chemaf, Letter to Amnesty International and IBGDH, 14 December 2022, p. 2, annexed.

196 Congo Research Group & Pulitzer Center, *All the President’s Wealth: The Kabila Family Business*, July 2017, <https://int.nyt.com/data/documenttools/2017-07-all-the-presidents-wealth-eng/468f6fc9a516a52b/full.pdf>, p. 11; BBC, “Why Congo Miners Fear President Kabila’s Guards,” 30 June 2016, <https://www.bbc.co.uk/news/av/world-africa-36671661> (accessed 24 July 2023).

village, near Lubumbashi.¹⁹⁷ Similarly, in June 2019, the DRC government ordered several hundred soldiers, carrying military weapons, to evict artisanal miners from the Tenke Fungurume Mine (TFM), 100km from Kolwezi.¹⁹⁸ The government then ordered the army to clear miners from the Kamoto Copper Company mine in Kolwezi. At TFM, the army threatened to forcibly remove up to 10,000 people from the 1,600km² concession, some of whom lived there. According to African Resources Watch (Afresource) and media reports, local residents said that soldiers destroyed housing and shelters in two villages, which could amount to forced evictions contrary to international law.¹⁹⁹

CHEMAF'S REBUTTAL

Chemaf insists that it was not involved in the destruction of Mukumbi because while it might have been the leaseholder for the Mutoshi concession it had not yet gained full access to the site in November 2016, when the former residents say the eviction took place. This is because, as Chemaf explained, “the main condition of the leasing contract with Gécamines required Chemaf to pay a “right to access to business” (pas de porte) which it paid via three staged payments. According to the company, the lease stipulates that “Chemaf was not permitted to commence development work until the final payment had been made in December 2017.”²⁰⁰ Chemaf did not provide a copy of this agreement as requested by researchers.²⁰¹

Accordingly, the company claims that for the first two years following the acquisition of the concession, it only conducted “extensive desktop research and planning.” Then, in September 2017, the company began organizing the public consultation and eviction of three villages on the concession. In each case, the company said this was done “with due consultation with the affected parties and the Lualaba Relocation Commission with appropriate compensation paid.” The company stated that it “was not aware of an alleged village called Mukumbi until 2019.”²⁰² This was when the community first organized public protests about the eviction.

Furthermore, the company has pointed to a 2022 court ruling, that cleared Chemaf and a senior manager of deliberately setting fire to houses in Mukumbi, due to a lack of evidence.²⁰³ The case was brought by some former residents of Mukumbi at the end of 2016, and led to a criminal investigation and indictment against Chemaf and its senior manager in 2019.

But Chemaf’s account has inconsistencies. Chemaf claims that it only began construction of the processing plant (located where Mukumbi once stood) on 9 March 2018.²⁰⁴ But satellite images from September 2017 reveal otherwise. One image, from 22 September, shows that the area where Mukumbi stood to be undisturbed, while land where Chemaf built its processing plant was part cleared. Two days later, long scrapes of the soil are visible on the eastern portion of Mukumbi. These measure up to 150 metres and appear to have been caused by machinery.

197 Amnesty International, *Bulldozed*, 2014 (previously cited).

198 Amnesty International, *DRC: Crisis in mines requires sustainable solution* (Index: AFR 62/0772/2019), 25 July 2019, <https://www.amnesty.org/en/documents/af62/0772/2019/en/>, p. 2.

199 Amnesty International, *DRC: Crisis in mines* (previously cited), p. 2.

200 Chemaf, Letter to Amnesty International and IBGDH, 9 May 2023, annexed.

201 This was on the basis that “it is a commercial agreement with a counterparty that would require their consent. These documents are not typically made public for commercial reasons.” Chemaf, Email to Amnesty International, 22 June 2023, on file with Amnesty International.

202 Chemaf, Letter to Amnesty International and IBGDH, 9 May 2023, annexed.

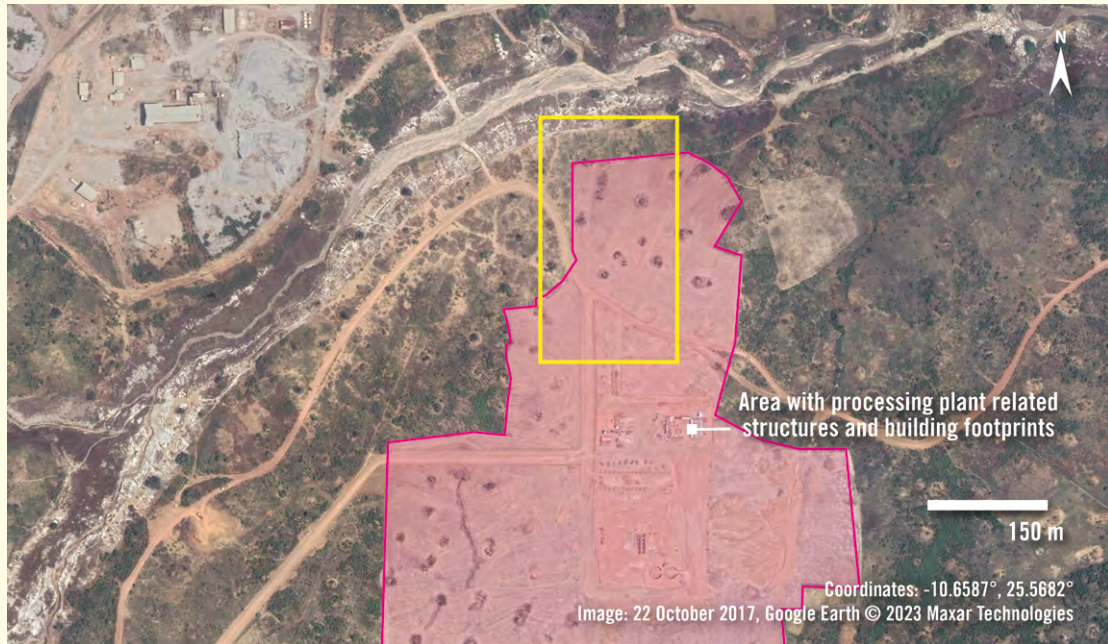
203 Lower Court of Kipushi, *Prosecutor and Ilunga Kalambay and Others v. Gilbert Kyungu Kafita*, RP 1215/RP 9543, Criminal Affairs First-Degree, 21 February 2022, on file with Amnesty International (in French).

204 Chemaf, Letter to Amnesty International and IBGDH, 14 December 2022, annexed.



© ↑ **Mukumbi, DRC:** Three-meter resolution satellite image from 22 September 2017 (top), shows the ground cover on the eastern side of where the settlement had been intact. On 24 September 2017 (bottom image), long scrapes—likely dug with machines—are visible on the soil where the settlement once stood. The scrapes are approximately 150 metres in length and are located where buildings for Chemaf operations will be built by 22 February 2019.

Satellite imagery from 22 October 2017 shows a much wider area had been scraped, covering the area where the plant was constructed, including the area where Mukumbi had stood. Chemaf insists that “any ‘satellite images that show scrapes’ pre-March 2018 are not related to Chemaf’s activities.”²⁰⁵ But it seems implausible that any other company or organization would have conducted such work without Chemaf’s knowledge or approval — given that Chemaf was the leaseholder of the concession, and Gécamines had no operations on site. It is not likely that artisanal miners would have access to such machinery, or any interest in clearing this area.



© ↑ **Mukumbi, DRC:** Satellite image from 22 October 2017, shows the area after the structures are gone and areas have been scraped. In the image, structures are present that continue to be visible in the most recent imagery from 2023. The yellow rectangle highlights overlapping areas of the settlement.

There is further evidence that Chemaf staff did conduct work on the site, rather than simply confine themselves to “desk research and planning” until December 2017, as the company claimed. An academic article, written with the approval of Chemaf, stated that Chemaf engineers had conducted test sampling in 2016, “from different areas within the Mutoshi complex and orebody.”²⁰⁶ Such work would have involved entering the site to gather ore samples.

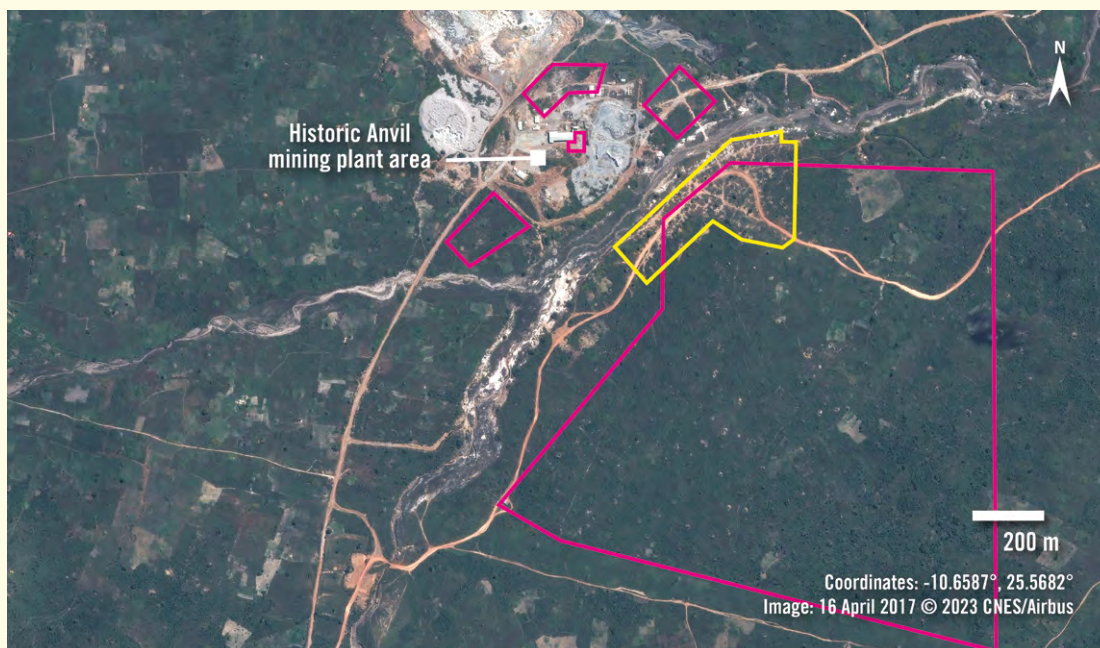
In its response to Amnesty International and IBGDH, Chemaf also dismissed as irrelevant the claim that Mukumbi had been visible from a plant operated by Mutoshi’s former owners, Anvil Mining. It wrote: “Chemaf has not used any of the old plant or former mining sites nor does it intend to do so.”²⁰⁷ But further satellite images, and a photograph taken in 2019, show in fact that Chemaf has used this plant, including for example by parking its digging equipment there.²⁰⁸

205 Chemaf, Letter to Amnesty International and IBGDH, 9 May 2023, annexed.

206 Ilunga et al., “The MutoShi project — Part I: Metallurgical test work, process design, and project delivery,” Journal of the Southern African Institute of Mining and Metallurgy, November 2018, available at https://www.researchgate.net/publication/329891297_The_MutoShi_project

207 Chemaf, Letter to Amnesty International and IBGDH, 9 May 2023, annexed.

208 Photograph taken by Amnesty International researcher on 14 November 2019, on file with Amnesty International.



© ↑ **Mukumbi, DRC:** Satellite image shows an overview of the central area of the Mutoshi mining site with the historic Anvil mining plant area on 16 April 2017. It is after the settlement was gone and before the major construction began. The old settlement area is highlighted with a yellow polygon and the areas with new structures visible in 2023 are highlighted with pink polygons.



© ↑ **Mukumbi, DRC:** Satellite image from 14 June 2023, shows a recent image of the Mutoshi mining site. The old village area is highlighted with a yellow polygon, and the areas with new structures visible are highlighted with pink polygons. New structures are visible within the historic Anvil mining plant area.

Therefore, according to available information, including from a series of satellite images, it seems highly unlikely that the company had no knowledge of Mukumbi's existence until 2019, on the exact location where it planned to build its flagship mineral processing plant. While selecting the location of this plant, it seems reasonable to assume that Chemaf's staff surveyed the concession in advance, and therefore would have been aware of Mukumbi's existence. This was not a remote location. The company and its partners invested hundreds of millions of dollars. It is unlikely that the company would not have conducted a detailed survey of its concession prior to starting construction, and unlikely that that survey would have taken place only after December 2017, when the company said it finally gained full access to the site.

In fact, as the satellite images show, it appears that Chemaf or its subcontractors had started work to clear the land where Mukumbi had stood and where it later built its processing plant, as early as September 2017.

