



PROFITS AND LOSS

MINING AND HUMAN RIGHTS IN
KATANGA, DEMOCRATIC REPUBLIC
OF THE CONGO

AMNESTY
INTERNATIONAL



Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

AMNESTY
INTERNATIONAL



First published in 2013 by
Amnesty International Ltd
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom

© Amnesty International 2013

Index: AFR 62/001/2013 English
Original language: English
Printed by Amnesty International,
International Secretariat, United Kingdom

All rights reserved. This publication is copyright, but may be reproduced by any method without fee for advocacy, campaigning and teaching purposes, but not for resale. The copyright holders request that all such use be registered with them for impact assessment purposes. For copying in any other circumstances, or for reuse in other publications, or for translation or adaptation, prior written permission must be obtained from the publishers, and a fee may be payable. To request permission, or for any other inquiries, please contact copyright@amnesty.org

Cover photo: The entrance of a 30m-deep well in the artisanal quarry of Kapata, 17km from Kolwezi, Democratic Republic of the Congo, 2010.

© Gwenn Dubourthoumieu

Back cover photo: The plant in Luisha, operated by the Chinese owned Luisha Mining Company (COMILU), April 2012.

© Amnesty International

amnesty.org

CONTENTS

Glossary	3
Chapter 1: Mining in the Democratic Republic of the Congo.....	6
Chapter 2: The legal framework for mining in DRC	9
Case Study: Exploitation at the Tilwezembe Mine	12
Case Study: Forced evictions at Luisha	21
Case Study: Obstructing access to water	26
Conclusion and Recommendations	28
Endnotes	31

2 PROFITS AND LOSS
Mining and human rights in Katanga, Democratic Republic of the Congo



© United Nations, 2004

GLOSSARY

ACHPR	African Charter on Human and Peoples' Rights
CF	Congolese Francs (CF900 = US\$1)
CIMCO	Congo International Mining Cooperation
COMILU	Compagnie Minière de Luisha
CMKK	Coopérative Minière Maadini Kwa Kilimo
COVEC	China National Overseas Engineering Corporation
CRECG	China Railway Engineering Corporation
DRC	Democratic Republic of the Congo
EMAK	Association des Exploitants Miniers Artisanaux du Katanga
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
SAESSCAM	Service d'Assistance et d'Encadrement d'Artisanal et Small Scale Mining (Service for the Assistance and Supervision of Artisanal and Small-Scale Mining)
SICOMINES	Sino-Congolaise des Mines

INTRODUCTION

The Democratic Republic of the Congo (DRC) has significant deposits of minerals and metals, including gold, copper, tantalum, tungsten, coltan and cobalt. For more than a decade the extraction of these resources has been linked to conflict, human rights abuses and corruption.

Much of the mining in the DRC is done by artisanal miners, who work using hand-held tools. Artisanal miners often receive very little for the minerals they extract and face systemic exploitation in the DRC where mine sites are controlled by powerful individuals, including political figures and armed groups.¹ They work in extremely dangerous conditions, usually without any safety equipment. Serious and fatal accidents on mine sites are regularly reported by media and NGOs.² Artisanal miners have also been subjected to threats, physical assault and ill-treatment on mine sites at the hands of the mine police, or private security guards working for those who control the sites.³

The minerals extracted by artisanal miners are ultimately sold outside of the country, after having passed through a number of actors and processes, in an often complex and opaque supply chain. In recent years there has been increasing attention to the issue of supply chains and the companies and countries that ultimately receive minerals from the DRC, as these actors can play an important role in preventing human rights violations and abuses.⁴

This report focuses on mining in the Katanga region in the south east of the DRC, where copper and cobalt are mined. Much of the DRC's copper and cobalt goes to China. In 2012 China is reported to have imported 166,000 tons of cobalt concentrates from the DRC, which was more than 90 per cent of China's total import of cobalt (177,000 tons).⁵ Although Chinese companies have been allocated large mining concessions since the 1990s, because of political instability these were largely dormant and much of the copper and cobalt that has gone from the DRC to China was extracted by artisanal miners.⁶

China is set to remain a major importer of Congolese copper and cobalt. A controversial multi-billion dollar resources-for-infrastructure deal signed between a consortium of Chinese state construction companies and the DRC's state-owned copper company Gécamines,⁷ created the Sino-Congolese mining joint venture, Sicominex. This company, in which the Chinese partners are the major shareholders, was allocated substantial reserves of copper and cobalt in the province of Katanga. Sicominex is expected to begin production in 2015.

Mining in Katanga is in transition. Although artisanal mining is still widespread, industrial mining – often involving multinational companies – is on the increase. Chinese companies are emerging as dominant players in industrial mining in Katanga with several already involved in joint ventures with the DRC's State-owned mining company, Gécamines. Chinese investment is supported by financial and diplomatic relationships between the governments of DRC and China.⁸ As multinational extractive companies move into the area, artisanal

miners have been moved off mining sites, sometimes violently. Local communities have also faced eviction to make way for mining; the manner in which some of the evictions are carried out violates international law and standards.

This report documents human rights violations and abuses arising from the operation of both artisanal and industrial scale mining, including forced evictions of communities from around mine sites and violations of the rights of artisanal miners. It looks at the responsibilities of the DRC and of the multinational companies involved directly in mining or in the supply chain. The report pays particular attention to the extent to which Chinese companies involved in mining in Katanga respect human rights in their operations. The report concludes with recommendations to the DRC, the mining companies in Katanga, and the home States of the mining companies, including China.

METHODOLOGY

This report is based on field research carried out in October 2011 and April 2012 in Katanga Province and Kinshasa as well as desk research. Amnesty International delegates visited several sites in Katanga including Kolwezi, Likasi, Lubumbashi and Manono. Interviews were conducted with public officials, international development organizations, senior managers of Congolese and foreign companies. The delegation visited mining communities and mine sites throughout Katanga and interviewed dozens of artisanal miners and their families, including representatives of artisanal mining cooperatives. They also visited 15 injured miners in the hospital. Follow-up interviews were conducted in Katanga in March 2013 with governmental and non-governmental sources and letters were sent to the companies named in the report, seeking their comments on Amnesty International's findings. The following companies responded: Glencore Xstrata, Groupe Bazano and Misa Mining. The following companies did not respond: China Railway Engineering Corporation (CRECG), China Railway Group Limited, Compagnie Minière de Luisha (COMILU), Congo International Mining Corporation (CIMCO), Gécamines.

CHAPTER 1: MINING IN THE DEMOCRATIC REPUBLIC OF THE CONGO

The Democratic Republic of the Congo (DRC) has some of the world's most important reserves of a number of strategic and precious resources, including cobalt and coltan.⁹ Amidst this wealth, most of the country's 70 million-strong population live in extreme poverty. In its 2013 Human Development Report, the United Nations Development Programme ranked the DRC 186 on the Human Development Index, bottom out of 187 countries for which it has sufficient data.¹⁰ Public services - from education and health to water, sanitation and transport - are in an extremely poor state, and more than 87 per cent of the population lives on less than US\$1.25 per day.¹¹

Mining dominates many areas of the country. Much of the mining carried out in the DRC is done by artisanal miners, who use hand-held tools to extract minerals from underground sources and rivers. However, industrial mining, often involving foreign companies, is on the increase. Political instability, weak institutions, serious deficiencies in the administration of justice, widespread corruption and severe human rights violations are problems across the DRC,¹² and present particular challenges for companies operating in the country. These challenges are found in all sectors, but the extractive sector has come under particular scrutiny because of the widespread human rights abuses associated with the sector and reports that trade in minerals has been used to fuel conflicts in the country.

MINING AND HUMAN RIGHTS IN KATANGA

Artisanal mining is a widespread form of mineral extraction in Katanga. Conditions at artisanal mining sites are poor and extremely dangerous. Many miners work with bare hands, without protective clothing, and in poorly ventilated underground shafts where temperatures can be extremely high.¹³ They rarely have access to safety equipment and are exposed to a range of health risks, such as falling rocks and dust inhalation. Every year scores of artisanal miners die or are seriously injured in accidents, when mineshafts collapse.¹⁴

During the DRC's protracted armed conflict from 1996 to 2003,¹⁵ artisanal mining was encouraged by the Congolese authorities and, for much of the past decade, the authorities have allowed artisanal mining on sites irrespective of whether they belong to the State-owned mining company, Gécamines, or to private companies.¹⁶

However, the mining industry in Katanga is currently in transition: artisanal mining is declining in the copperbelt area but industrial-scale mining is not yet fully underway. Many large-scale mining projects remain in the prospection, exploration, feasibility or development stages. Until recently the majority of minerals produced and exported from Katanga were still mined, transported, and sold by artisanal and small scale miners, operators and traders.

There are estimated to be between 70,000 to 150,000 artisanal miners in the Katanga area, although some reports indicate the numbers are declining as industrial mining expands.¹⁷ Artisanal miners face serious exploitation at the hands of both State officials and private actors who control mine sites.¹⁸ They are often forced to sell minerals to specific individuals or companies under threat of being denied access to the mining site in the future, affecting their ability to make a living.¹⁹

The governmental agency, the Service for the Assistance and Supervision of Artisanal and Small-Scale Mining (SAESSCAM), was established by the Mining Code in 2002 to support miners. However, it lacks resources and its underpaid – or often unpaid – agents often simply rely on ‘taxes’, ‘levies’ and other ‘fees’ from the miners, thereby compounding the exploitation of artisanal mine workers.²⁰

There are a number of artisanal miners’ cooperatives in Katanga tasked with organising the miners and representing their interests. The cooperatives often compete for control over mining sites and over artisanal miners, and collaborate with particular companies and trading houses.

As industrial mining accelerates in Katanga local people who rely on farming and other livelihoods (sometimes combined with artisanal mining) have faced human rights violations, including forced evictions to make way for mining operations.²¹ Communities have also faced other serious disturbances as mining expands, such as negative impacts from drilling or the construction of mining infrastructure, which can generate dust, noise and pollution.

THE ROLE OF TRADERS

Under the 2002 Mining Code artisanal miners should sell their minerals to Congolese trading posts or *negociants*, who then sell to Congolese or foreign trading houses.²² Over the last decade some traders have become involved in artisanal mining; they are assigned mining sites – usually by the State-owned mining company, Gécamines, but sometimes by private companies – and provide services, such as *découverte* (removal of the top layer of earth to make reaching the ore body easier), as well as organising the collection and transport of the bagged minerals from the sites.

From 2004 onwards there was an influx of traders from Asia, particularly China, into Katanga.²³ Traders initially exported ore (often unprocessed) to buyers on the international market. In 2007/8, after the provincial government of Katanga introduced measures to halt the export of raw minerals, traders developed smelters and processing facilities.²⁴ These businesses are still largely dependent on artisanal miners. The traders have arrangements with particular artisanal mining cooperatives who then organize the informal workforce. The artisanal miners can only sell their products within the limits of the mining site to the company through *negociants*, who are no longer independent but are effectively agents of the trading company. The miners are no longer allowed, as they were in the past, to remove minerals from the site to try to seek a better price elsewhere.²⁵ Over the past few years there has been some consolidation of trading companies and now there are fewer operating in Katanga. However, the system whereby trading companies have substantial control over certain sites where artisanal miners work persists.²⁶

MINING COMPANIES IN KATANGA

There are a number of international companies involved in mining in Katanga. This includes companies involved in trading and processing of ore and minerals as well as those involved directly in extraction. Many of these companies have been the subject of criticism because of the negative social and environmental impact of their operations.²⁷

Chinese companies have a substantial presence in Katanga. By 2008, out of 75 processing companies active in Katanga, 60 were Chinese owned and over 90 per cent of the province's minerals were sent to China.²⁸ Since 2008 there has been consolidation in the copper and cobalt mining and processing sector and many smaller Chinese operators have left. However, much of Katanga's copper and cobalt continues to go to China. In 2012, the world's leading producer of refined cobalt was China. Much of its production was from cobalt-rich ore and partially refined cobalt imported from the DRC.²⁹

Chinese companies have purchased minerals from the DRC since the mid 1990s, but in the last 10 years there has been an increase in investment. With the Congolese peace accords and the installation of the Transitional Government (2003-2006), Chinese entrepreneurs settled in Katanga and established foundries and processing plants, which depended almost entirely on the output of artisanal miners.³⁰

In January 2008 a US\$8 billion resources-for-infrastructure deal was signed between a consortium of Chinese State construction companies³¹ and the DRC's State-owned copper company Gécamines.³² The Sino-Congolese mining joint venture, Sino-Congolaise des Mines (SICOMINES), was created and allocated mining titles in Katanga. In exchange, SICOMINES is to construct transport and social infrastructure in the DRC, originally financed by loans from the Chinese State-owned Export-Import (Exim) Bank; however in early 2012 the Bank pulled out as the finance provider.³³ The loans are to be reimbursed using profits from the mining venture. The agreement was renegotiated in 2009 under pressure from the International Monetary Fund (IMF) and reduced to US\$6 billion. The IMF had opposed the deal because the finance would be State-guaranteed and the terms were not compliant with the bank's rules on debt relief.³⁴

Commentators have noted that as a consequence of the SICOMINES deal Chinese mining companies have a greater influence within the DRC and the Congolese authorities have an increased incentive to support the commercial interests of Chinese mining companies.³⁵

CHAPTER 2: THE LEGAL FRAMEWORK FOR MINING IN DRC

Mining in the DRC is regulated by the 2002 Mining Code (*Loi N° 007/2002 du 11 juillet 2002 portant Code Minier*)³⁶ and accompanying Mining Regulation (*Décret N°038/2003 du 26 mars 2003 portant Règlement Minier*). The 1973 Land Law is also important as this is the legislation under which the government grants companies and artisanal miners the right to use land for mining.

All land in the DRC is vested in the State and is formally controlled by the Cadastral Department. Individuals gain rights to land through a variety of processes. Land for mining is granted by the State in the form of concessions divided into ‘perimeters’ (demarcated surface areas). Concessions are granted by the Minister of Mines. Where mining concessions are granted on land that people live and work on there are some limited provisions in the Mining Code and Regulations with regard to consultation³⁷ and payment of compensation. However, compensation applies only to people with rights to the land they occupy (that is, those occupying land in settlement recognized by the government, including all land allocated by traditional leaders).³⁸

There are some significant gaps in the legal framework as it relates to land and communities living and working in mining areas. In particular, where the authorities have not registered the plots of land being used by people in the unplanned mining townships that have sprung up over the past decade, these settlements are not officially recognized. Consequently people living there – even when they have been there for years – are considered to have no rights to the land and do not have any security of tenure.

In February 2012, a Congolese law was passed requiring all mining and mineral trading companies dealing in designated minerals to comply with OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.³⁹ According to this law the list of designated minerals is not exhaustive and can be changed by the Minister of Mines.

THE DRC’S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

The DRC has ratified most of the core international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. At a regional level the DRC has ratified the African Charter on Human and Peoples’ Rights, and the African Charter on the Rights and Welfare of the Child.

BUSINESS AND HUMAN RIGHTS

Under international law, States have a duty to protect human rights from abuse by non-State actors, such as companies. Over the past decade there has also been increasing recognition of the responsibility of companies to respect human rights, particularly as elaborated in the UN "Protect, Respect and Remedy" Framework for Business and Human Rights⁴⁰ and the UN Guiding Principles on Business and Human Rights.⁴¹ Over and above the business responsibility to respect, companies must ensure that they do not commit or materially assist with the commission of illegal or criminal acts that lead to human rights abuses abroad.

THE STATE DUTY TO PROTECT

In the context of corporate activity, the duty to protect requires States to have in place adequate and effective systems for regulating business activity. UN Treaty Bodies have made clear that States are required to take various steps in order to fulfil the duty to protect, including adopting legislative measures to prevent corporate abuse; investigating and sanctioning abuses when they do occur; and ensuring that those affected receive an effective remedy.⁴²

States also have a responsibility to regulate companies based in their country in relation to their human rights impact abroad (sometimes referred to as the Home State responsibility). The scope of this responsibility has been more clearly defined in recent years through UN human rights mechanisms, the work of international law experts and – in relation to mineral extraction and trading by the OECD.⁴³ The UN Committee on Economic, Social and Cultural Rights has clarified that States have a duty to respect rights in other countries and prevent third parties – such as companies – from violating those rights, if they are able to influence these third parties by legal or political means.⁴⁴

Additionally, in 2011 independent human rights legal experts articulated the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights.⁴⁵ These Principles – drawn from international law – elaborate, amongst other issues, the responsibility of States with respect to companies based in their jurisdiction but operating internationally.

Under the Maastricht Principles the obligation is described as follows: "all States must take necessary measures to ensure that non-State actors which they are in a position to regulate, such as...transnational corporations and other business enterprises, do not nullify or impair the enjoyment of economic, social and cultural rights."⁴⁶ The Principles also note that "States must adopt and enforce measures to protect economic, social and cultural rights through legal and other means, including diplomatic means... b) where the non-State actor has the nationality of the State concerned; c) as regards business enterprises, where the corporation, or its parent or controlling company, has its centre of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned; d) where there is a reasonable link between the State concerned and the conduct it seeks to regulate, including where relevant aspects of a non-State actor's activities are carried out in that State's territory; e) where any conduct impairing economic, social and cultural rights constitutes a violation of a peremptory norm of international law."⁴⁷

THE CORPORATE RESPONSIBILITY TO RESPECT

The UN “Protect, Respect and Remedy” Framework for Business and Human Rights and the UN Guiding Principles on Business and Human Rights (Guiding Principles) confirm that companies have a responsibility to respect all human rights, and a corresponding need to take concrete action to discharge this responsibility. Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation.

According to the Guiding Principles, “The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.”⁴⁸

The Guiding Principles further note that: “Business enterprises may undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of rights. But this does not offset a failure to respect human rights throughout their operations. Business enterprises should not undermine States’ abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes.”⁴⁹

CASE STUDY: EXPLOITATION AT THE TILWEZEMBE MINE



Improvised ventilation for a mine shaft at the Tilwezembe mine site, near Kolwezi, February 2012
© Action Contre l'Impunité pour les Droits Humains (ACIDH)

Tilwezembe is a mine site 30km from Kolwezi, situated near the Kolwezi-Lubumbashi road. The site, which until 2008 was mined industrially, is now part of Katanga Mining Limited, a company listed on the Toronto Stock Exchange.⁵⁰

After 2008 Tilwezembe was left “dormant”, meaning that since then there has not been further industrial production at the mine. Artisanal miners came on to the site and, for a short time, they were able to mine “independently”, selling ore to whichever trading house offered the highest price.