IMPACTS

The destruction of Mukumbi had severe adverse impacts on its former residents. According to Kanini Maska, "the entire village was burnt down, we weren't able to retrieve anything... No-one had any money on them... We had nothing to survive on and spent nights in the forest."²⁰⁹

Papy Mpanga, 37, similarly said that:²¹⁰

"The eviction destroyed my dreams. I had started to plan to build a house where my children were going to grow up. I lost everything and I live in constant fear of losing everything again if I settle down somewhere new. I had to start from scratch."

The neighbourhood chief, Ernest Miji, recalled that before his eviction he used to farm but that he lost his house, a small restaurant and one hectare of farmland.²¹¹

Following the settlement's destruction, evictees explained that many former residents of Mukumbi ended up homeless, finding refuge in churches and schools of neighbouring towns including the hamlet of Kanfufu where researchers conducted focus group interviews in 2022.²¹² Florence Kalume, 44, shared that: "After this incident, we were scattered around...others are here but spend the night in churches and schools. We have no fixed place, we are refugees."²¹³

Lutéa Maska, 43, said that in addition to homes and farmland, she and other evictees lost their ID documents, voting registration and documentation such as her daughter's school diploma during the raid.²¹⁴

209 Amnesty International and IBGDH focus group interview in person with former residents of Mukumbi (women), 24 February 2022, Kanfufu.

210 Amnesty International and IBGDH focus group interview in person with former residents of Mukumbi (men), 24 February 2022, Kanfufu.

211 Amnesty International and IBGDH in-person focus group interviews with former residents of Mukumbi, 24 February 2022, Kanfufu.

212 Amnesty International and IBGDH in-person focus group interviews with former residents of Mukumbi, 24 February 2022, Kanfufu.

213 Amnesty International and IBGDH in-person focus group interview with former residents of Mukumbi (women), 24 February 2022, Kanfufu.

214 Amnesty International and IBGDH in-person focus group interview with former residents of Mukumbi (women), 24 February 2022, Kanfufu.

FIGHT FOR JUSTICE

In 2019, Mukumbi's chief sent yet another grievance letter to the governor of Lualaba stating that:²¹⁵

“Chemaf took the liberty to burn our houses, schools, churches, health centres, seize our farmland, evicted residents of our village as we had no responsible government officials. (...) The compensation of the whole population of [Mukumbi] does not need further promises or delays, since it has been three years and some months with no results, and our demands did not have any success.”

In December 2019, former residents of Mukumbi organized a 24-day protest on Chemaf's concession blocking the entrance to the Mutoshi processing plant and halting the company's construction activities.²¹⁶ They condemned Chemaf's failure to provide remedy, the lack of support received from the provincial government and the fact that they were not allowed to return to Mukumbi following its destruction.²¹⁷

Chemaf then agreed to participate in a mediation meeting convened by provincial authorities with a customary chief and a delegation of former residents of Mukumbi.²¹⁸ Subsequent to this protest, as noted above, Chemaf agreed to pay US\$1.5 million to settle the dispute. The settlement agreement (annexed to this report) restates the community's account that in 2016, Chemaf “evicted the residents of Mukumbi village without any compensation.”²¹⁹ It also includes a disclaimer stating that Chemaf denies any form of liability, an acknowledgement of Chemaf's absolute right to occupy the contested perimeter of the settlement of Mukumbi and a waiver of the right of the person accepting the settlement to any future adjudication of this dispute by a court of law.²²⁰

Evictees told researchers that Chemaf's settlement damages were paid to residents in February 2020 by the governor of Lualaba at the offices of the provincial Ministry of Interior.²²¹ Researchers obtained copies of two settlement agreements (annexed to this report). These awarded US\$300 per individual for the loss of houses made from tarpaulin.

Despite these payments, many former residents remain unsatisfied with how the company and government have responded to the eviction and its long-term impacts. They have organized numerous protests, peaceful marches and sit-ins, and mobilized local and international media attention to increase public pressure on the company.²²² “Once we realized that Chemaf's compensation was

215 Former residents of Mukumbi, Letter signed by customary chief Marc Kalambay to the governor of Lualaba, 8 April 2019, on file with Amnesty International (in French).

216 Amnesty International and IBGDH focus group interviews in person with former residents of Mukumbi, 24 February 2022, Kanfufu; Chemaf, Letter to Amnesty International and IBGDH, 14 December 2022, annexed. See also Wangu, “Le torchon brûle entre Chemaf et les ex-habitants du village MUKUMBI” [“There are squabbles between Chemaf and the former inhabitants of the village of MUKUMBI”], 16 December 2019, <https://www.youtube.com/watch?v=VUCe8tHWwgc> (accessed on 24 July 2023).

217 Amnesty International and IBGDH focus group interview in person with former residents of Mukumbi, 24 February 2022, Kanfufu.

218 Chemaf, Letter to Amnesty International and IBGDH, 14 December 2022, annexed.

219 The agreement includes a disclaimer stating that Chemaf denies any form of liability, an acknowledgement of Chemaf's absolute right to occupy the contested perimeter of the settlement of Mukumbi and a waiver of the right of the person accepting the settlement to any future adjudication of this dispute by a court of law.

220 Acte transactionnel d'indemnisation, [Settlement agreement between former residents of Mukumbi and Chemaf], February 2020, annexed.

221 Amnesty International and IBGDH focus group interview in person with former residents of Mukumbi, 24 February 2022, Kanfufu; Amnesty International and IBGDH interview in person with Joseph Kitenge, 20 September 2022, Kolwezi.

222 Wangu, 2019 video (previously cited); Reportage Sans Frontières, “Lualaba, non-respect du code minier: village Mukumbi Indemnisé ou dupé par la société Chemaf?,” 6 September 2020, https://www.youtube.com/watch?v=iIM9_77umow&t=188s (in French and Swahili, accessed on 24 July 2023); B-One TV Congo, “Lualaba: Manifestation des habitants de Mukumbi contre l'entreprise CHEMAF”, 6 April 2021, <https://www.youtube.com/watch?v=DdLzEfJcZIA> (in French, accessed on 24 July 2023).

insufficient, we wrote grievance letters to every office [of the provincial government], to no avail,” said Florence Kalume.²²³

Eric Vumba, 41, explained that “authorities have cracked down on us several times, punishing us for merely defending our rights, including before the Governor.”²²⁴ In early September 2020, IBGDH publicly condemned Lualaba’s criminalization of evictees after 11 former residents of Mukumbi were arrested and detained for over a week, after the police invited them to meet the provincial governor to discuss their demands.²²⁵

As noted earlier, Chemaf has also pointed to a court ruling issued in 2022, that cleared Chemaf and its senior manager of deliberately setting fire to houses in Mukumbi, due to a lack of evidence.²²⁶ Former residents of Mukumbi claim the proceedings violated their right to a fair trial, have shared their discontent with Lualaba’s governor and made public their intention to appeal the decision.²²⁷

CONCLUSION

While the facts surrounding Mukumbi’s destruction are contested, there is compelling evidence suggesting that, as the former residents described, their homes were destroyed, and that they were forced to leave the Mutoshi concession against their will.

The fact that the settlement may have been comprised of informal housing structures does not diminish the fact that such evictions are unlawful under Congolese and international human rights standards. A lawful eviction from any type of settlement would still require the Congolese state to afford residents legal protections and safeguards against forced evictions. These protections apply in all cases, whether or not people have a legal right to occupy the land on which they reside.

Mukumbi residents report that they were not consulted, given adequate notice, access to information or afforded an opportunity to challenge the authorities’ decision to destroy the settlement. Evictees told researchers that the company and law enforcement officials only orally informed that they should vacate Chemaf’s concession a few months, and again a few days before the eviction. This approach falls far short of the due process and safeguards against forced evictions prescribed by international human rights standards.

The UN Basic Principles on Evictions further provide that evictions should not be carried out in a manner that violates the dignity and human rights to life and security of those affected.²²⁸ Any legal use of force must respect the principles of necessity and proportionality,²²⁹ and states must ensure that no one is subject to direct or indiscriminate attacks, including but not limited to “arson and other forms of deliberate destruction, negligence or any form of collective punishment.”²³⁰ Former residents of Mukumbi report that members of the Republican Guard raided their settlement, burning down houses and beating up its residents. It was only in late 2019, that is three years after the eviction, and after sustained protests and complaints by evictees, that the government brokered a settlement that saw Chemaf pay small sums to them.

223 Amnesty International and IBGDH focus group interview in person with former residents of Mukumbi (women), 24 February 2022, Kanfufu.

224 Amnesty International and IBGDH focus group interview in person (men), 24 February 2022, Kanfufu.

225 IBGDH, Press release 01/IBGDH/09/2020 condemning arbitrary arrests of evictees, 10 September 2020, on file with Amnesty International (in French).

226 Lower Court of Kipushi, *Prosecutor and Ilunga Kalambay and Others v. Gilbert Kyungu Kafita*, RP 1215/RP 9543, Criminal Affairs First-Degree, 21 February 2022, on file with Amnesty International (in French).

227 Former residents of Mukumbi, meeting with the vice-President of the Provincial Assembly of Lualaba, 11 July 2023, Kolwezi.

228 UN Basic Principles on Evictions, para. 47.

229 UN Basic Principles on Evictions, para. 48.

230 UN Basic Principles on Evictions, para. 50.

Acts of violence that evictees described experiencing at the hands of military officials may amount to criminal misconduct. Evictees reported that the Republican Guard destroyed their property and physically assaulted people who tried to protect themselves and their property. At least one former resident, a girl who was under three years-old at the time of the incident, suffered from life changing injuries after residents say soldiers set fire to the house in which she was sleeping. Congolese authorities must open an investigation into the forced eviction of Mukumbi, including the role of Chemaf, prosecute perpetrators and ensure that survivors have access to effective remedy.

CORPORATE RESPONSIBILITY

Even if one disregards the accounts of former community members and accepts at face value Chemaf's claim that it had no involvement in the forced eviction, the company still bears some responsibility for the human rights abuses suffered by the former residents of Mukumbi. As leaseholder of the Mutoshi site since 2015, the company had a responsibility to conduct human rights due diligence. This should have involved it assessing likely human rights risks linked to its operations or planned operations, and taking reasonable steps to mitigate or prevent these from occurring.

Given that the company was developing plans to build a processing plant, on the site of Mukumbi, the company's due diligence should have identified the likely impact that this would have had on the community members, i.e. the need to move them away in order to build the plant. As a result, the due diligence process should then have considered the risks associated with moving people against their wishes and the necessary steps to avoid these risks from occurring. Chemaf could for example have followed a similar protocol that it put in place to manage the evictions of other communities from Mutoshi in 2017, which did not involve the military. But it did not — either according to the former residents, or to the company itself which claimed it was not aware of Mukumbi until 2019.

REMEDY

When return to one's place of residence and recovery of property and possessions is not possible, state authorities must provide victims of forced evictions appropriate compensation or other forms of just reparation.²³¹ In turn, where companies identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in remediation.²³²

After several months of outreach and public demonstrations, Lualaba's provincial government mediated the dispute between former residents of Mukumbi and Chemaf at the end of 2019. In turn, Chemaf agreed to settle the dispute through a US\$1.5 million payment to former residents, but some cases compensation amounted to as little as US\$300 per resident. Provincial government authorities should make sure that the affected people have access to effective remedy including adequate compensation. Chemaf should cooperate fully in this process.

²³¹ UN Basic Principles on Evictions, para. 67.

²³² UN Guiding Principles, Principle 22.

METAKOL ROAN TAILINGS RECLAMATION

The Metakol Roan Tailings Reclamation project (Metakol RTR) is a large cobalt and copper mining project 5km north-west of Kolwezi. Metakol RTR reprocesses waste rock, known as tailings, that contain copper and cobalt, which was left by previous mining operations.²³³ The mine's owner, Eurasian Resources Group SARL (ERG) estimates that the site contains 110 million tonnes of reserves.²³⁴

Metakol RTR covers an area of 66.7km².²³⁵ Before it began operating in 2019, many people lived inside its permit area, had farmland there, or lived in villages close to the perimeter.²³⁶ The

company has not disclosed how many people have been affected by its operations, but human rights organizations Afrewatch and Rights and Accountability in Development found that close to 114,500 people were living in twelve communities on or near its concession in 2019.²³⁷ This case study focuses on two groups of farmers. One group farmed near the village of Samukonga, the others are from the village of Tshamundenda, both have been affected by Metakol RTR. Samukonga falls within the concession. Tshamundenda is not, but many of its residents used to cultivate farmland on the outskirts of Metakol's concession.

IBDGH visited the village of Tshamundenda in 2021. In February 2022, Amnesty International and IBDGH conducted follow-up interviews with five people from Samukonga and 21 from Tshamundenda, who all lost their farmlands to make way for the development of Metakol RTR. Researchers also travelled with farmers from Tshamundenda to the location of their old plots. Researchers also reviewed publicly available company documents and exchanged letters with the company.



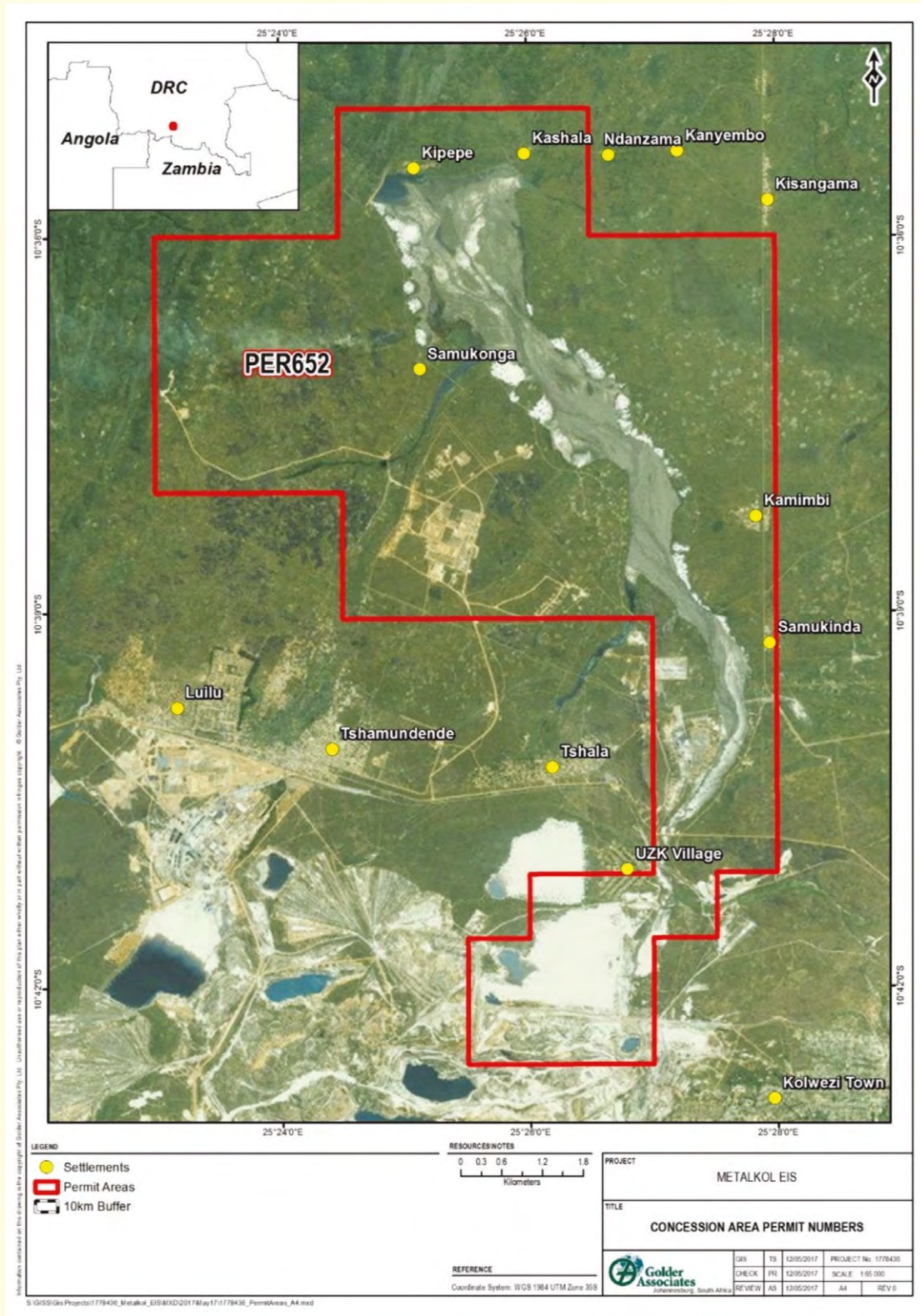
233 ERG Africa, "ERG Africa Interview: The DRC is a cornerstone of ERG's copper and cobalt business," 10 May 2019, <https://www.ergafrica.com/erg-africa-interview-the-drc-is-a-cornerstone-of-ergs-copper-and-cobalt-business/> (accessed on 24 July 2023). See also: ERG Africa, *Metakol RTR, Clean Cobalt & Copper Performance Report 2022*, 03 June 2022, <https://www.ergafrica.com/wp-content/uploads/Metalkol-Performance-Report-Final-03.06.2022.pdf>, p. 1.

234 ERG Africa, "Metakol RTR major tailings reprocessing operation," <https://www.ergafrica.com/cobalt-copper-division/metalkol-rtr/> (accessed on 24 July 2023).

235 Golder Associates Africa (GAA), *Metakol Roan Tailings Reclamation Project: Environmental Impact Study Executive Summary*, September 2019, <https://www.ergafrica.com/wp-content/uploads/Metalkol-ESIA-Executive-Summary.pdf>, p. 5.

236 GAA, *Metakol Roan Tailings Reclamation Project: Environmental Impact Study Executive Summary*, September 2019, <https://www.ergafrica.com/wp-content/uploads/Metalkol-ESIA-Executive-Summary.pdf>, p. 16.

237 Afrewatch and RAID, DRC: Congo's Victims of Corruption (previously cited), p. 11.



↑ Satellite image showing the perimeter of Metalkol's concession, excerpted from Metalkol RTR Environmental Impact Study's Executive Summary, published in September 2019 © Golder Associates Pty. Ltd.

TIMELINE: Metalkol RTR

DATE	Event
August 2013	Eurasian Natural Resources Corporation Plc (later Eurasian Resources Group SARL) acquires what is then known as the Kingamyambo Musonoi Tailings mining project. ²³⁸
2017	Metalkol pays the first of its compensation payments to over five hundred farmers affected by the project. ²³⁹
2018	Metalkol completes the resettlement of 16 families from Samukonga and claims to pay compensation to 972 farmers whose fields had been affected by the project. ²⁴⁰
2019	Metalkol fences off fields of Samukonga farmers. ²⁴¹
February 2020	Metalkol blocks access to agricultural fields of 144 Tshamundenda farmers. ²⁴²
April 2020	Farmers evicted by Metalkol protest in front of the headquarters of Lualaba government and provincial assembly.

238 Afrewatch and RAID, DRC: Congo's Victims of Corruption (previously cited), p. 4.

239 Eurasian Resources Group SARL (ERG), *Embedding sustainability: ERG Sustainable Development Report 2017*, https://eurasianresources.lu/uploads/1/files/20077_ERG_SR%20ENG%20web2.pdf, pp. 44, 54.

240 ERG, *Sustainable Development Report 2018: Towards Long Term Sustainability*, https://eurasianresources.lu/uploads/1/files/20077_ERG_SR%20ENG%20web2.pdf, p. 54.

241 See, for example, Amnesty International and IBGDH interview in person with Dorcas Ilunga, 23 February 2022, Luilu.

242 See, for example, IBGDH interview in person with Robert Kanyimbu, 2021, Tshamundenda.



METALKOL RTR

Formerly known as the Kingamyambo Musonoi Tailings (KMT) mining project, Metalkol RTR was taken over and made operational by the Canadian mining and metals company First Quantum Minerals Ltd. in the early 2000s.²⁴³ The mine suddenly closed in September 2009, when the DRC government revoked First Quantum's mining license, rendering close to 700 Congolese workers unemployed overnight.²⁴⁴ The following year, DRC sold the venture to a group of companies owned by Israeli businessman Dan Gertler, that in turn sold it to the then UK-listed company Eurasian Natural Resources Corporation Plc (ENRC).²⁴⁵ Eurasian Resources Group SARL (ERG) acquired ENRC in 2013.²⁴⁶

ERG is a privately held company headquartered in Luxembourg.²⁴⁷ In addition to the three founder shareholders, who each own approximately 20% of the company's share, the Ministry of Finance of the Republic of Kazakhstan owns the remaining 40%.²⁴⁸ ERG Africa owns the DRC-registered entity *Compagnie de Traitement des Rejets de Kingamyambo*, also known as Metalkol SA (Metalkol) that wholly owns and operates the Metalkol RTR project.²⁴⁹ The company boasts that it "is set to become one of the world's leading cobalt producers and one of the largest suppliers of cobalt to China. [Its] aim is to produce enough cobalt to power more than three million EVs per year."²⁵⁰ In 2021, Metalkol produced 20,718 tonnes of cobalt and 94,807 tonnes of copper.²⁵¹

ERG is one of the founding members of the Global Battery Alliance, an industry scheme created in 2017 with the aim to ensure that "battery production not only supports green energy, but also safeguards human rights and promotes health and environmental sustainability."²⁵² In November 2020, ERG also committed to the Responsible Mineral Initiative's Responsible Minerals Assurance Process (RMAP).

In December 2018, Metalkol launched its "Clean Cobalt Framework" with the aim to embed responsible business practices in its operating system.²⁵³ Metalkol expanded the framework to cover both cobalt and copper in 2021.²⁵⁴

243 International Finance Corporation, "Kingamyambo Musonoi Tailings SARL," <https://disclosures.ifc.org/project-detail/SPI/24920/kingamyambo-musonoi-tailings-sarl> (accessed on 12 July 2023).

244 Afrewatch and RAID, DRC: Congo's Victims of Corruption (previously cited), p. 25.

245 Afrewatch and RAID, DRC: Congo's Victims of Corruption (previously cited), p. 25.

246 ERG, "Our History," <https://www.eurasianresources.lu/en/pages/our-business/history>, (accessed on 13 July 2023).

247 ERG, "Organisational Structure," <https://www.eurasianresources.lu/en/pages/corporate-governance/organisational-structure> (accessed 24 July 2023).

248 ERG, "Organisational Structure" (previously cited).

249 GAA, *Metalkol Roan Tailings Reclamation Project: Environmental Impact Study Executive Summary*, September 2019, <https://www.ergafrica.com/wp-content/uploads/Metalkol-ESIA-Executive-Summary.pdf>, p. 5.

250 ERG Africa 2019 interview (previously cited).

251 ERG Africa, "Metalkol RTRA major tailings reprocessing operation," <https://www.ergafrica.com/cobalt-copper-division/metalkol-rtr/> (accessed on 13 July 2023).

252 Global Battery Alliance, "About the GBA," <https://www.globalbattery.org/about/> (accessed on 12 July 2023).

253 ERG, *The ERG Clean Cobalt Framework: Our Commitment to Responsible Production*, July 2019, <https://www.eurasianresources.lu/uploads/1/files/Clean%20Cobalt%20Framework.pdf>

254 Metalkol, *Clean Cobalt and Copper Framework*, September 2022, <https://www.ergafrica.com/wp-content/uploads/ERG-Clean-Cobalt-and-Copper-Framework-September-2022.pdf>, p. 5.

METALKOL RTR *continued*

Metalkol has issued a human rights statement of commitment explicitly stressing that the company supports the UN Guiding Principles and the OECD Due Diligence Guidance on Responsible Supply Chains of Minerals from Conflict-Affected and High- Risk Areas.²⁵⁵ The statement also provides that Metalkol is bound by the principles laid out by its parent ERG's human rights policy.

Among its key human rights pledges, Metalkol has publicly committed to “avoid involuntary resettlement, and where this is unavoidable, constructively engag[e] in line with relevant laws and international standards.”²⁵⁶



Ⓒ ↑ At the time the data was accessed, the Metalkol concession discussed in this report was demarcated to encompass over 66km² of land.

255 Metalkol, *Human Rights Statement of Commitment*, September 2021, https://www.ergafrica.com/wp-content/uploads/Metalkol-HR-Statement-of-Commitment_2021_ENG.pdf

256 ERG, *Sustainable Development Report 2018: Towards long-term sustainability*, 2018, https://eurasianresources.lu/uploads/1/files/20077_ERG_SR%20ENG%20web2.pdf, p. 94.

EVICCTIONS

SAMUKONGA (2017)

As of 2017, the village of Samukonga was home to 53 people.²⁵⁷ Because of its proximity to mining infrastructure, Metalkol evicted and resettled its residents to a new site outside the perimeter “for health and safety” reasons that year.²⁵⁸ Amnesty International and IBGDH did not examine the process by which the residents who lost their homes were resettled in housing newly built by the company, but focused instead on the hundreds of farmers who lost access to farmland near Samukonga.