However, in October 2010 a company called Misa Mining was given permission by the local authorities to manage the dormant Tilwezembe site, despite the fact that the concession belongs to Katanga Mining Ltd. Misa Mining did not carry out mining activity but acted as a trader, purchasing ore from the miners at Tilwezembe.⁵¹ The work of the artisanal miners on the site was supervised by the mining cooperative Coopérative Minière Maadini Kwa Kilimo (CMKK) and State agency SAESSCAM. In addition Mine Police were present at Tilwezembe.⁵²

Amnesty International carried out research on the conditions at Tilwezembe during 2011 and 2012 when Misa Mining was operating at the Tilwezembe site. This research included interviews with 15 artisanal miners and their families living at Tilwezembe village, interviews with agents working with two artisanal mining cooperatives (CMKK and EMAK – Association des Exploitants Miniers et Artisans du Katanga), as well as interviews with officials working with SAESSCAM, and representatives of Gécamines. Researchers also visited the mine site.

The organization found evidence of a number of serious human rights problems at the site, including: exploitative and harmful labour conditions; child labour and ill-treatment of artisanal miners.

EXPLOITATIVE AND UNSAFE WORK CONDITIONS

The conditions for artisanal miners working at Tilwezembe are difficult and dangerous.

Several sources confirmed that there are frequent injuries and some fatal accidents as a result of landslides, falling boulders or asphyxiation due to a lack of adequate ventilation.⁵³ Ventilation systems are rarely put in place and, where they are used, they depend on small – often manual – pumps. Miners also described several cases where men had been seriously or permanently injured while mining at Tilwezembe. According to the miners, many of the accidents are not properly recorded or reported.⁵⁴

The risks to miners at Tilwezembe were increased by the fact that, in order to access ore, they frequently dug deep pits, some of which were over 100m deep,⁵⁵ even though the Mine Code stipulates 30m as the maximum depth allowed.

The situation at Tilwezembe has continued to deteriorate. As of March 2013 only two pits were reported to be operational. The number of miners has sharply decreased.⁵⁶

KD'S EXPERIENCE⁵⁷

KD, a 24 year old former artisanal miner, was working at Tilwezembe at the time of his accident in 2011. He had come to Lubumbashi to study but got into debt and turned to artisanal mining, which he now regrets.

In May 2011 his right leg was crushed by a boulder when he was working in a mine shaft. Although he had undergone two operations, when Amnesty International visited him in hospital in October 2011 the bone in his leg was exposed and the wound appeared infected. He said he was in constant pain and had to buy his own medicine.

KD told Amnesty International: "SAESSCAM is at Tilwezembe but does nothing to help. Artisanal miners work at Tilwezembe non-stop. If you are caught removing minerals [from the site] the guards beat you. I've seen that happening. There is a *cachot* [a container used as a cell], and artisanal miners can be held there for as long as four or five days. The traders at the site make you take a low price for your minerals. There is a huge discrepancy in prices paid. Outside the site, in the centre of Kolwezi, trading houses would grade the ore at 16-18% and pay you, but at Tilwezembe the buyers would cheat you and give you a much lower grade for the ore, at 2-4 per cent."

In April 2012 KD's right leg was amputated at the knee.

CHILD LABOUR

The presence of child workers in the mines in Katanga is a serious problem. Some 40, 000 children under the age of 16 years are believed to be working on mine sites in Kolwezi, Kipushi and Likasi.⁵⁸ If those aged 17 and 18 were included the figure would undoubtedly be higher. Several media outlets and non-governmental sources have documented children working at the Tilwezembe site. A BBC *Panorama* programme broadcast in April 2012 filmed children working in dangerous mine shafts at Tilwezembe.⁵⁹

Despite the evidence of children under the age of 18 working in very difficult conditions at Tilwezembe, as far as Amnesty International could discover, little or no action has been taken to address the situation. The Ministry of Labour is responsible for inspecting work sites for child labour. However, the Ministry lacks resources to carry out its work and has no system to monitor child labour complaints.⁶⁰

REPORTS OF ILL-TREATMENT AT TILWEZEMBE

The Tilwezembe site is guarded by the Mine Police, private security guards and by *mobiles* – young miners who have been selected to work as security guards. In 2011 Misa Mining appeared to play a role in site security.⁶¹

When Misa Mining took over the Tilwezembe site, artisanal miners were no longer allowed to take the ore they mined off the site to sell.⁶² If miners were caught attempting to do so, they faced a range of sanctions: fines, confiscation of the minerals and being banned from the site. In some cases they were also beaten by guards and/or locked up for 24 hours - or sometimes for days - in a container used as a cell (known as a *cachot*) near the weighing station on the site.⁶³

Much of the mine security appears to operate without any adequate legal safeguards in place to prevent abuse. Mine Police have authority to detain people on mine sites and to hold them in *cachots*.⁶⁴ The *cachots* on mine sites are, in theory, under the supervision of the State Prosecutor and suspects are not supposed to be held for more than 48 hours - after which they should be presented to the Prosecutor's office in Kolwezi.⁶⁵ However, miners interviewed by Amnesty International reported that this does not always happen and individuals can be detained in the *cachot* for several days; while some are brought to the Prosecutor's office, others are not.

Congolese lawyers and NGOs confirmed that the policing of mine sites and the use of detention at the sites do not always conform with national law.⁶⁶ There appears to be no effective oversight of the security system at mine sites such as Tilwezembe or the basis for detention, and artisanal miners who are detained do not have access to legal advice, or a means to complain about unlawful detention.

THE CASE OF ISAAC MUKEBA MUZALA

Isaac Mukeba Muzala, a 29-year-old artisanal miner who had worked at Tilwezembe, died in September 2011. There are discrepancies in the accounts of how he died. Although an investigation was initially opened into his death, it has never been concluded.

On 24 September 2011 Mine Police assigned to Tilwezembe accused Isaac Muzala and three other artisanal miners of stealing minerals. Mine police and *mobiles* detained the men and called a Misa agent to the scene, apparently to take the miners into custody. Isaac Muzala died shortly thereafter.⁶⁷

In April 2012 Amnesty International interviewed Isaac's family and a lawyer working with the family. According to the family, Isaac disappeared in September and they did not know what had happened to him. In October they received news that he had been assaulted and killed.⁶⁸ The family then scoured all the hospitals around Kolwezi until they eventually found Isaac's body at the Mwangeji hospital. Isaac's brother and his father identified the body. They described to Amnesty International the physical condition of the body: his head had been crushed, and there were bruises and scratches all over the body. One eye appeared to have been gouged out. The family has not been able to retrieve Isaac's medical notes from the hospital, and no autopsy was carried out.⁶⁹

According to Isaac's family, hospital staff told them that the body had been brought to the morgue by Misa personnel and Mine Police, who had described him as an unknown miner who had died in a road accident.⁷⁰ The body was placed in the morgue refrigerator with a label to that effect. A few days later the Mine Police reportedly came and tried to remove the body for burial but the hospital administrator refused to release it.⁷¹

A Prosecutor subsequently examined the case. In accounts given to the Prosecutor, a Misa agent claimed that he arrived on the scene and put the miners (who he referred to as "thieves") into the jeep. As he was driving them to the *cachot* on the site, a *mobile* told him that one of the miners had jumped out of the back of the vehicle. After taking the other suspects to the *cachot*, the Misa agent claimed that he then drove back to try to locate the missing man and found Isaac's dead body stretched out on the ground. He took the body to the hospital in Kolwezi.⁷² A police officer supported this account in his statement to the Prosecutor.

Isaac Muzala's family told Amnesty International that a lawyer acting on behalf of Misa Mining had given Isaac's uncle US\$5000 in the form of assistance towards the funeral expenses and the wake. Misa Mining

confirmed this in a letter to Amnesty International dated 23 May 2013, stating that it was a form of “assistance”, requested by the cooperative and in line with African solidarity values for co-workers.⁷³

As far as Amnesty International could discover, the inconsistencies between the accounts of the Misa’s agent and the police officer on the one hand, and the information from the family on the other, have never been investigated. A complaint was filed on behalf of Isaac’s family with the Military Court of Kolwezi, and a hearing was held on 30 May 2012 but almost immediately adjourned. The file was referred to the civilian court but, at the time of writing, there have been no further developments in the case.

PROFITING FROM ABUSES AT TILWEZEMBE

The appalling conditions at Tilwezembe, described above, occurred when Misa Mining was the corporate operator on site buying ore from the artisanal miners working there. In a letter dated 23 May 2013 Misa Mining denied any responsibility for human rights problems at Tilwezembe. The company stated that it was never informed by the authorities that violations had occurred on the site. It also said that it organizes regular meetings with members of the mining cooperative to assess the working conditions and that there is a board at the entrance of the site prohibiting entry to women and children.⁷⁴

The ore extracted at Tilwezembe was sold by Misa Mining to other companies. None of the trading or processing companies that buy ore from artisanal miners in Katanga can credibly claim to be unaware of the nature of the artisanal mining system, and the difficult and dangerous conditions at sites such as Tilwezembe.