Metalkol has never published its environmental and social impact assessment report in full, and the 25-page executive summary that it did post on its website (in English) does not provide the number of people it evicted to make way for the development of the RTR project.²⁵⁹ However it has provided the details of compensation payments the company claims to have made to farmers in the area in its sustainability reports. In 2017, ERG reported that it paid “compensation for crops to more than 500 farmers in the operating region of Metalkol RTR.”²⁶⁰ In 2018, it said it paid a total of US\$582,350 to “972 community members near Metalkol RTR, whose agricultural land and crops have been affected by the construction of the new tailings storage facility.”²⁶¹ In 2019, it reported paying approximately US\$580,000 to 1,438 community members for the same reason.²⁶² It does not state whether this figure includes the number of compensated farmers from the previous year or not. In 2020, it reported paying a further 11 community members.²⁶³ Then, in an email to Amnesty International and IBGDH, ERG referred to 800 farmers, who it said were identified in 2019 and paid in 2020.²⁶⁴

Some of the farmers who received these payments described this process. For example, Colin Tshikula, aged 42, used to grow cassava and maize near Samukonga. He said that in April 2017, two representatives of Metalkol came to notify farmers verbally that the company planned to evict people living close to the mine for safety reasons.²⁶⁵ In the months that followed, he said that representatives of the government agency AGRIPPEL conducted field visits to measure farmers’ crops and assess economic losses that would result from the eviction.²⁶⁶

Aimerance Kayoyo, aged 40, used to grow sweet potatoes, cassava, mangoes, okra, aubergine and sorrel near Samukonga. She said that between August and September 2018, Metalkol convened a meeting with farmers to start disbursing monetary compensation.²⁶⁷ According to Colin Tshikula and other interviewees, military officials were present and made some feel coerced into accepting the monetary compensation that Metalkol offered. “In September 2018, they called us to Metalkol’s [offices]. There were military officers everywhere. They started giving us envelopes, one by one. They gave me US\$390 and they forced us all to sign,” he recounted.

257 GAA, *Metalkol Roan Tailings Reclamation Project: Environmental Impact Study Executive Summary* (Metalkol RTR EIS Summary), September 2019, <https://www.ergafrica.com/wp-content/uploads/Metalkol-ESIA-Executive-Summary.pdf>, p. 10. See also, https://eurasianresources.lu/uploads/1/files/29685_ERG_Sustainability_Report_2017_ENG_Interactive.pdf, p. 44

258 GAA, *Metalkol RTR EIS Summary* (previously cited), p. 10.

259 See generally GAA, *Metalkol RTR EIS Summary* (previously cited).

260 ERG, *Sustainable Development Report 2017: Embedding sustainability*, https://eurasianresources.lu/uploads/1/files/20077_ERG_SR%20ENG%20web2.pdf, p44

261 ERG, *Sustainable Development Report 2018* (previously cited), p. 52.

262 ERG, *Sustainable Development Report 2019: Building a Sustainable Business*, <https://eurasianresources.lu/uploads/1/files/ERG%20SR%202019%20WEB.pdf>, p. 47.

263 ERG, *Sustainable Development Report 2020: Sustainability in Challenging Times*, [https://eurasianresources.lu/uploads/1/files/ERG%20SR%202020%20INT%20ENG%20\(1\).pdf](https://eurasianresources.lu/uploads/1/files/ERG%20SR%202020%20INT%20ENG%20(1).pdf), p. 52.

264 Metalkol, Email to Amnesty International and IBGDH, 23 May 2023, annexed.

265 Amnesty International and IBGDH interview in person with Colin Tshikula, 23 February 2022, Luilu.

266 Amnesty International and IBGDH interview in person with Colin Tshikula, 23 February 2022, Luilu.

267 Amnesty International and IBGDH interview with Aimerance Kayoyo, 23 February 2022, Luilu.

Dorcas Ilunga, aged 40, was also outraged by Metalkol's approach. She explained that, "first, they came to value our farmlands... There were police officers inside, there were police dogs, and they offered us insignificant amounts, for example US\$40, telling us, 'if you don't want it, you can go!'"²⁶⁸

Interviewees who used to grow crops near Samukonga reported receiving from \$7 to a few hundred dollars for hectares of crops and being forced to sign a registry that was not intelligible. They said that the monetary damages received were insufficient to buy equivalent plots of the same size, within a reasonable distance.²⁶⁹ Aimerance Kayoyo told researchers that she received US\$325, and explained that, "today, one hectare [of farmland] cost approximately US\$500. With the compensation disbursed, it is difficult to purchase [a new] field."²⁷⁰

Dorcas Ilunga told researchers that by the end of 2019, fields were fenced off after Metalkol gave farmers three months to retrieve their crops.²⁷¹

Several months later, in 2020, evictees told researchers that they organized a nine-day sit-in in front of Lualaba's provincial assembly in response to the company's refusal to revise the compensation offered to them.²⁷² "We decided to spend nine nights under the stars. For nine days, members of civil society came to show support so that we could go home and find a solution. Some women gave birth there, we named a new-born after the Vice Governor, Fifi," shared Dorcas Ilunga.²⁷³

One of the protestors told researchers that he and others were attacked by the police during this protest. "I was severely beaten up by police officers. I had to be hospitalized for 3 days. They lifted me up and threw me on the ground. I'm still suffering after-effects (pain in the arms, legs...)," said Obadian Kyombela, aged 35.²⁷⁴

Following these protests, in 2020, the governor of Lualaba wrote to Metalkol's General Manager, in support of the claim of the farmers. He too found that they had not been sufficiently compensated.²⁷⁵

"Following an investigation carried out by the Provincial Assembly and members of the Government, it appears that your company carried out the compensation of the farmers alone and without the oversight of the public administration, in violation of applicable laws and best practices. That is the reason why these 812 farmers have returned to claim their rights, threatening to disturb public order. (...) It turns out that out of a total of USD 432,691.00 your company has only paid USD 223,176.9."

ERG has disputed the account of Samukonga farmers.²⁷⁶ The company wrote that: "in line with our procedures, compensation calculations were determined by the information gathered from the surveys conducted in the field, which assess the areas farmed and the type and the maturity of the crops, amongst other criteria. These calculations are based on the official rates published by AGRIPPEL. Metalkol has no authority to adjust the calculations or rates. Once this assessment is completed, Metalkol makes payment through a commercial bank, which will then manage the payment to the farmers under Metalkol's oversight. No form of coercion is used during this process and the farmers receive their payments fairly and without any undue pressure. Metalkol does not use (Armed Forces of the DRC) FARDC intervention in relation to resettlements, compensation assessments or payments.

268 Amnesty International and IBGDH interview with Dorcas Ilunga, 23 February 2022, Lulu.

269 Amnesty International and IBGDH interviews in person with Colin Tshikula, Dorcas Ilunga, Aimerance Kayoyo, 23 February 2022, Lulu.

270 Amnesty International and IBGDH interview in person with Aimerance Kayoyo, 23 February 2022, Lulu.

271 Amnesty International and IBGDH interview in person with Dorcas Ilunga, 23 February 2022, Lulu.

272 Amnesty International and IBGDH interviews in person with Dorcas Ilunga, Aimerance Kayoyo and Colin Tshikula, 23 February 2022, Lulu.

273 Amnesty International and IBGDH interview in person with Dorcas Ilunga, 23 February 2022, Lulu.

274 Amnesty International and IBGDH interview in person with Obadian Kyombela, 23 February 2022, Lulu.

275 Governor of Lualaba, Letter CAB/GOUV/LBA/ to Metalkol's General Manager, 2020, on file with Amnesty International (in French).

276 ERG, Email to Amnesty International and IBGDH, 23 May 2023, annexed.

We have investigated these matters, including with the village chiefs from the locations of these farmers, who have confirmed that no instances of coercion by the military or police have been reported in relation to the payment process.”²⁷⁷

TSHAMUNDENDA (2020)

Between 2021 and February 2022, researchers also met with 21 farmers who belong to a collective of 144 farmers from Tshamundenda and who report that Metalkol evicted them from their farmland in 2020, without any consultation or prior notice.

Researchers spoke to Robert Kanyimbu, aged 51, director of Tshamundenda’s primary school and president of a committee advocating on behalf of the 144 farmers. He told researchers that in February 2020, farmers found their fields patrolled by FARDC soldiers while bulldozers were razing their fields and prohibited them from accessing their plots.²⁷⁸

Gracia Kahilou, aged 30, lost one hectare of land where she grew cassava and sweet potatoes. She told researchers that one day she found FARDC soldiers in her field:²⁷⁹

“I saw that the bulldozer was destroying our fields. We asked: “Why are you destroying our fields?” They told us, ‘It’s not your land anymore, it was bought out by Metalkol.’”

Similarly, Dianda Kazadi, aged 42, lost three fields where she used to grow cassava and potatoes. She shared that “[i]n February 2020, we went to the field, when we were walking, we saw the FARDC in the field. My friend was picking cassava leaves, he saw a [bulldozer] that was removing their plants. The soldiers came with dogs and started attacking people.”²⁸⁰

Farmers complained that they had not received any monetary compensation or alternative farmland before or after the eviction.²⁸¹ ERG has confirmed that it did not pay the farmers of Tshamundenda, because it says the provincial government had assessed that they had already been compensated twice, by the former mine operator, KMT, and that “the land had subsequently been illegally reoccupied without the consent of the company.”²⁸² Amnesty International and IBGDH asked the company to share supporting documents but did not receive any reply.

Community members denied that this was the case. Madeleine Tumba, aged 50, farmed cassava, corn, sugar cane, peanuts and other vegetables for three years before the eviction. She stressed: “No, we were not consulted, which explains the tension with Metalkol... They told us that the land had been sold and that KMT said it had paid the farmers, but I replied that we hadn't received anything. They said, ‘Leave, if you resist, we'll arrest you! They should have given us time to harvest, so we wouldn't have to beg.’”²⁸³



© ↑ Women and children evicted from their farmland to make way for the expansion of the Metalkol RTR project, interviewed and photographed in Tshamundenda, 23 February 2022 © Amnesty International (photographer: Jean-Mobert Senga)

277 ERG, Email to Amnesty International and IBGDH, 23 May 2023, annexed.

278 IBGDH interview in person with Robert Kanyimbu, 2021, Tshamundenda. See also, Amnesty International and IBGDH interviews in person with Madeleine Tumba, Gracia Kahilou, Jeanne Samba, Tshinate Tshikuta and Henri Kaumba, 23 February 2022, Tshamundenda.

279 Amnesty International and IBGDH interview in person with Gracia Kahilou, 23 February 2022, Tshamundenda.

280 Amnesty International and IBGDH interview in person with Kazadi Dianda, 23 February 2022, Tshamundenda.

281 Amnesty International and IBGDH Interviews in person with Madeleine Tumba, Gracia Kahilou, Madeleine Samba, Julie Shili, Eunice Kapokosa, Gertrude Lukunga, Henri Yenge, Robert Kanyimbu and Jean Mapasa, 23 February 2022, Tshamundenda.

282 ERG, Email to Amnesty International and IBGDH, 23 May 2023, annexed.

283 Amnesty International and IBGDH interview in person with Madeleine Tumba, 23 February 2022, Tshamundenda.

Robert Kanyimbu, who presides over the committee of 144 Tshamundenda farmers also contradicted ERG's explanation. According to him, "some of the 144 were compensated by KMT around 2004-2005, but it was for other fields that have nothing to do with our current claims."²⁸⁴

Some farmers tried to return to their fields to harvest their crops and were met with violent responses from the Congolese military patrolling Metalkol's concession. "Kabibi," (pseudonym) aged 38, was one of them.

HUMAN RIGHTS ABUSES AT THE HANDS OF MILITARY PATROLS

"Kabibi" moved to Tshamundenda in 2012 and used to grow maize and cassava. Following the eviction, she went to her plot with two fellow farmers in the hope of harvesting one last time. She was two-months pregnant.

"Kabibi" recalls leaving her home around 6 am that day. She was able to harvest her cassavas. While she was leaving her fields, she ran into six soldiers. "Don't come back, these fields belong to Metalkol," they warned.

"Kabibi" replied that she had to come back to harvest her remaining cassava and maize. Three of the soldiers suddenly grabbed her and raped her, while the other officers were watching the scene. As soon as they let her go, she remembered running to her brother's house, who then took her to hospital. "I went through a series of medical exams, and thank God, the baby was okay. Doctors gave me injections to strengthen my cervix," she said.

"Kabibi" explained that afterwards she only spoke about her assault with her immediate family and the village chief, but was too afraid to report the incident to the company, or the authorities as she thought the chances that military officials would be held accountable were slim.²⁸⁵

The assault has had a severe impact on her physical and mental health. "My blood pressure went down, I was constantly crying, my whole body hurt. It felt like pieces of wood were cutting through my entire body. Anytime I'd think about it, my heart rate would go up, it felt like my heart was going to explode," she said.

At the time of the interview, "Kabibi"'s health had significantly improved. Nevertheless, she mentioned that her experience was so traumatizing, she had not gone back to her fields since that day. Today, her demands are clear:²⁸⁶ "We want Metalkol to compensate us. I'm a widow, I can't afford to register my children in school... To date, I don't have a job or other sources of income. I wander, from home to home, to find something to eat for my kids"



←  "Kabibi" (pseudonym) was evicted from her farmland, located near Metalkol's concession, and sexually assaulted by military forces when she attempted to retrieve her crops, photographed in Tshamundenda, 10 September 2022 © Amnesty International (photographer: Reportage Sans Frontières)

284 Amnesty International and IBGDH interview by voice call with Robert Kanyimbu, 6 July 2023.

285 Amnesty International and IBGDH interviews in person with "Kabibi" (name changed for security reasons), 23 February and 10 September 2022, Tshamundenda.

286 Amnesty International and IBGDH interview in person with "Kabibi," 10 September 2022, Tshamundenda.

Robert Kanyimbu, told researchers that two days after the eviction, representatives of the provincial government and Metalkol conducted a field visit and met with Tshamundenda's neighbourhood chief.²⁸⁷ According to him, the following day, Metalkol's representative in charge of social affairs acknowledged that farmers from his community had not received any compensation.²⁸⁸ In the following weeks, he said that Metalkol representatives came back to check farmers' identity information against a list of beneficiaries and told farmers that AGRIPEL would evaluate their losses. However, such valuation never occurred, despite his numerous attempts to follow up with the provincial government.²⁸⁹

In April 2020, Tshamundenda farmers participated in a blockade in front of Lualaba's government headquarters.²⁹⁰ Almost a year after their eviction, the 144 evictees organized another march in front of Metalkol's facilities in the town of Tshala that they say the FARDC brutally dispersed.²⁹¹ Jeanne Samba Kayilu, aged 37, participated in the demonstration and told researchers:²⁹²

“[The company] even called in the FARDC to suppress us. They started to threaten us, to snatch our files. They took away my phone, my wallet and 25000 Congolese francs. Another soldier grabbed my skirt and dragged me. Finally, they opened the folder and saw our grievance documents. They didn't let us in [the company's offices].”

After months of grassroots mobilization, MPs from the Lualaba province commissioned an investigation and escalated Tshamundenda farmers' concerns to the Provincial Assembly in October 2021, but farmers interviewed say they have not led anywhere.²⁹³

COMPANY RESPONSE

In response to this account, ERG stated that “[i]n accordance with Metalkol's commitments to the Voluntary Principles of Security and Human Rights, we have provided a copy of [Amnesty International's and IBGDH initial findings] to the Lualaba Province Commandant of FARDC to urge an investigation of these matters and requested feedback on the outcome of these investigations.” It also claimed that, “Metalkol has in place an effective system to handle community grievances, which is consistently communicated to the community. We deplore any instances of sexual violence and have followed up with all the surrounding communities, including those mentioned in the draft report. As at the time of the response, there have been no reports of rape cases related to a pregnant woman made to any of the chiefs or their respective committees, including some of the 144 farmers, or any additional information that would enable further investigation of these matters.”

287 Amnesty International and IBGDH interview in person with Robert Kanyimbu, 23 February 2022, Tshamundenda.

288 Amnesty International and IBGDH interview in person with Robert Kanyimbu, 23 February 2022, Tshamundenda.

289 Amnesty International and IBGDH interview in person with Robert Kanyimbu, 23 February 2022, Tshamundenda.

290 Wangu, “Lualaba-société: Les propriétaires des champs délocalisés par METALKOL réclament que justice soit faite [Lualaba-société: Owners of fields displaced by METALKOL call for justice]”, 27 April 2020, <https://www.wangu.info/societe/lualaba-societe-les-proprietaires-des-champs-delocalises-par-metalkol-reclament-que-justice-soit-faite/> (in French, accessed 24 July 2023).

291 Amnesty International and IBGDH interviews in person with Robert Kanyimbu, Jeanne Samba and Madeleine Samba, 23 February 2022, Tshamundenda.

292 Amnesty International and IBGDH interview in person with Jeanne Samba, 23 February 2022, Tshamundenda.

293 7Sur7, “Lualaba: 3 communautés réclament leurs indemnités suite à l'expropriation de leurs terres agricoles par l'entreprise Metalkol (Députés) [Lualaba: 3 communities demand compensation following the expropriation of their farmland by the Metalkol company (MPs)],” 28 October 2021, <https://7sur7.cd/2021/10/28/lualaba-3-communaut-es-reclament-leurs-indemnit-es-suite-lexpropriation-de-leurs-terres> (accessed on 24 July 2023).

Regarding the presence or role of FARDC during evictions, ERG reiterated that “Metalkol does not exercise command or control over the deployment of FARDC. FARDC has not been involved in any resettlement or crop compensation activities undertaken by Metalkol. Nor has Metalkol requested its presence in relation to protest actions near the Metalkol offices as described in the report.”²⁹⁴ However, the company acknowledged that “at the relevant time, the Government had deployed the FARDC to the region generally in response to significant increases in Artisanal and Small-Scale Mining.”²⁹⁵

IMPACTS

As a result of the eviction, many of the farmers interviewed, and in particular women who lost their fields, told researchers that they have not been able to find alternative means of subsistence.²⁹⁶ Some bought new plots, while others now rent substitute plots, and often have to travel longer distances to reach them—therefore incurring new transportation costs.²⁹⁷ Henri Kaumba and his wife were able to buy substitute farmland, a long distance away from their home and told researchers: “This year, we suffered from not having enough food to feed our family.”²⁹⁸

Other farmers reported having no choice but to fetch and sell charcoal,²⁹⁹ turning to artisanal mining, or domestic work. After the eviction, Madeleine Tumba said that her husband who also used to farm turned to artisanal mining and died when a tunnel collapsed. She told researchers that since her husband’s death, she has been left with “next to nothing to buy another plot” and support her family of 10.”³⁰⁰

Those farmers from Samukonga, who received some monetary compensation, deemed Metalkol’s remediation utterly unjust and insulting. “My farmland... I don’t how much they can pay me. What I know is that my fields provided what I needed to live,” said Colin Tshikula.³⁰¹

Many interviewees used to farm for both commercial purposes and their families’ subsistence. The eviction forced many to buy (instead of grow) their own food supplies.

CONCLUSIONS

The two groups of farmers from Samukonga and Tshamundenda interviewed for this report had different experiences. But neither eviction followed due process requirements and legal safeguards prescribed by international human rights standards or protections enshrined in the revised Mining Code and Regulations.

294 ERG, Email to Amnesty International and IBGDH, 23 May 2023, annexed.

295 ERG, Email to Amnesty International and IBGDH, 23 May 2023, annexed.

296 Amnesty International and IBGDH interviews in person with Madeleine Tumba, Gracia Kahilou, 23 February 2022, Tshamundenda.

297 Amnesty International and IBGDH interviews in person with Gracia Kahilou, Henri Kaumba, 23 February 2022, Tshamundenda.

298 Amnesty International and IBGDH interview in person with Henri Kaumba, 23 February 2022, Tshamundenda.

299 Amnesty International and IBGDH interview in person with Colin Tshikula, 23 February 2022, Lulu.

300 Amnesty International and IBGDH interview in person with Madeleine Tumba, 23 February 2022, Tshamundenda.

301 Amnesty International and IBGDH interview in person with Colin Tshikula, 23 February 2022, Lulu.

CONSULTATION, PRIOR NOTICE, COMPENSATION

Samukonga

The farmers from Samukonga that researchers interviewed were evicted in 2017, that is before the revision of the Congolese Mining Code. But international standards had already established the need for, “genuine consultation,” and “information on the proposed eviction... especially when groups of people are involved.”³⁰²

Interviewees state that Metalkol gave Samukonga farmers verbal notice of their eviction, and government agents were involved in valuing their land and crops. However, farmers told researchers that Metalkol did not meaningfully consult with them, and that they felt coerced, in part due to the presence of military personnel, into signing compensation agreements that they deemed insufficient.

Farmers complained that the company had refused to listen to their complaints since then, forcing them to organize public demonstrations.

Tshamundenda

The 144 farmers from Tshamundenda were evicted in 2020. By then, the revised Mining Code and Regulations had entered into force, recognizing mining-impacted communities’ rights to information and effective participation.³⁰³ ERG claims that the community had earlier been compensated by the previous owners of the mine, and were illegally occupying the land.

But even if that is the case—which the community disputes—this does not justify what happened next. Not only did Metalkol fail to consult with Tshamundenda farmers but community members reported that soldiers then came to destroy their crops, without prior notice.

COERCION, MILITARY PERSONNEL

The UN Basic Principles on Evictions provide that evictions should not be carried out in a manner that violates the dignity and human rights to life and security of those affected.³⁰⁴ They stress that “states must also take steps to ensure that women are not subject to gender-based violence and discrimination in the course of evictions.”³⁰⁵ They further urge states to, “ensure that no one is subject to direct or indiscriminate attacks or other acts of violence, especially against women and children.”³⁰⁶

Farmers told researchers that FARDC soldiers were present when Metalkol disbursed a portion of the compensation owed to individuals evicted from Samukonga—which ERG contests—, and that soldiers patrolled Metalkol’s concession using unlawful force and intimidation tactics. One interviewee reported being sexual assaulted by military officials while attempting to retrieve crops after her fields were fenced off.

302 CESCR, General Comment 7, para. 15.

303 DRC Mining Regulations, Article 10 and 14.

304 UN Basic Principles on Evictions, para. 47.

305 UN Basic Principles on Evictions, para. 47.

306 UN Basic Principles on Evictions, para. 50.

STATE'S FAILURE TO PROTECT

States have a duty to protect human rights in the context of business activities.³⁰⁷ By failing to facilitate meaningful consultation, through the illegal conduct of public security forces and by failing to ensure that farmers evicted to make way for the Metalkol RTR project had access to effective remedy, Congolese authorities violated evictees' right to bodily integrity, freedom from torture, adequate housing, access to information, and effective remedy, enshrined in both the Congolese Constitution and international human rights law. State agents also breached their constitutional duty and obligations under international human rights law to respect human rights.

COMPANY'S RESPONSIBILITY

Metalkol and its parent company ERG state that they adhere to human rights policies that align with international standards. They are both aware that to meet their responsibility to respect human rights, companies must conduct an ongoing and proactive human rights due diligence process. All the issues raised in this case study were both foreseeable and preventable.

The only evidence that Metalkol conducted anything like a due diligence process is that it commissioned a consultancy to conduct an environmental impact study. Metalkol has only published this report's executive summary, and not the full report. This is in English, which is not a widely spoken language in the DRC. The report was published in September 2019, nine years after ERG bought Metalkol, and more than two years after it began evicting people from the concession. This is further evidence of the lack of transparency and accessible information surrounding this project.

Metalkol may have had valid reasons for relocating people away from their mine infrastructure but has not carried out evictions in a way that mitigated harm done to affected communities.

An adequate due diligence process would have seen the company engage meaningfully with affected communities and share all relevant information about Metalkol RTR and evictions in connection to its expansion in a timely way. Instead, both sets of farmers feel they have been coerced into accepting low or no compensation to make way for Metalkol's mining activities.

While Metalkol denies commissioning military forces to patrol its concession or to facilitate the eviction of farmers, the company should have taken steps to monitor the activities and conduct of armed soldiers on and near its concession and tried to prevent harm resulting from their security practices. Metalkol must take steps to ensure that unnecessary or excessive force is not used in policing its concession and take measures to ensure that only civilian police is involved in evictions, and that they carry out enforcement activities in full conformity with human rights standards. When evictions are not carried out in line with human rights standards, the company must promptly investigate any human rights abuses that may have been committed by public security forces and remediate any harm caused to mining-impacted communities.

Both groups of farmers in Samukonga and Tshamundenda shared their grievances with the company and provincial authorities repeatedly. ERG must review these inquiries, and importantly engage with the authorities and farmers to provide them with effective remedy.


³⁰⁷ UN Guiding Principles, para. 1.

KAMOA-KAKULA MINE

The Kamo-a-Kakula mining complex is located 25km south-west of Kolwezi.³⁰⁸ The Sino-Canadian joint venture Kamo-a Copper SA (Kamo-a) operates this project, which is set to become one of the world's leading copper mines.

Amnesty International and IBGDH conducted two group interviews of ten people in the town of Muvunda, where Kamo-a resettled 45 households in 2017, in the course of construction of the Kakula Mine.³⁰⁹ Researchers also reviewed company documents and exchanged letters with the company, and drew from qualitative research on Kamo-a's human rights impacts conducted by IBGDH and the Carter Centre published in 2022.³¹⁰ Resettled individuals told Amnesty International and IBGDH that Kamo-a provided them accessible information about the development of the Kakula Mine, meaningfully assessed their demands, and facilitated their resettlement. However, they also said that the resettlement complex Kamo-a built departed from the living standards the company agreed to. During their field visit, researchers confirmed that substitute housing and social infrastructure the company built fell short of both Congolese and international human rights standards on, among others, the right to adequate housing.