Several sources, including SAESSCAM officials and representatives of miners’ cooperatives, told Amnesty International that during 2011 Misa sold ore to a company called Groupe Bazano.⁷⁵ However, in a letter dated 23 May 2013 in response to Amnesty International, Groupe Bazano stated that, while they worked with Misa Mining in 2011, the company has not purchased ore from Tilwezembe since the mine closed in 2008.⁷⁶

Most of the copper mined in Katanga is exported from the DRC to other countries. NGOs working on mining in the DRC have investigated where the ore mined at Tilwezembe and other artisanal mine sites in Katanga ends up. A lack of transparency and inadequate monitoring of the copper and cobalt supply chain makes it difficult to establish exactly who is profiting from the abusive artisanal mining system. In April 2012 two NGOs, Bread for All and Swiss Catholic Lenten Fund, published a report alleging that ore from Tilwezembe is sent to Groupe Bazano’s processing plant from where some of it is sent to Mopani, a subsidiary of Glencore Xstrata⁷⁷ in Zambia.⁷⁸ A BBC investigative programme, *Panorama*, also reported in a programme aired on 16 April 2012 that the ore from Tilwezembe was tracked, via Groupe Bazano to the Glencore subsidiary in Zambia.⁷⁹

Responding to the BBC, Glencore stated that “We would be very concerned if this is happening because we make every effort possible to ensure that no material from Tilwezembe or anywhere else gets into our shipments”.⁸⁰ In a letter to Amnesty International, dated 4 June 2013, the company stated that “Mopani does not purchase material from Groupe Bazano or anybody else in the DRC other than from our own operations at Katanga. We can confirm that no material from Tilwezembe, or anywhere else, is included in our shipments”.

RESPONSIBILITY OF THE DRC AUTHORITIES FOR THE SITUATION IN TILWEZEMBE

The DRC authorities allocated Tilwezembe to Misa Mining, giving the company a significant degree of control over a site on which artisanal miners worked. State authorities were also present at the site, including Mine Police and SAESSCAM.

The conditions at Tilwezembe are clearly unsafe and workers have suffered serious injuries.

International human rights law requires the government to protect people from both unsafe working conditions and exploitation by private actors. The right to work is recognised in article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and article 15 of the African Charter on Human and Peoples' Rights (ACHPR), both of which have been ratified by the DRC.

A key element of the right to work is the right to work in "safety". Article 7 of the ICESCR commits States to ensuring that everyone has "just and favourable conditions of work which ensure, in particular... (b) Safe and healthy working conditions."

The Committee on Economic, Social and Cultural Rights has emphasised that violations of the obligation to protect in relation to the right to work follow from the failure of States parties to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to work by third parties. They include omissions such as the failure to regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to work of others.⁸¹

In respect of children there are additional safeguards. Article 32 of the Convention on the Rights of the Child requires the State to protect children (defined under the CRC as being aged 18 or under) from economic exploitation and from performing any work that is likely to be hazardous or to interfere with their education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. This is reinforced by ILO Convention No. 182 on the Worst Forms of Child Labour, also ratified by the DRC. The "worst forms of child labour" include work that "by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children".⁸² Mining is always considered a worst form of child labour.⁸³ Similarly Article 3(1) of ILO Convention No. 138 on the Minimum Age for Admission to Employment requires States to ensure that no child under 18 is subject to any employment which, by its nature or the circumstances in which it is carried out, is likely to harm the health and safety of children.

It should be also noted that the DRC has ratified ILO Convention No. 81 governing labour inspections which requires the government to maintain an adequately resourced inspection system across all industrial workplaces.

Article 12 of the ICESCR and Article 16 of the ACHPR recognize the right of everyone to health. The ICESCR includes a requirement that governments improve all aspects of environmental and industrial hygiene. The Committee on Economic, Social and Cultural Rights has stated that this comprises, amongst other measures, "preventive measures in respect of occupational accidents" and "the prevention and reduction of the population's exposure to ... detrimental environmental conditions that directly or indirectly impact upon human health."⁸⁴ The Committee added that "industrial hygiene refers to the minimization, so far as is reasonably practicable, of the causes of health hazards inherent in the working environment."⁸⁵

The Committee on Economic, Social and Cultural Rights has also made clear the need to protect children from all forms of work that are likely to interfere with their development or physical or mental health.⁸⁶

These provisions on the rights to work and health apply to all workers, including those who are self-employed and/or working in the informal economy. However, although artisanal mining is recognised in the DRC's legal framework for mining and has been, as noted above, encouraged by the DRC authorities, there are almost no legal provisions in place to protect artisanal miners as workers. In 2002 the DRC put in place a national labour law - *the Code du Travail* (Labour Code). This contains several provisions on health and safety at work, but it does not explicitly refer to informal workers, such as artisanal miners. Moreover, the mechanism for enforcement appears to be very weak.⁸⁷

The Mining Code imposes environmental and other obligations on artisanal miners but contains almost no provisions which protect their labour rights.⁸⁸ The Code's only reference to labour rights is a prohibition on people under the age of 18 working as miners, a provision that – at Tilwezembe – did not appear to be enforced.

SAESSCAM is supposed to ensure the safety for artisanal miners and help them improve their techniques to increase productivity. It is also supposed to keep a record of incidents of deaths and injuries.⁸⁹ However, as far as Amnesty International could discover, this is rarely done in practice. A number of injured miners interviewed at Mwangeji Hospital in Kolwezi in October 2011 told Amnesty International that SAESSCAM did not provide any support to them even when they had been injured.

Although the DRC authorities have established some mechanisms, such as SAESSCAM, to address the conditions of artisanal miners, these are clearly insufficient. In these circumstances the working conditions at Tilwezembe constitute a violation of the right to safe and healthy working conditions.

Effective regulation of artisanal mining is needed to protect workers both from exploitation and risks to health. At the same time, while ensuring safe working conditions in the informal sector, the authorities should acknowledge that this is often the only means by which people can earn a livelihood to realise their economic and social rights, such as access to food, education and health, given the lack of availability of formal job opportunities or adequate social security provisions.

In addition to the violations of the rights to work and health, the security system being implemented at the site has exposed artisanal miners to serious abuses, including arbitrary and unlawful detention.⁹⁰

In the case of Isaac Muzala, State authorities have failed to properly investigate his death, despite the efforts of his family.

None of the human rights violations or abuses at Tilwezembe, documented above, has been addressed.

RESPONSIBILITY OF COMPANIES SOURCING MINERALS IN KATANGA

All companies have a responsibility to respect human rights. This means that they should avoid infringing on the human rights of others and should address negative human rights impacts with which they are involved.

As noted previously, the UN Guiding Principles on Business and Human Rights make clear that “The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.”⁹¹

The UN Guiding Principles also note that business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties.⁹²

In the case of the Tilwezembe mine – and many other sites where artisanal miners are working in dangerous and exploitative conditions – a range of companies are involved, some more directly than others. While artisanal miners are not direct employees of any company, those companies that purchase from them (directly or via a cooperative) are in a business relationship with the miners and the associated mining cooperatives, and the UN Guiding Principles make clear that such companies have human rights responsibilities.

Misa Mining’s position that it has no responsibility in respect of the conditions at Tilwezembe is not tenable. While State agencies, such as SAESSCAM, were failing to ensure mining conditions were safe, Misa Mining was operating on the Tilwezembe site and purchasing from the artisanal miners. The company’s physical presence on the site means it cannot credibly claim to be unaware of the prevalent working conditions, which had been documented by NGOs and the media.

The UN Guiding Principles on Business and Human Rights note that “Questions of complicity may arise when a business enterprise contributes to, or is seen as contributing to, adverse human rights impacts caused by other parties. Complicity has both non-legal and legal meanings. As a non-legal matter, business enterprises may be perceived as being “complicit” in the acts of another party where, for example, they are seen to benefit from an abuse committed by that party.”

The basis of Misa Mining’s commercial activity at Tilwezembe was the procurement of ore from artisanal miners, who were working in appalling conditions. The actions that Misa claims to have taken (meetings with the cooperative on working conditions and a board prohibiting the entrance of children and women) suggest that the company accepts that it bears some responsibility for conditions on site; however, these actions did not prevent the company from benefiting from exploitative working conditions.

In addition, there are serious, but unanswered, questions about the death of Isaac Muzala and the role of a Misa agent in the events of the night of 24 September 2011.

Regardless of the failures of the DRC authorities, as the company on site, and an actor in the supply chain, Misa Mining failed to ensure that its operations were not causing or contributing to human rights abuse.

The ore purchased by Misa Mining was sold on to other commercial actors. There are, as noted above, significant difficulties in establishing where the Tilwezembe ore went after Misa purchased it from the artisanal miners. This is due to a lack of transparency and a lack of monitoring by companies along the supply chain.

Those companies that bought ore from Tilwezembe bear responsibility for sustaining and profiting from a context of abuse. The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, state that all actors in the supply chain have a responsibility to conduct due diligence aimed at ensuring that they do not contribute to human rights abuses.⁹³ Basic due diligence on the part of processing and trading companies should reveal the source of the ore that they are purchasing. Annex II of the OECD Guidance advises that suppliers “immediately suspend or discontinue engagement with upstream suppliers” where there is a reasonable risk that they are sourcing from, or linked to, any party committing serious abuses. Although the OECD Guidance currently refers to tin, tantalum, tungsten and gold, the Congolese law incorporating the OECD Guidance at the national level explicitly states that the obligation to conduct due diligence in the supply chain could apply to other minerals. The OECD Guidance has been endorsed by the DRC government as well as the OECD Member States.

CASE STUDY: FORCED EVICTIONS AT LUISHA



Members of the community that was forcibly evicted from their homes in Luisha in August 2011. The photo was taken in October 2011 at the new site where they were taken following the evictions.

© Amnesty International

FORCED EVICTIONS AT LUISHA

The settlement of Luisha, 80km from Lubumbashi, was a small traditional village, but since the late 1990s people have moved to the area to make a living from artisanal mining. Luisha has now grown into a sizeable, though unplanned, town of about 32,000 people⁹⁴ and temporary structures have been replaced by brick houses with tin roofs.

Although artisanal miners found and developed productive pits around Luisha, such sites have frequently been taken over by companies, some linked to the political elite.⁹⁵ As opportunities for artisanal mining have declined, artisanal miners have turned to subsistence agriculture and charcoal production.

MINING COMPANIES IN LUISHA: RECENT DEVELOPMENTS AND THE RISE OF CHINESE OWNERSHIP

Chinese mining companies are major operators in Luisha. Several are closely related to China Railway Group Limited (China Railway), whose controlling shareholder is the State-owned China Railway Engineering Corporation (CRECG).⁹⁶

In 2006 a joint venture, Compagnie Minière de Luisha (COMILU), was established between China Railway, Gécamines, and another China Railway subsidiary, the China National Overseas Engineering Corporation (COVEC).⁹⁷

The Congo International Mining Corporation (CIMCO), another China Railway subsidiary,⁹⁸ operates a processing plant in Luisha⁹⁹ where minerals from COMILU and those bought from artisanal miners, obtained from Gécamines' tailings¹⁰⁰, are treated. There is a conveyor belt from COMILU to CIMCO's processing plant.

Amnesty International visited Luisha in October 2011 and interviewed families who had been forcibly evicted two months previously, in August. When Amnesty International met them they were living in appalling conditions in make-shift tents, with no certainty about the future.

According to those interviewed some 300 households were forcibly evicted when a Chinese company, Congo International Mining Corporation (CIMCO) was given the rights to the site in the centre of Luisha, where they had been living since 2007. CIMCO had been given the site to build a processing plant.¹⁰¹

When the community was told by a local administrative official, in about July 2011, that they would have to move from their homes because their land had been given to CIMCO they raised concerns with the local authorities. The official reportedly told them they did not have rights to the plots of land on which many had built brick houses, although most had paid CF25,000 to the local chief, in line with customary land use practices in the area.¹⁰² As noted in Chapter 2, people living in the unplanned settlements around mines are often considered to have no rights to the land and do not have any security of tenure.



A signpost on the road to Luisha, where the companies Compagnie Minière de Luisha (COMILU) and Congo International Mining Corporation (CIMCO) have operations.

© Amnesty International

According to the community, the Chef de Poste (a local official) valued people's homes and fixed how much compensation should be paid to each household (between US\$100-US\$300).¹⁰³ Community members do not know what formula was used to arrive at the valuations, which, they say, could not be challenged.

Following the valuation process the community was given two weeks notice,¹⁰⁴ after which they were taken to a new site in trucks. The community members interviewed by Amnesty International stated that the trucks belonged to CIMCO. It was at this new site that Amnesty International met them. The new site had no housing, nor any other facilities. The community was simply left there. One man described the situation:

"We have to start again from scratch. That's why we are living in tents even though the rainy season is fast approaching. Life is much more difficult here than in the old place. We sleep outside, there is no school or local market nearby. Our children and wives have to make long journeys. Water is also a problem. A few days ago after we had protested, CIMCO came and put up two water cisterns which they replenish. But the water is not good quality. After a few days it is dirty, smells bad and cannot be used for drinking or preparing food."

The community also lost access to their means of livelihood. According to a community member:

“We have had little time to start planting crops for the rainy season. We left our plants and mature fruit trees behind and were not given compensation for that. We don't even have mosquito nets here.”¹⁰⁵

The situation of the Luisha evictees is compounded by their uncertainty about the future. They have no guarantee that they will be allowed to remain at the new site – they have been given no information about their security of tenure.

When Amnesty International delegates paid follow up visits to the area in April 2012 and March 2013 their situation had not changed.

RESPONSIBILITY OF THE DRC

Forced evictions are illegal under international human rights law. Consequently, the DRC authorities must both refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out such evictions.¹⁰⁶ While the right to adequate housing is perhaps the most obvious human right violated by forced eviction, others, such as the rights to security of the person, to work, to food and to an adequate standard of living, may also be infringed.

Safeguard measures that should be applied to all evictions have been clearly articulated by both the UN Committee on Economic, Social and Cultural Rights¹⁰⁷ and the UN Special Rapporteur on Adequate Housing in the Basic Principles and Guidelines on Development-based Evictions and Displacement, referred to as the Basic Principles¹⁰⁸, which reflect existing standards and jurisprudence on this issue. They include detailed guidance on steps that should be taken prior to, during and following evictions in order to ensure compliance with relevant principles of international human rights law.

Under international human rights law, eviction should be undertaken as a last resort and only after all feasible alternatives have been explored in genuine consultation with affected persons.¹⁰⁹ There are also a number of other procedural requirements and safeguards which should be in place before evictions are carried out,¹¹⁰ including adequate notice, as well as requirements in respect of how any evictions that do go ahead are carried out.¹¹¹ These requirements give communities sufficient time to challenge any eviction before judicial or other bodies to seek appropriate remedies. These requirements also offer opportunities for communities to salvage their possessions and building materials and take steps to ensure protection of the most vulnerable members of the community in eviction situations.

When there is no feasible alternative to eviction, the State must ensure that people have adequate compensation and access to adequate alternative housing, particularly in situations where people would be unable to provide for themselves and would be at risk of homelessness, and to ensure that resettlement sites comply with requirements for adequacy of housing.

Considering the impact that evictions and displacement can have on communities if undertaken without necessary safeguards it is essential that States have in place robust policies that prevent evictions where possible and ensure that – where evictions are unavoidable – the rights of those evicted are protected.

The evictions at Luisha breached many of the core provisions of accepted international standards. There was no effort to identify alternatives to evictions and the community was not consulted. Those evicted were simply taken to a site and left there without adequate housing, access to water or other facilities, rendering them homeless and vulnerable to other human rights violations. The victims of the forced evictions continue to lack any security of tenure and to suffer multiple violations of other economic and social rights.

RESPONSIBILITY OF COMPANIES

Any company taking over land should ensure that it does due diligence checks to discover who was on the land before and whether these people were subject to any human rights violations in the context of making the land available for company operations. This is in line with UN Guiding Principles on Business and Human Rights. The aim is to ensure that business operations do not lead to forced evictions – an issue that is of particular concern in Africa.

Amnesty International contacted CIMCO to ask what action the company took prior to acquiring the site and what action the company will now take in light of the information that families were forcibly evicted. No response was received. The allegation that company trucks were used to take the community from their homes to the bare site where they were left raises serious questions about whether the company provided assistance to State agents to carry out forced evictions.

CASE STUDY: OBSTRUCTING ACCESS TO WATER

In the early hours of 19 April 2012, workers from Chinese-Congolese joint venture COMILU, accompanied by police, used bulldozers and diggers to excavate a deep trench about 3m wide (see photo), which blocked off a rural road crossing the COMILU concession in Luisha. This road had been used for decades by local people to reach their fields and to fetch water. What had previously been about a 15-20 minute walk to the fields and back became a two-hour journey.¹¹²

Amnesty International visited Luisha on 20 April - the day after the trench had been dug - and spoke to local residents, officials of SAESSCAM, a representative of the Administrator of the District of Kambove, and local police. On 21 April 2012 Amnesty International interviewed the Director of COMILU in Luisha.

Confronted by the trench, local people initially tried to breach it with spades and shovels to create a passage for pedestrians and motorbikes. The police intervened and – according to local reports - fired live ammunition into the air to disperse the angry crowd, killing a 25-year old man, Jean Isuzu, a subsistence farmer who was hit in the head by a stray bullet.¹¹³



The trench in Luisha dug by Compagnie Minière de Luisha (COMILU), 20 April 2012
© Amnesty International

During the meeting at COMILU's headquarters in Luisha, the company claimed that the trench was a necessary safety measure to prevent people entering their concession, where they might be endangered by ongoing construction work and the passage of vehicles on the road, which threw up dust, reducing visibility. COMILU dismissed the idea that they should have consulted the local community before they dug the trench; they claimed that the company's conduct was perfectly correct as they had had several meetings with the Chef de Poste, a local official, and were accompanied by the police throughout. Amnesty International proposed that, to protect the community's access to water and farms and restore relations with the community, COMILU could provide a fenced passageway so pedestrians could cross the concession safely; or they could dig a borehole for people whose access to water had been restricted by the barricade. The Managing Director dismissed both these suggestions saying: "People must be patient. Rome wasn't built in a day."¹¹⁴ The Mining Registry subsequently defended the Chinese company's action because COMILU had constructed an alternative route around the concession. They said it conformed to the requirements of the Mining Code, even though it had doubled the distance to reach fields and other mines.

Local people have now found alternative ways to cross the trench.