 ↑ House wall on an industrial mining concession, Kolwezi, February 2022 © Amnesty International (photographer: Richard Kent)

308 Ivanhoe Mines Ltd. (Ivanhoe), "Kamo-a-Kakula Copper Complex," <https://ivanhoemines.com/projects/kamo-a-kakula-project/>, (accessed on 13 July 2023)

309 Amnesty International and IBGDH focus group interviews in person with individuals resettled in Muvunda, 26 February 2022, Muvunda.

310 IBGDH report on COMMUS and Kamo-a, July 2022 (previously cited).

TIMELINE: Kamoa-Kakula Mine

DATE	Event
2008	Canadian company Ivanhoe Mines Ltd. (Ivanhoe) discovers the Kamoa copper deposit. ³¹¹
2012	DRC government awards Ivanhoe the license to develop the Kamoa-Kakula mining complex. ³¹²
2015	Chinese multinational, Zijin Mining, which also operates the Kolwezi copper and cobalt mine, acquires 49.5% of Ivanhoe's Kamoa stake. ³¹³
2016	Geologists discover the Kakula deposit. ³¹⁴
February 2016	Kamoa notifies at risk communities that the company plans to evict households living on the future Kakula mine's surface area.
2017	Kamoa carries out public consultations with communities at risk of eviction. Company and at-risk communities agree on resettlement package, including housing features. ³¹⁵
2018	Kamoa completes the construction of 45 substitute houses in Muvunda and a primary school; ³¹⁶ the company facilitates the resettlement of households evicted from the Kakula Mine surface area.
2021	Commercial production commences at the Kakula Mine. ³¹⁷
2022	Kamoa completes the construction of Muvunda's health clinic and early childhood development. ³¹⁸

311 Ivanhoe, *Sustainability Report 2021*, https://ivanhoemines.com/site/assets/files/3775/18141_ivanhoe_sustainability_report_2021-v2.pdf, p. 4. See also Ivanhoe, "Kamoa-Kakula Project now demonstrated to be the largest copper discovery ever made on the African continent", 12 October 2016, <https://ivanhoemines.com/news/2016/kamoa-kakula-project-now-demonstrated-to-be-the-largest-copper-discovery-ever-made-on-the-african-continent/>

312 Ivanhoe, *Sustainability Report 2021* (previously cited), p. 4

313 Ivanhoe, "Ivanhoe Mines and China's Zijin Mining Group sign landmark agreement to co-develop the world-scale Kamoa copper discovery in the Democratic Republic of Congo," 26 May 2016, <https://ivanhoemines.com/news/2015/ivanhoe-mines-and-chinas-zijin-mining-group-sign-landmark-agreement-to-co-develop-the-world-scale-kamoa-copper-discovery-in-the/>

314 Ivanhoe, *Sustainability Report 2021* (previously cited), p. 4. See also Ivanhoe Mines, "Kamoa-Kakula Project now demonstrated to be the largest copper discovery ever made on the African continent," 12 October 2016, https://ivanhoemines.com/site/assets/files/2046/2016-10-12_nr.pdf

315 Kamoa, Letter to Amnesty International and IBGDH, 9 May 2023, p. 2, annexed.

316 Ivanhoe, *Sustainability Report 2021* (previously cited), p. 110.

317 Ivanhoe, *Sustainability Report 2021* (previously cited), p. 5.

318 Ivanhoe, *Sustainability Report 2022*, ivanhoemines.com/site/assets/files/3775/ivanhoe-sustainability-report-2022.pdf, pp. 80 - 81.



KAMOA – KAKULA MINING PROJECT

The Kamo Copper mining complex comprises four ore bodies, Kakula (currently in production), Kansoko (under development), Kakula West (planned) and Kamo North (planned). Total copper production per year is projected to reach 600,000 tonnes by the end of 2024 and could then reach 800,000 tonnes per year. This would make Kamo the world's second most productive copper mine project.³¹⁹

The Kakula Mine is a vast copper deposit located approximately 25km south-west of Kolwezi, operated by the DRC registered company Kamo, a joint-venture between the Canadian company Ivanhoe (39.6%), the Chinese company Zijin Mining (39.6%), a private Hong Kong-based company Crystal River Global Limited (0.8%) and the Congolese government (20%).³²⁰ Kamo owns a mining license of 397.4km².³²¹

Ivanhoe discovered the Kakula deposit in 2016.³²² According to the Canadian company, it is the “largest copper discovery ever made on the African continent” and “the world's fourth-largest copper discovery.”³²³ It contains approximately 43.69 million tonnes of copper.³²⁴ The Kakula Mine's commercial production began in July 2021.³²⁵

Kamo states it “is committed to inclusive growth by fostering the development of thriving communities in our host communities.”³²⁶ Zijin Mining's commitments are listed above in the section on the Kolwezi copper and cobalt mine.

Ivanhoe's human rights policy stresses, among others, that companies in its group are “committed to promoting human rights and fostering economic growth and poverty alleviation by assisting the communities in which we operate to meet and exceed their basic needs.” It states that:³²⁷

“We conduct due diligence exercises as a means to proactively identify and address human rights risks to people in our business and value chain. We expect (...) community members to bring human rights concerns to our attention through our site-level grievance mechanisms.”

319 Kamo Copper S.A. (Kamo), “Operations: Mining”, <https://kamoacopper.com/operations/#mining>, (accessed 12 July 2023)

320 Kamo, “About Kamo Copper” <https://kamoacopper.com/about/> (accessed on 24 July 2023).

321 Kamo, “Operations: Mining,” <https://kamoacopper.com/operations/#mining> (accessed 12 July 2023).

322 The Kakula mine is located within the scope of exploitation permits number 13025 and 12873. See GAA, Kamo EIS Update (previously cited), p. 4.

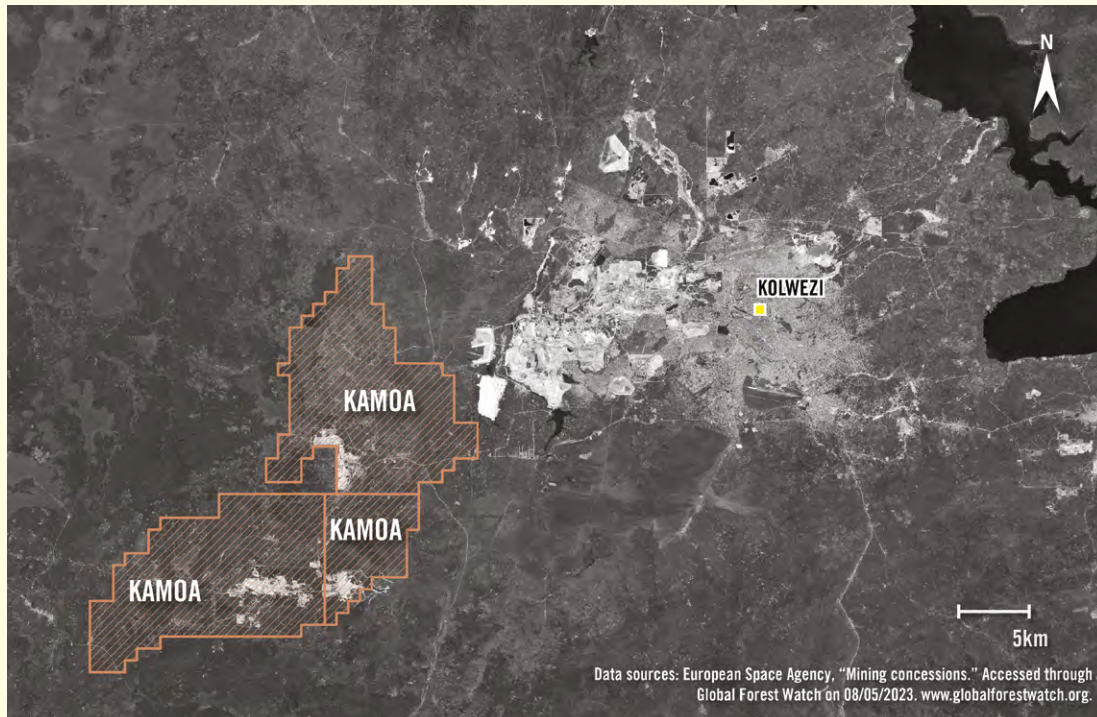
323 Ivanhoe, *Sustainability Report 2017*, <https://ivanhoemines.com/site/assets/files/4363/2017-sustainability-report.pdf>, p. 9.

324 Zijin Mining, “Kamo-Kakula Copper Mine,” <https://www.zijinmining.com/global/program-detail-71734.htm> (accessed on 13 July 2023).

325 Ivanhoe, “Kamo-Kakula Copper Complex”, <https://ivanhoemines.com/projects/kamo-kakula-project/>, (accessed on 13 July 2023).

326 Kamo, “Social,” <https://kamoacopper.com/social/>, (accessed on 19 June 2023).

327 Ivanhoe, “Human Rights”, (accessed 12 July 2023).



↑ At the time the data was accessed, the Kamoia discussed in this report concession was demarcated to encompass over 394km² of land.

MUVUNDA

The Kamoia-Kakula project covers an area of approximately 400km².³²⁸ The company says that its “operating area” is home to approximately 40,000 people in 41 villages.³²⁹

The numbers requiring relocation have however been much smaller. As of December 2022, the company reported that a total of only 1352 people had lost access to homes, businesses, or fields.³³⁰

These included people impacted by the development of the Kakula mine. The company said that it had identified 45 households in 2016 living within an area of 21km² needed to be fenced off for the mine’s development.³³¹ The environmental impact study that the company published in 2017 found that “Muvunda chiefs and family have been established in this area for many years, longer than living relatives can remember. The village has grown over the years as households move in search of fields to cultivate.”³³²

One of the residents, “Thérèse” (pseudonym), aged 25, told researchers that in February 2016, Kamoia representatives first informed her and others that the company would soon need to evict them.³³³ Kamoia confirmed that the company had “conducted numerous consultations with both affected communities and communities earmarked to host relocation activities” and created a “resettlement working group,” comprised of community representatives, local leaders, government and company representatives.³³⁴ The company also told researchers that Kamoia shared information regarding

328 Kamoia, “Operations: Mining”, <https://kamoiacopper.com/operations/#mining> (accessed 12 July 2023).

329 Kamoia, “Social,” <https://kamoiacopper.com/social/> (accessed 19 June 2023).

330 Kamoia, Letter to Amnesty International and IBGDH, 8 December 2022, annexed.

331 GAA, Kamoia EIS Update (previously cited), p. 39

332 GAA, Kamoia EIS Update (previously cited), p. 39.

333 Amnesty International and IBGDH focus group interview in person with residents of Muvunda (women), 26 February 2022.

334 Kamoia, Letter to Amnesty International and IBGDH, 9 May 2023, annexed.

“the mine development and reason for relocation, the entire relocation and compensation process, agricultural practices and health and safety information.”³³⁵

Interviewees explained that in 2017, once provincial government experts completed the valuation process, Kamoia facilitated evictees’ move to resettlement houses the company newly built in Muvunda.³³⁶ “Désirée” (pseudonym), aged 38, mentioned that: “the move was at the company’s expense, they warned [families] a day in advance, so that the person moving could prepare and the following day, a vehicle would come pick up your [belongings].”³³⁷

INADEQUATE HOUSING

According to Kamoia, the “resettlement working group,” (RWG) that included community representatives, established “the framework determining the size of the house to be built in lieu of the existing hamlet structure.”³³⁸ It also stated that, “each household received a house according to the results of the identification and the surveys based on what was decided by the RWG committee according to the design signed and attached to the individual transfer deed.”³³⁹

Kamoia told researchers that it offered a relocation package including 45 resettlement houses (comprised of a living room, two to three bedrooms, a veranda and outdoor “toilets,” based on matching house specifications on a like-for-like basis.³⁴⁰ However, several community members complained about the size and amenities of the houses the company built. For example, “Innocent” (pseudonym) shared that the house his family resettled in was “too small for a family of 12 children.”³⁴¹

Kamoia has boasted that its resettlement programme led to the replacement of “straw-hut hamlet structures with stronger, more spacious houses of a much higher quality, constructed from pre-cast concrete, hollow cement blocks, roof sheeting and steel frames.”³⁴² But researchers found that none of the resettlement houses in Muvunda were equipped with showers, running water or electricity. Kamoia confirmed that the holes the company dug for residents to use as toilets were not connected to any sewage system.³⁴³ For example, “Dieudonné” (pseudonym), 54, told researchers that: “When we arrived here, they had already built these small houses (...). They were empty and we had to scramble to find the bed, chairs, and everything else. No electricity. There is a toilet but no shower, and the holes are 2 meters deep, they were filled after two years.”³⁴⁴

Researchers found that none of the resettlement houses in Muvunda were equipped with showers, running water or electricity. Kamoia confirmed that the holes the company dug for residents to use as toilets were not connected to any sewage system.

335 Kamoia, Letter to Amnesty International and IBGDH, 8 December 2022, para. 3c, annexed.

336 Amnesty International and IBGDH focus group interview in person with residents of Muvunda (women), 26 February 2022, Muvunda.

337 Amnesty International and IBGDH focus group interview in person with residents of Muvunda (women), 26 February 2022, Muvunda.

338 Kamoia, Letter to Amnesty International and IBGDH, 9 May 2023, p. 2, annexed.

339 Kamoia, Letter to Amnesty International and IBGDH, 9 May 2023, p. 2, annexed.

340 Kamoia, Letter to Amnesty International and IBGDH, 8 December 2022, paras 3g, 4. See also Ivanhoe, 2017 Sustainability Report (previously cited), p. 52.

341 Amnesty International and IBGDH focus group interview in person with men resettled in Muvunda, 26 February 2022, Muvunda.

342 Ivanhoe, *Sustainability Report 2022*, ivanhoemines.com/site/assets/files/3775/ivanhoe-sustainability-report-2022.pdf, p. 85.

343 Kamoia, Letter to Amnesty International and IBGDH, 8 December 2022, para. 4b, annexed.

344 Amnesty International and IBGDH focus group interview in person with men resettled in Muvunda, 26 February 2022, Muvunda.

This stands in sharp contrast to the housing for its employees and contractors. The pictures below show the difference between housing the company built for its staff (completed in 2019), compared to resettlement houses it built for families that had to leave their homes behind to make way for the Kakula mine.³⁴⁵



© ↑ Units built near Kakula to provide on-site accommodations for Kamo's employees and contractors © Ivanhoe Mines Ltd. (top); Resettlement houses and bathroom built in Muvunda where Kamo resettled communities who used to live on the surface area of the Kakula Mine, 26 February 2022 © Amnesty International (photographer: Jean-Mobert Senga)

Families that researchers interviewed moved to Muvunda in 2017, but it was not until 2021 that its primary school opened, and they had to wait until 2023 for Kamo to complete the construction of a health clinic.³⁴⁶

345 See Ivanhoe, *Management's Discussion and Analysis for the Year Ended December 31, 2019, 5 March 2020*, https://ivanhoemines.com/site/assets/files/4838/managements_discussion_and_analysis_as_at_december_31-2019.pdf

346 Amnesty International and IBGDH focus group interviews with individuals resettled in Muvunda, 26 February 2022, Muvunda. See also Ivanhoe, 2022 Sustainability Report (previously cited), p. 55.

IMPACTS

Kamoa initially built one borehole which was the only source of drinking water shared by several nearby communities all resettled from the surface area of the Kakula mine. IBGDH recently estimated that up to 4,000 individuals from Muvunda and nearby villages rely on this one water source.³⁴⁷ Individuals resettled in Muvunda report that since its construction, the borehole has stopped working a few times, sometimes for months at a time.³⁴⁸ Evictees told researchers that they had no other choice but to use their own money to get it repaired.³⁴⁹ When it is not functioning, Muvunda residents are forced to source water from nearby villages, at a cost. “Alain” (pseudonym) told researchers:³⁵⁰

“The issue of access to water must be resolved. We were used to go to the river and find water in sufficient quantities, at any point in time, even at midnight, but here we are now, dependent on water tanks, and when they are not working, we are forced to participate financially for repairs.”

In response to these findings, Kamoa claims that: “The first borehole installed was vandalized by Muvunda residents during a dispute linked to the handover of power in the Muvunda Chiefdom. The borehole has since been repaired and paid for by Kamoa. Kamoa has also added two more boreholes and all are fully functioning.”³⁵¹

Furthermore, resettled families told IBGDH that the main water stream evictees rely on for sanitation, the Mulunguishi river, is polluted.³⁵² Kamoa confirmed that the company’s construction work led to an “increase in the river’s turbidity”³⁵³ but that the issue has now been fixed and that water quality was restored.”³⁵⁴



© ↑ Water borehole built by Kamoa in Muvunda, 26 February 2022
© Amnesty International (photographer: Candy Ofime)

347 IBGDH report on COMMUS and Kamoa, July 2022 (previously cited), p. 29.

348 Amnesty International and IBGDH focus group interview in person with women resettled in Muvunda, 26 February 2022, Muvunda.

349 Amnesty International and IBGDH focus group interview in person with women resettled in Muvunda, 26 February 2022, Muvunda.

350 Amnesty International and IBGDH focus group interview in person with men resettled in Muvunda, 26 February 2022, Muvunda.

351 Kamoa, Letter to Amnesty International and IBGDH, 9 May 2023, p. 4, annexed.

352 IBGDH report on COMMUS and Kamoa, July 2022 (previously cited), p. 23.

353 Kamoa, Letter to Amnesty International and IBGDH, 9 May 2023, p. 4, annexed.

354 Kamoa, Letter to Amnesty International and IBGDH, 9 May 2023, p. 4, annexed.

A group of women resettled in Muvunda also told researchers they experienced skin rashes and vaginal infections when using nearby water streams. “All these health issues emerged when the water well stopped working. We fetched water wherever we could, from nearby water streams. We’ve developed numerous infections, especially vaginal infections,” they shared.³⁵⁵

Kamoa claims to have in place “various resettlement working group (RWG) committee meetings for direct and continuous engagement with resettled communities as well as robust grievance mechanism with flexible channels for effective communication.”³⁵⁶ However, despite the various concerns raised by households resettled in Muvunda researchers documented and relayed to Kamoa, the company claims that to date, it has only received two formal grievances from Muvunda residents including one relating to access to potable water and that they were both resolved.

IBGDH found that while Kamoa’s community consultation processes were robust before the company resettled families from Kakula to Muvunda, Kamoa’s engagement with local communities is almost non-existent today.³⁵⁷

CONCLUSION

Amnesty International and IBGDH’s research shows that families evicted from the Kakula mine’s surface area received adequate procedural safeguards in the course of their resettlement.

However, according to the UN Basic Principles on Evictions, relocation sites must fulfil the criteria for adequate housing according to international law, including security of tenure, “services, materials, facilities and infrastructure such as potable water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services,” “habitable housing providing inhabitants with adequate space,” and “access to employment options, health-care services, schools, childcare centres and other social facilities.”³⁵⁸ The CESCR has emphasized that “the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity.”³⁵⁹

Researchers observed that substitute houses Kamoa built in Muvunda are not equipped with running water, electricity, or connected to any sewage system. Many reported that at the time of the eviction, resettlement houses were too small for their family sizes.

In response to these findings, Kamoa replied that: “At the time when Muvunda relocation happened (2017), Kamoa relocation standards were benchmarked to International best practices as defined in our entitlement framework, which is precisely what we executed. The actual United Nations (UN) principles are commendable, but challenging to implement in the context where electricity is not available in the region.”³⁶⁰

355 Amnesty International and IBGDH focus group interview in person with women resettled in Muvunda, 26 February 2022, Muvunda.

356 Kamoa, Letter to Amnesty International and IBGDH, 26 February 2022, annexed

357 IBGDH report on COMMUS and Kamoa, July 2022 (previously cited), p. 21.

358 UN Basic Principles on Evictions, para. 55.

359 CESCR, General Comment 4, para. 7.

360 Kamoa, Letter to Amnesty International and IBGDH, 9 May 2023, p. 4, annexed.

But it is apparent that Kamoia was able to overcome such challenges to develop what the company describes as cutting edge, carbon efficient mining and processing facilities. Indeed, among other achievements, Ivanhoe's website emphasizes that:³⁶¹

“Kamoia-Kakula is powered by clean, renewable hydro-generated electricity and is projected to be among the world's lowest greenhouse gas emitters per unit of metal produced, as confirmed by a 2020 independent audit performed by Hatch Ltd., of Mississauga, Canada. The Kakula Mine will have one of the most favourable environmental footprints of any tier-one copper mine worldwide.”

Similarly, logistical and infrastructure limitations did not prevent the company from building spacious and comfortable accommodation for its staff and contractors.

The UN Basic Principles on Evictions also provide that “[a]ll resettlement measures, such as construction of homes, provision of water, electricity, sanitation, schools, access roads and allocation of land and sites, must be consistent with (...) internationally recognized human rights principles, and completed before those who are to be evicted are moved from their original areas of dwelling.”³⁶² Kamoia acknowledged that when it facilitated the move of 45 households from Kakula to Muvunda, the company had only completed construction of a primary school that was not yet operational. It took another four years for the company to build a health centre, and construction of recreational facilities remains under way.

Moreover, Kamoia's “like for like” standard for in-kind compensation contravenes the revised Mining Regulations' requirement that: “The new living environment (...) enable evictees to reach a standard of living superior to what they experienced in their original environment.”³⁶³

Therefore, the resettlement complex Kamoia that built limits evictees' constitutional rights to decent housing, drinking water and electric energy.

Local and provincial authorities must seek direct engagement with resettled communities and take steps to ensure that their new living environment meets the requirements of Congolese law and international human rights standards. While Congolese law puts the main burden on mining operators to facilitate evictions of communities impacted by their operators, mining companies cannot and should not become a state proxy. Kamoia's direct engagement with communities it resettled does not absolve Congolese authorities' supervisory role and sovereign prerogatives.

To meet its responsibility to respect human rights, Kamoia should engage in proactive and ongoing due diligence. It should have foreseen shortcomings of the houses it built to families resettled in Muvunda and taken steps to mitigate them. Even now, after it constructed the new homes, the company should listen to concerns of the community, and put in place measures to respond to them in a meaningful way. This should include increases to the size of the houses, where necessary. It must also address complaints relating to the ongoing issue of access to water, energy supply and lack of adequate sanitation and sewage systems.

361 Ivanhoe, “Kamoia-Kakula Copper Complex,” <https://ivanhoemines.com/projects/kamoia-kakula-project/> (accessed 13 July 2023).

362 UN Basic Principles on Evictions, para.44.

363 DRC, Mining Regulations, Annex XVIII, Article 7.

CONCLUSION

Amnesty International and IBGDH's research reveals that in and around the city of Kolwezi, multinational mining companies have engaged in forcibly evicting communities from their homes and farmlands to make way for energy transition mining. Forced evictions have become a serious issue that affects families residing in densely populated hubs at the heart of Kolwezi, to farmers cultivating fields on the outskirts of the world's cobalt capital. Communities are often trapped between mining projects, forced to abandon their homes and means of subsistence, with no meaningful avenues for redress.

The companies investigated for this report all boast of their role in the energy transition and of adhering to high ethical standards.

For example, Zijin Mining, majority owner of COMMUS, states that “we contribute to global economic growth and sustainable development by producing and supplying high-quality minerals.”³⁶⁴ The company claims that it is “committed to conducting business in compliance with all applicable laws and regulations and the highest ethical standards.”³⁶⁵

Chemaf, owner of Mutoshi, claims that its, “vision is to lead the global green energy transition by means of responsible mineral extraction.”³⁶⁶

According to the mission statement of ERG, parent company of Metalkol, the company strives to “drive global change whilst holding true to our values. Unlock the potential of the Earth and its people and ensure the prosperity of those who rely on us.”³⁶⁷

Ivanhoe, majority owner of Kamao, states that it is “committed to becoming a global leader in the supply of critical resources required to transition our world to a low-carbon, renewable future.”³⁶⁸

Yet each one of these companies has, in different ways, harmed the rights of people that it required to move from their homes or fields.

The Congolese government has adopted laws to curtail forced evictions in the mining sector, but as demonstrated in this report, has failed to implement or enforce such legal protection. Worse, in most cases, Congolese authorities have actively carried out or facilitated forced evictions documented in this report. To meet their obligation to protect human rights in the context of business activities, Congolese authorities must cease doing so, and now ensure that all individuals and communities that have been forcibly evicted have access to effective administrative, judicial, and other appropriate remedies. They must also ensure that all protective legal standards adopted at the national and provincial level translate into new corporate practices. If not, perpetrators should be held accountable. To that end, Congolese authorities should declare a moratorium on mass evictions in the mining sector, until a commission of inquiry completes a comprehensive review of existing implementation gaps and formulates concrete policy reforms.

364 Zijin Mining, “Company Profile,” https://www.zijinmining.com/about/about_us.htm (accessed on 13 July 2023).

365 Zijin Mining, “Business Ethics,” https://www.zijinmining.com/sustainable/Business_ethics.htm (accessed on 13 July 2023).