RESPONSIBILITY OF THE DRC

According to the UN Committee on Economic, Social and Cultural Rights, sufficient and safe water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace and it must be affordable.¹¹⁵ No State or third party may interfere with any person's right to water without: an opportunity for genuine consultation with those affected; timely and full disclosure of information on the proposed measures; and legal recourse and remedies for those affected. Nor may they deprive anyone of the minimum essential level of water under any circumstances.¹¹⁶

The ICESCR also requires that States protect people's livelihoods; in this case informal and agricultural based livelihoods are the basis for many people's access to food, education for children and a range of goods and services necessary for the enjoyment of human rights. Any action that would compromise people's ability to carry out their traditional livelihoods – such as substantially increasing the journey time to fields – should be avoided or mitigated in some manner. As industrial mining expands in Katanga this will become an issue of increasing importance; mining activity cannot justify undermining livelihoods and the government should ensure that mining companies consult with affected communities before taking action that would put their economic, social and cultural rights at risk.

In this case the police response to community protests involved the discharge of live ammunition which led to the death of a young man. On the available evidence the action breached international standards on the use of force and firearms by law enforcement officials.¹¹⁷

RESPONSIBILITY OF COMILU

COMILU's actions interfered with people's access to water and to their means of livelihood. The corporate responsibility to respect human rights, as described earlier, requires companies to act with due diligence to avoid such negative impacts. In this case COMILU failed to act with due diligence. Instead it pointed to the acquiescence and involvement of state authorities to legitimise its actions. This approach – which is contrary to the UN Guiding Principles on Business and Human Rights – not only leaves the affected people with limited options for redress, it increases the distrust and tension between companies and communities.

CONCLUSION AND RECOMMENDATIONS

Numerous serious violations of human rights have occurred in the context of artisanal and industrial mining in Katanga. Private actors have been directly responsible for abuses and have acted alongside State agents who have committed breaches of international human rights law.

The failure of the DRC authorities to protect human rights in the context of mining constitutes a breach of the country's international legal obligations. However, the failure of the DRC authorities does not absolve companies of responsibility for their own actions and omissions, where these have caused or contributed to human rights violations or abuses.

This report highlights how companies can take advantage of the weak regulatory systems that characterize many poor countries, which frequently results in the poorest people being the most vulnerable to exploitation by corporate actors. It also highlights how State failures to respect and protect human rights can be used by companies to justify their own failures.

The government of the DRC has proved unwilling or unable to act to effectively regulate companies operating within its territory. However, some of the companies implicated in serious human rights abuses in Katanga are multinational companies whose headquarters are in another country. Home State governments, such as China, have an obligation, grounded in international law, to regulate companies headquartered in their territory in relation to their global operations. The parameters of such regulation will be more limited than those of the State in which the company is actually operating, but at minimum should include requirements that the company carries out adequate due diligence, discloses this information and acts upon it, with the express intention of preventing the company's operations in any country from causing or contributing to human rights abuses. The requirement to carry out human rights due diligence is even greater when a company is operating in areas that are affected by conflict or which face significant challenges in terms of the rule of law.

RECOMMENDATIONS

To the DRC authorities

- Revise the Mining Code to require all extractive companies to carry out and disclose adequate impact assessments that cover environmental, social and human rights impacts. These assessments should be carried out in consultation with potentially affected groups (including artisanal miners) and reflect the importance of artisanal mining as a source of livelihood in the DRC.
- Take urgent action to ensure that artisanal miners can work safely. This action must include, at a minimum, provision of adequate health and safety inspections and support at sites that artisanal miners use. This support should be properly and transparently budgeted. Action to ensure artisanal miners can work safely should take into account the importance of

artisanal mining as a source of livelihood. As far as possible the government should ensure that people do not face a choice between a dangerous livelihood and no livelihood.

- Conduct full and effective investigations into the death of Isaac Mukeba Muzala at Tilwezembe and ensure those responsible are held to account in processes that fully comply with international human rights obligations, including the right to a fair trial.
- Ensure all victims of human rights violations, including forced evictions and loss of livelihood, have an effective remedy, including adequate compensation.
- Ensure that all victims of forced evictions are given access to adequate alternative housing in a manner that complies with the UN Basic Principles and Guidelines on Development-based Evictions and Displacement. This includes ensuring adequate compensation and security of tenure.
- Instruct all police operating at mine sites to ensure that policing activity is consistent with international human rights law and standards. Anyone detained at a mine site on suspicion of having committed a criminal offence should be informed of their rights and taken before a judicial officer within the 48 hour timeframe stipulated by law.
- Expand the list of designated minerals in Article 2 of the Ministerial Decree dated 29 February 2012 to include cobalt and copper thereby legally requiring all actors extracting and trading in these minerals to exercise supply chain due diligence pursuant to Article 8.

To the companies operating in Katanga

- Publically commit to respecting human rights and put in place adequate systems to enable the company to become aware of and prevent human rights abuses as a consequence of its operations. Such systems should take into account the fact that business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties. The actions that companies take to prevent negative human rights impacts should be publically disclosed.
- Review operational practices and policies to ensure the company does not commit, or materially assist in the commission of, illegal acts that lead to human rights abuses.
- Cooperate fully with official investigations into criminal actions committed at mine sites.
- Work with State agencies to ensure that those whose human rights have been violated as a result of corporate activity have an effective remedy.

To the home governments of companies operating in Katanga

- Immediately engage with the companies named in this report that are headquartered in your country on the issues raised and call on these companies to cease all action that is causing or contributing to human rights abuses.
- Provide guidance to companies on how to ensure their operations are in line with the responsibility to respect human rights as outlined in the UN Guiding Principles on Business and Human Rights.
- Ensure that any State support to companies, including through export credits, insurance support or diplomatic support, is made conditional upon the company carrying out adequate human rights due diligence in relation to its operations.

- Engage with the DRC authorities to urge them to investigate cases of abuse and to put in place adequate systems to protect the health and safety of artisanal miners and the rights of mine-affected communities. Provide the government of the DRC with technical support to improve conditions in Katanga's mining areas in this regard.
- Institute legal reforms to require companies headquartered in your country to carry out adequate human rights due diligence in relation to their operations in Katanga. Such a requirement should ensure that the companies:
 - Carry out adequate due diligence in line with the UN Guiding Principles on Business and Human Rights. This should involve consultation with potentially affected groups or communities based on the disclosure of all relevant information on the mining plans in advance and in a manner that is accessible to communities.
 - Disclose the outcome of all due diligence and the actions taken to prevent or mitigate harm to communities or groups likely to be affected by the company's operations.
 - Ensure that they have in place accessible complaints mechanisms that operate in a transparent manner to deal with community concerns. Such mechanisms should not prevent or be an obstacle to access to judicial processes or any other State process.
- All OECD countries should ensure that companies that are headquartered or have their main base of operations in their country comply with the OECD Guidelines for Multinational Enterprises and supply chain due diligence provisions, including disclosure requirements relating to information, practices and policies, particularly when operating in conflict areas.

ENDNOTES

¹ Global Witness, *Digging in Corruption: Fraud, abuse and exploitation in Katanga's copper and cobalt mines*, 2006 (Global Witness, *Digging in Corruption*, 2006)

² See for example: PACT Inc., *PROMINES Study - Artisanal Mining in the Democratic Republic of Congo*, June 2010 (Pact Inc. *PROMINES Study*, June 2010); Reuters, About 60 dead in Congo mine accident-radio report 15 August 2012.

³ Amnesty International interviews with miners in Katanga, 2011 and 2012 - see later chapters of this report.

⁴ The Dodd Frank Wall Street Reform and Consumer Protection Act, passed by the US Congress in July 2010, is an example. It includes a provision – section 1502 – that asks companies to carry out supply chain due diligence in relation to minerals from DRC that may fuel conflict.

⁵ Mining.com at:

<http://www.mining.com/dr-congo-reaffirms-export-ban-on-copper-and-cobalt-39477/>.

⁶ World Bank, *DRC Growth with Governance in the Mining Sector*, May 2008. In 2005, officially recorded copper exports from industrial and artisanal sources were 27,925 tonnes of copper metal and 177,310 copper concentrates. Cobalt exports were 17,770 metric tonnes of cobalt and 84,835 metric tonnes of cobalt concentrates.

⁷ Global Witness, *China and Congo: Friends in Need*, March 2011. See:

http://www.globalwitness.org/sites/default/files/library/friends_in_need_en_lr.pdf; Johanna Jansson, "The Sicomines agreement revisited: prudent Chinese banks and risk-taking Chinese companies", *Review of African Political Economy*, 2013, 40:135, 152-162

⁸ See Chapter 1 of this report for details.

⁹ Almost half the world's cobalt reserves are found in DRC. See: Credit Suisse, *African Copper*, 31 May 2012, p.6.

¹⁰ UNDP, Human Development Report 2013, *The Rise of the Global South: Human Progress in a Diverse World* (UNDP Human Development Report 2013), p.147, available at:

<http://hdr.undp.org/en/reports/global/hdr2013/>. The DRC and Niger both shared the lowest ranking of no. 186.

¹¹ UNDP Human Development Report 2013, p.160. Gross National Income (GNI) per capita was 319 US dollars in 2012, p.147.