366 Chemaf, “Our Vision,” <https://www.chemaf.com/> (accessed 24 July 2023).

367 ERG, “Our Business,” <https://www.eurasianresources.lu/en/pages/our-business/main> (accessed 12 July 2023).

368 Ivanhoe, “Home,” <https://ivanhoemines.com/> (accessed 12 July 2023).

The Congolese Constitution provides that: “All Congolese people have the right to enjoy the national wealth.”³⁶⁹ The energy transition should indeed directly benefit people who care most about the mineral-rich land at the heart of this global transformation. In the upcoming decades, the demand for energy transition minerals will continue to rise. Therefore, the Congolese government and the mining companies must urgently protect the rights and interests of frontline communities, who should be the main beneficiaries of the energy transition.

“We contribute to global economic growth and sustainable development by producing and supplying high-quality minerals.”

Zijin Mining, majority owner of COMMUS

“Our vision is to lead the global green energy transition by means of responsible mineral extraction.”

Chemaf, owner of Mutoshi

“Company's mission: Drive global change whilst holding true to our values. Unlock the potential of the Earth and its people and ensure the prosperity of those who rely on us.”

ERG, parent company of Metalkol

“Ivanhoe Mines is (...) committed to becoming a global leader in the supply of critical resources.”

Ivanhoe, majority owner of Kamo

Yet each one of these companies has, in different ways, harmed the rights of people that it required to move from their homes or fields.

³⁶⁹ DRC, Constitution, Article 58.

RECOMMENDATIONS

DRC AUTHORITIES

TO THE PRESIDENT

- Ensure that mining and all related activities do not lead to forced evictions and other human rights abuses of affected communities.
- Ensure that the rights and interests of people whose homes and land will be affected by mining operations come first in the development and monitoring of projects extracting copper, cobalt and other minerals throughout the DRC.
- Urge the government to implement recommendations outlined in this report including the adoption of a nation-wide moratorium on mass evictions in the mining sector until a commission of inquiry completes a comprehensive review on evictions linked to the extraction of cobalt, copper and other minerals throughout the DRC and presents policy recommendations to national and provincial authorities and communities.
- Issue an executive order prohibiting all military forces, including the Republican Guard, from patrolling mining concessions and from intervening in disputes between mining operators and frontline communities.

TO THE PRIME MINISTER

- Adopt a nation-wide moratorium on mass evictions in the mining sector until a commission of inquiry completes a comprehensive review on evictions linked to the extraction of cobalt, copper and other minerals throughout the DRC and presents policy recommendations to national and provincial authorities, with the effective participation of mining-impacted communities and civil society.
- Set up a multi-stakeholder commission of inquiry to assess existing laws and practices in the context of evictions carried out to make way for mining of cobalt, copper, and other minerals since the revision of Mining Code in 2018. The Commission should:
 - Include national and provincial government's experts, representatives of mining operators, mining-impacted communities (ensuring that women, children, older people, people with disabilities among others who experience multiple and intersectional forms of discrimination are represented) and civil society organizations;
 - Hold meaningful public consultations and actively seek the input of individuals and communities forcibly evicted and at risk;
 - Identify and assess: (i) good practices, normative gaps, and implementation failures; (ii) the long-term risks associated with the indefinite expansion of mining projects on urban centres with a high population density such as Kolwezi; (iii) past and present cases of forced evictions and other violations of the Mining Code, Mining Regulations and international human rights standards including the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement (UN Basic Principles on Evictions);

- Develop concrete policy recommendations for central and provincial authorities and other stakeholders;
- Refer all unresolved cases of forced evictions (including cases pre-dating the revision of the Mining Code) to the Ministry of Justice and other competent bodies for further investigation;
- Carry out its functions in a manner that is transparent, participatory and ensure that its conclusions are rendered public and accessible to mining-impacted communities.
- Ensure that effective administrative, judicial and other appropriate remedy is provided to individuals and communities forcibly evicted in connection with mining of cobalt, copper and other minerals.
- Take immediate steps and publicly commit to sign, ratify and domesticate the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in order to ensure access to justice for victims of human rights abuses linked to forced evictions in the mining sector.

TO THE NATIONAL ASSEMBLY AND THE SENATE

- Amend—in consultation with mining-impacted communities and civil society—the Mining Code to align its provisions with international human rights standards, including the UN Basic Principles on Evictions and the UN Guiding Principles on Business and Human Rights (UN Guiding Principles) by:
 - Explicitly prohibiting forced evictions and codifying all legal protections and safeguards against forced evictions outlined in Annex XVIII of the Mining Regulation;
 - Mandating relevant government agencies to condition mining licensing to a review and approval of eviction impact assessments in line with paragraph 32 of the UN Basic Principles on Evictions;
 - Requiring that evictions only be carried out as a last resort, after mining companies have demonstrated that they have explored all other feasible alternatives in genuine consultation with all affected people;
 - Requiring all mining operators to conduct human rights due diligence on their operations, as outlined by the UN Guiding Principles;
 - Strengthening the capacity and duties of the Congolese government in overseeing and monitoring evictions carried out to make way for mining projects;
 - Explicitly expanding the scope of “prohibited areas” envisioned by Article 6 of the Mining Code to densely populated urban centres such as the city of Kolwezi.

TO THE MINISTRY OF MINES

- Systematically assess the quality and content of both eviction and environmental and social impact assessments when granting mining licenses. Such assessments must take into account the disparate impacts of forced evictions on women, children, older people, people with disabilities and other marginalized groups.
- Carry out public hearings as part of licensing processes for mines of all sizes, including expansion projects, accessible to the general public, particularly mining-impacted communities.

TO THE MINISTRY OF AGRICULTURE AND ITS PROVINCIAL DIVISION FOR THE LUALABA

- Share accessible information regarding AGRIPPEL's valuation method to quantify compensation for the loss of farmland.
- Commission and publicly disclose a study assessing the impacts of industrial mining of energy transition minerals on subsistence farming and food security in the Lualaba province, articulating policy recommendations to the provincial government.

TO THE MINISTRY OF DEFENSE

- Investigate all allegations of misconduct, unnecessary or excessive use of force and other human rights abuses (including violent incidents) ascribed to members of the military, including the Republican Guard, documented in this report, and prosecute and hold perpetrators accountable.
- Ensure that there are no agreement between military forces and mining operators to patrol industrial mining concessions.

TO THE MINISTRIES OF JUSTICE AND HUMAN RIGHTS

- Investigate all alleged misconduct, unnecessary or excessive use of force and other human rights abuses ascribed to law enforcement agents, State officials and mining companies' employees in relation to forced evictions documented in this report, and prosecute and hold perpetrators accountable.

TO THE GOVERNOR AND GOVERNMENT OF LUALABA PROVINCE

- Halt all mining related evictions until further notice from national authorities.
- Provide emergency relief, adequate housing, access to services and effective remedy including in-kind compensation for losses incurred to all individuals and communities impacted by the development of the Kolwezi copper and cobalt mine, the Mutoshi mine, Metalkol RTR and the Kakula mine.
- Ensure that mining operators carrying out evictions systematically offer in-kind compensation including but not limited to substitute housing and land.
- Create local resettlement committees—as set out by Article 28 of the Directive—at the municipal level and starting with the city of Kolwezi.
- Amend provincial Decree n° 2017/Gouv/P.LBA/031 establishing Lualaba’s Relocation Commission to ensure its composition and mandate are in line with Articles 29 and 30 of Annex XVIII of the Mining Regulation, and that it supports the work of local resettlement committees set up at the municipal level as an appeals’ body.
- Urge the provincial Relocation Commission to:
 - Publish data on all evictions it has supervised since its creation;
 - Publish all past and current annual budgets and spendings since its creation;
 - Train local and provincial government officials, including public security forces, and mining operators on how to prevent forced evictions in the mining sector;
 - Provide “Know-Your-Rights” trainings on mining and forced evictions to communities impacted and likely to be impacted by mining.
- Impose civil penalties on mining operators failing to: (i) notify local and provincial authorities before an eviction, (ii) submit a resettlement plan, or (iii) displace communities with adequate safeguards against forced evictions in accordance with applicable domestic and international human rights law.
- Engage in a dialogue with national authorities to identify and designate areas of the Lualaba province as “prohibited [mining] areas,” in line with Article 6 of the Mining Code.
- Elaborate and publicly share information about long-term urban planning for the Lualaba province and the city of Kolwezi, especially with regards to the expansion of mining activities.

TO THE PROVINCIAL ASSEMBLY OF LUALABA

- Adopt a resolution condemning human rights abuses associated with forced evictions in the mining sector.
- Urge the provincial government to implement recommendations outlined in this report and ensure follow-ups and public accountability for the same.

COMPANIES

TO ALL MINING OPERATORS IN THE DRC

- Ensure that all future evictions are carried out in accordance with the Mining Code and Regulations, as well as international standards, so that human rights are respected.
- Conduct human rights due diligence in line with international standards to ensure that mining operations, including evictions, do not harm the rights of affected communities.
- Refrain from authorizing or contracting with military forces, including the Republican Guard, to patrol mining concessions.
- Develop or share information with mining-impacted communities about available operational-level grievance mechanisms. Evictees' engagement with such mechanisms should not amount to a waiver of the right to seek alternative judicial or non-judicial remedies.
- Systematically refer future evictions and resettlement plans to competent provincial agencies, including Lualaba's Relocation Commission and / or resettlement committees (created pursuant to Article 6 of the Directive).

TO THE COMPANIES NAMED IN THIS REPORT

- Immediately investigate and address rights abuses documented in this report, in good faith, and in consultation with mining-impacted communities, and provide effective remedy where adverse human rights impacts have been identified. Remedies should take into account and assess communities' demands for adequate compensation and access to essential services and provide guarantees of non-repetition.

TO COMMUS AND PARENT COMPANIES

- Disclose all plans for the expansion of the Kolwezi copper and cobalt mine.
- Disclose meeting minutes and records of past remediation processes or compensation (if any) and basis for compensation afforded to former residents of Cité Gécamines in Kolwezi.
- Create direct channels of communication and address concerns expressed by communities evicted and at risk of eviction in Cité Gécamines in Kolwezi.

TO CHEMAF

- Cooperate with a state-led investigation into the eviction of Mukumbi.
- Provide effective remedy to former residents of Mukumbi for the loss of homes, farmland as well as the long-term economic and health impacts of forced eviction and burning of homes belonging to people in Mukumbi.

TO METALKOL AND PARENT COMPANIES

- Investigate serious allegations of violence, including sexual assault, documented in this report, in connection with the patrolling of Metalkol's concession by military forces.
- Disclose meeting minutes and records of remediation processes or compensation (if any) and basis for compensation afforded to farmers of Tshamundenda and Samukonga.
- Provide effective remedy to the farmers of Tshamundenda and Samukonga.

TO KAMOA AND PARENT COMPANIES

- Commission home improvements to align resettlement houses and infrastructure built by the company with requirements of the right to adequate housing, including (and at a minimum) through the electrification of substitute houses, the provision of potable water, and the construction of toilets and bathing areas connected to sewage systems.
- Plan for (in consultation with affected communities and civil society) and build social infrastructure in Muvunda and other resettlement towns throughout Kamoa's concession, including but not limited places of worship, recreational centres, markets and training centres.
- Create new and share information about existing channels of communication between the company and resettled households and address concerns expressed by communities evicted from the surface area of the Kamoa-Kakula mining complex, starting with issues raised by families resettled in Muvunda.

TO GÉCAMINES

- Require all companies that hold leases of, and / or operate concessions that Gécamines owns, to fully respect the Mining Code and Regulations, including the provision of legal safeguards against evictions, and conduct human rights due diligence to minimize harm to communities.

OTHER STAKEHOLDERS

HOME STATES OF MINING OPERATORS AND OTHER COMPANIES SOURCING COBALT AND COPPER FROM THE DRC


- Legally require companies to conduct human rights due diligence on their global operations, and report publicly on their due diligence policies and practices in accordance with international standards.
- Provide international cooperation and assistance to the government of the DRC to support its efforts to eradicate forced evictions in the mining sector.






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POWERING CHANGE OR BUSINESS AS USUAL?

FORCED EVICTIONS AT INDUSTRIAL COBALT AND COPPER MINES IN THE DEMOCRATIC REPUBLIC OF THE CONGO

The world needs to urgently shift away from fossil fuels, which are key drivers of the climate crisis, but at what cost? *Powering Change or Business as Usual?* documents how many people in the Democratic Republic of the Congo have been forcibly evicted from their homes and farmland to make way for the expansion of industrial mining projects extracting copper and cobalt. The country is a major producer of both of these minerals, which are essential to the global energy transition away from fossil fuels. But evictions are often carried out by mining companies with little regard for the rights of affected communities or full compliance with national laws. The Congolese government has failed to enforce these legal safeguards, and in some cases, actively facilitated forced evictions. The report urges mining companies to immediately provide meaningful remedy for the harm they have caused and to avoid future harm. It also calls on Congolese authorities to declare a moratorium on mass evictions until a commission of inquiry completes a review of existing implementation gaps of domestic legal protections against forced evictions and formulates concrete policy reforms.

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