¹² Amnesty International, *Time for Justice is now: New strategy needed for the Democratic Republic of the Congo*, August 2011 (Index: AFR 62/006/2011); Human Rights Watch, *Always on the Run: The Vicious Cycle of Displacement in Eastern Congo*, 2010; United Nations Office of the High Commissioner for Human Rights, *Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1993 and June 2003*, Geneva June 2010, at http://www.ohchr.org/Documents/Countries/ZR/DRC_MAPPING_REPORT_FINAL_EN.pdf

¹³ Amnesty International interviews with miners in Tilwezembe, Kolwezi District, October 2011 and April 2012; PACT Inc., *PROMINES Study* June 2010.

¹⁴ Amnesty International interviews with miners in Katanga, and with civil society groups in Katanga, 2011 and 2012. See also: Global Witness, *Digging in Corruption: Fraud, abuse and exploitation in Katanga's copper and cobalt mines*, 2006 (Global Witness, *Digging in Corruption*, 2006); and PACT Inc., *PROMINES Study*, June 2010.

¹⁵ The conflict in the DRC is often described in terms of two wars. The first began in 1996, when the Rwandan army invaded eastern DRC, backing the rebel leader Laurent-Désiré Kabila, who eventually toppled president Mobutu Sese Seko; the second began in August 1998, when Kabila broke with his Rwandan allies, who, in turn, backed a new rebel group, the Rassemblement Congolais pour la Démocratie (RCD), in an attempt to overthrow Kabila. The five years of armed conflict that followed split the country into different zones of control ruled by competing armed groups.

¹⁶ In February 1999 artisanal mining was authorized in 44 sites in Katanga. But many of the sites were unsuitable and artisanal miners worked on Gécamines or foreign-owned concessions. See PACT Inc., *PROMINES Study*, June 2010, p. 22: "Artisanal mining is legal under the DRC 2002 Mining Code. However, the conditions stated in the law are flouted in virtually every respect therefore the majority of

artisanal exploitation is, in fact, occurring outside the law...Industrial grade sites are illegally occupied by artisanal mining groups causing conflicts and deterring foreign investors”.

¹⁷ World Bank, *Democratic Republic of Congo Growth with Governance in the Mining Sector*, May 2008, p.57; PACT Inc., *PROMINES Study*, June 2010, p. 21. This study quotes SASSCAM as saying that they estimated there to be some 67,000 artisanal miners in the Copperbelt and around 26,000 active in northern Katanga (p.21). In an interview with the head of SAESSCAM in Lubumbashi in March 2013 he estimated the number of artisanal miners in Katanga to be around 150,000.

¹⁸ Global Witness, *Digging in Corruption*, 2006; Broederlijk Delen, Commission Justice et Paix and the Nationaal instituut voor Zuidelijk Afrika (NiZA), *Is Congo Undermining its Future?*, 2008.

¹⁹ Amnesty International interviews with artisanal miners Kolwezi April 2012 ; Bread for All, Catholic Lenten Fund, *Glencore in the Democratic Republic of Congo: Profits Before Human Rights and the Environment*, April 2012, p.12 (Bread for All, Catholic Lenten Fund, *Glencore*, April 2012): “The traders are among the most powerful. Their office is located at the entrance to the mine and constitutes the point via which all the ore from Tilwezembe must transit. The miners have no other choice: It is at this office that they must sell their sacks of copper and cobalt, or otherwise be arrested”, at http://www.fastenopfer.ch/data/media/dokumente/news/2012/Glencore_report.pdf

²⁰ PACT Inc., *PROMINES Study*, June 2010. See also Southern Africa Resource Watch (SARW), *Conflict Gold to Criminal Gold: The new face of artisanal gold mining in Congo*, November 2012.

²¹ See the case of Luisha in this report.

²² Loi N° 007/2002 du 11 juillet 2002 portant Code Minier, Article 116: “Les exploitants artisanaux ne peuvent vendre leurs produits miniers qu’aux négociants, aux marchés boursiers, aux comptoirs ou organismes agréés ou créés par l’Etat... Les négociants agréés ne peuvent vendre les produits de l’exploitation artisanale qu’aux comptoirs ou aux organismes agréés ou créés par l’Etat ainsi qu’aux marchés boursiers.”

²³ Garth Shelton and Claude Kabemba (editors), *Win Win Partnership: China, Southern Africa and the Extractive Industries*, Southern Africa Resource Watch, 2012, p. 66 (Shelton and Kabemba, *Win Win Partnership*, 2012), at: http://www.osisa.org/sites/default/files/china-africa_web_sarw_0.pdf

²⁴ World Bank, *DRC Growth with Governance in the Mining Sector*, May 2008 p. 23; Shelton and Kabemba, *Win Win Partnership*, 2012 p. 66.

²⁵ Amnesty International interviews with artisanal miners and cooperatives, Katanga, 2012 and 2013. See also: Ruben de Koning, *Artisanal mining and post conflict reconstruction in the Democratic Republic of the Congo*, SIPRI background paper, Stockholm International Peace Research Institute, October 2009, p. 7, 13.

²⁶ Amnesty International interviews with cooperatives, artisanal miners, SAESSCAM and NGOs in Lubumbashi, Likasi, Luisha and Kolwezi October 2011 and April 2012. See also Bread for All and Catholic Lenten Fund, *Glencore*, April 2012, pp 12-14.

²⁷ See for example: PACT Inc. *PROMINES Study*, June 2010; Global Witness, *Digging in Corruption*, 2006; The Carter Center, *Les investissements Miniers en République Démocratique du Congo: Développement ou Appauvrissement des Communautés Locales?* October 2012; Louis Putzel and Noël Kabuyaya, *Chinese aid, trade and investment and the forests of the Democratic Republic of Congo*, 2011 Center for International Forestry Research, pp. 20-22 and p. 28.

²⁸ Simon Clark, Michael Smith and Franz Wild, “China in Africa: Young Workers, Deadly Mines”, Bloomberg Markets, 23 July 2008.

²⁹ U.S. Geological Survey, Mineral Commodity Summaries, January 2013, p. 47, at: <http://minerals.usgs.gov/minerals/pubs/mcs/2013/mcs2013.pdf>

³⁰ Global Witness, *Digging in Corruption*, 2006. p 11 – 13.

³¹ In 2008 there were some changes to the Chinese consortium with the inclusion of Zhejiang Huayou Cobalt and the China Machinery Engineering Corporation (CMEC) in the joint venture. See Johanna Jansson, *The Sicomin Agreement: Change and Continuity in the Democratic Republic of Congo’s International Relations*, South African Institute for International Affairs, October 2011, p. 12 (Johanna Jansson, *The Sicomin Agreement*, 2011), at: <http://www.congomines.org/wp-content/uploads/2011/11/J-Jansson-SAIA-2011-Sicomines-Agreement-Change-and-continuity.pdf>

³² KPMG, *Democratic Republic of the Congo 2010 EITI Report: The Extractive Industries Transparency Initiative*, pp. 88 -93, at: http://eiti.org/files/Congo-DRC-2010-EITI-Report-ENG_0.pdf; World Bank, *DRC Growth with Governance in the Mining Sector*, (May 2008), p. 45.

³³ Johanna Jansson, “The Sicomin agreement revisited: prudent Chinese banks and risk-taking Chinese companies”, *Review of African Political Economy*, 2013, 40:135, 152-162.

³⁴ KPMG, *Democratic Republic of the Congo 2010 EITI Report: The Extractive Industries Transparency*

Initiative, pp 88 -93; World Bank, *DRC Growth with Governance in the Mining Sector*, May 2008, p. 45. ; Deborah Brautigam, "Chinese Development Aid in Africa", *Rising China: Global Challenges and Opportunities*, edited by Jane Golley and Ligang Song, Australian National University Press, June 2011, pp 213- 215. <http://epress.anu.edu.au?p=113721> ; African Economic Outlook, "Transparency needed to end debt sustainability fears", 2011.

³⁵ Amnesty International interviews with Congolese officials and businessmen and diplomats in Lubumbashi and Kinshasa October 2011 and April 2012. See also Johanna Jansson, *The Sicomines Agreement*, 2011, p 12.

³⁶ At the time of writing the Mining Code is being revised.

³⁷ Article 69 (f) *Code Minier* and Article 451 of the Mining Regulations also require consultation with the public and the community in the project area. Procedures for land expropriation are set out in *LOI 77-001 du 22 février 1977 sur l'expropriation pour cause d'utilité publique*, at: www.leganet.cd/Legislation/Droit%20administratif/Div/L.77.001.22.02.1977.htm (last accessed 25 January 2013).

³⁸ Article 280 and article 281 of the *Code Minier* deal with compensation. Article 281 *Code Minier* states that: "Toute occupation de terrain privant les ayants-droits de la jouissance du sol, toute modification rendant le terrain impropre à la culture entraîne, pour le titulaire ou l'amodataire des droits miniers et/ou de carrières, à la demande des ayants-droits du terrain et à leur convenance, l'obligation de payer une juste indemnité correspondant soit au loyer, soit à la valeur du terrain lors de son occupation, augmentée de la moitié." Article 280 *Code Minier* states that: « Le titulaire ou l'amodataire est, de plein droit, tenu de réparer les dommages causés par les travaux, même autorisés, qu'il exécute dans le cadre de ses activités minières. »

³⁹ Arrête ministériel No. 0054 (057) cab.min/mines/01/2012 du 29 février 2012 portant mise en oeuvre du mécanisme régional de certification de la conférence internationale sur la région des grands lacs (CIRGL) en République Démocratique du Congo. Article 2 lists the current designated minerals as gold, cassiterite, wolframite, and coltan and their related mineral concentrates. Article 3 states that this list is not exhaustive and can be changed by the Minister of Mines. Article 8 states that all market participants in the supply chain must exercise due diligence to assure that they do not contribute to human rights infringements or conflict in the DRC., at: https://icglr.org/IMG/pdf/Arrete_Ministeriel_DRC.pdf.

⁴⁰ UN Human Rights Council, Report of the Special Representative of the Secretary- General on the issue of human rights and transnational corporations and other business enterprises, UN Doc. A/HRC/8/5, 7 April 2008, at: <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>

⁴¹ United Nations Office of the High Commissioner for Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, 2011 (UN Guiding Principles), at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

⁴² UN Human Rights Council, Addendum to the report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises - State responsibilities to regulate and adjudicate corporate activities under the United Nations core human rights treaties: an overview of treaty body commentaries, UN Doc. A/HRC/4/35/Add.1, 13 February 2007, at: http://ap.ohchr.org/Documents/dpage_e.aspx?si=A/HRC/4/35/Add.1

⁴³ See the OECD website, at: <http://www.oecd.org/fr/daf/inv/mne/mining.htm>

⁴⁴ Committee on Economic, Social and Cultural Rights (CESCR), General Comment 15 on the right to water, 2002, UN Doc. E/C.12/2002/11, para 33: " Steps should be taken by States parties to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries. Where States parties can take steps to influence other third parties to respect the right, through legal or political means, such steps should be taken in accordance with the Charter of the United Nations and applicable international law"; CESCR, General Comment 19, UN Doc. E/C.12/GC/19, para 54: "States parties should extraterritorially protect the right to social security by preventing their own citizens and national entities from violating this right in other countries. Where States parties can take steps to influence third parties (non-State actors) within their jurisdiction to respect the right, through legal or political means, such steps should be taken in accordance with the Charter of the United Nations and applicable international law."

⁴⁵ Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, 29 February 2012, at www.maastrichtuniversity.nl/humanrights

⁴⁶ Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights para 24.

⁴⁷ Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, para 25.

⁴⁸ UN Guiding Principles, Principle 11.

⁴⁹ UN Guiding Principles, Principle 11.

⁵⁰ See: <http://www.katangamining.com/about-us/company-profile.aspx>. for confirmation of a listing on the Toronto Stock Exchange, and, e.g., News Release No. 3/2013 (p.3) for confirmation of Katanga's operation of the Tilwezembe mine., at: <http://www.katangamining.com/~media/Files/K/Katanga-mining-v2/media/newsreleases/news2013/pr-04-03-2013.pdf>. Katanga Mining Ltd. operates in the DRC through joint venture with Gécamines. Glencore International, a commodity trader based in Switzerland, is the majority stakeholder in Katanga Mining Ltd. Glencore owns 75,2% of Katanga Mining's shares through Jangleglade Ltd and another Glencore plc subsidiary. See: 'Katanga Mining Limited, Management's Discussion and Analysis for the three and six months ended June 30, 2012 and 2011, p.2, at: http://www.katangamining.com/~media/Files/K/Katanga-mining-v2/investor_relations/financialresults/res2012/q22012/mda_q2_2012.pdf. Available on Glencore (now GlencoreXstrata)'s website. See: <http://www.glencorexstrata.com/our-business/operations-map/>.

⁵¹ The exact nature of Misa Mining's role at Tilwezembe is unclear. In a letter to Amnesty International dated 23 May 2013 Misa mining said that it does not control directly the exploitation of the mining sites but that it is the cooperative and the State agency SAESSCAM that control the daily execution of the extraction; while the State mining police and "mobiles" ensure security on the site.

⁵² Bread For All and the Swiss Catholic Lenten Fund, *Glencore*, April 2012, pp. 13 and 19.

⁵³ Amnesty International interviews with: artisanal miners in Mwangeji Hospital in Kolwezi and at Tilwezembe and Kawama mining townships; with representatives of the cooperatives EMAK and CMKK; and with SAESSCAM agents and the Division des Mines, conducted in October 2011 and April 2012. Interviews were also carried out with local NGOs such as Action contre l'impunité pour les droits humains.

⁵⁴ Interviews with injured miners in Kolwezi hospital in October 2011; interviews with artisanal miners at Tilwezembe village, April 2012.

⁵⁵ Amnesty International interviews with artisanal miners working at Tilwezembe, October 2011; Amnesty International interview with a SAESSCAM agent, Tilwezembe, October 2011.

⁵⁶ Amnesty International interviews with miners at Tilwezembe, March 2013.

⁵⁷ Amnesty International interviews with KD, Mwangeji Hospital, October 2011 and April 2012.

⁵⁸ Cornelia Walther, "In DR Congo, UNICEF supports efforts to help child labourers return to school", article on UNICEF's website dated 15 June 2012.

http://www.unicef.org/infobycountry/drcongo_62627.html. Also interview with UNICEF in Lubumbashi in March 2013.

⁵⁹ BBC Panorama, "Billionaires behaving badly?", 16 April 2012; Radio Okapi: "Katanga: 40,000 enfants travaillent dans les mines, selon l'Unicef" 2 October 2012, at: <http://reliefweb.int/report/democratic-republic-congo/katanga-40000-enfants-travaillent-dans-les-mines-selon-l%E2%80%99unicef>.

⁶⁰ US State Department Country Report 2012, *The government did not undertake any measures to reinforce the capacities of the labor inspectors to ensure that children under 18 did not engage in hazardous work in mines*, at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>

⁶¹ Amnesty International interviews with EMAK, SAESSCAM agents and artisanal miners at Tilwezembe village and the family of Isaac Muzala, October 2011.

⁶² Amnesty International interview with artisanal miners, Lualaba and Tilwezembe, October 2011.

⁶³ Amnesty International interviews with miners working at Tilwezembe, April 2012; the use of the cachot and a system of fines was also confirmed in an interview with M Makaba, Procureur de la République, in Kolwezi on 23 March 2013.

⁶⁴ ORDONNANCE-LOI 82-020 portant Code de l'organisation et de la compétence judiciaires, 31 mars 1982, Art. 5.: « Le commissaire d'État à la Justice peut conférer la qualité d'officier de police judiciaire soit par nomination personnelle, soit par commission générale, à une catégorie d'agents des services publics, des entreprises publiques ou privées. L'arrêté détermine la compétence matérielle et territoriale », République démocratique du Congo Droit civil et judiciaire; Les Codes Larcier Edition 2003. Idem, Interview with the Chief Prosecutor M. Makaba in Kolwezi in March 2013. Interview with the Chief Prosecutor M. Makaba in Kolwezi in March 2013. The Chief Prosecutor told Amnesty International that the 'cachots' on mine sites under his supervision and are supposed to be inspected. The use of cachots was reported to Amnesty International in interviews in October 2011 and April 2012 with artisanal miners at various mine sites including Tilwezembe and Kawama. The use of temporary

cachots on private and public mining concessions dates back a long time (See for example a reference to a cachot on the MIBA (state owned diamond mine) concession in a 2006 MONUC report, *Arrestations et détentions dans les prisons et cachots de la RDC, Partie II: La détention des enfants et la justice pour mineurs*, available at: <http://www.refworld.org/country,...COD,,46caab120,0.html>

⁶⁵ Constitution de la République démocratique du Congo, Article 18: « La garde à vue ne peut excéder quarante huit heures. A l'expiration de ce délai, la personne gardée à vue doit être relâchée ou mise à la disposition de l'autorité judiciaire compétente. », at: <http://www.katanga.gouv.cd/files/pdf/constitution.pdf>.

⁶⁶ A number of sources, including SAESSCAM, lawyers in Kolwezi and representatives of cooperatives as well as NGOs such as ACIDH confirmed to Amnesty International that the security system at mine sites is not regularised.

⁶⁷ Interview with the family of Isaac Muzala and their lawyer, Kolwezi, 10 April 2012 and information contained in statements taken by the local Prosecutor who investigated the death of Isaac Muzala.

⁶⁸ An individual told the family that Isaac Muzala was beaten and killed at Tilwezembe. The individual is not identified due to fears for their security.

⁶⁹ Amnesty International interviews with the family of Isaac Muzala and their lawyer, Kolwezi, 10 April 2012.

⁷⁰ Amnesty International was not able to interview the hospital staff directly; however, a statement given to the Prosecutor by a Misa employee also confirms that a Misa Mining employee (described in the Prosecutor's document as Misa Agent) brought the body to Mwangeji hospital. Statement by Misa Agent to the Prosecutor, 6 October 2011, Parquet de Grande Instance, Kolwezi. RMP: 20884/MAZ.

⁷¹ According to the family, medical staff at the hospital were also concerned that the cause of death was not a road accident. However, Amnesty International was unable to interview the medical staff.

⁷² Statement by Misa Mining Agent to the Prosecutor, 6 October 2011, Parquet de Grande Instance, Kolwezi. RMP: 20884/MAZ.

⁷³ Letter from MISA S.P.R.L. (Misa Mining), dated 23 May 2013, in response to questions from Amnesty International. Misa Mining stated in the letter that: "Quant à l'argent remis à la famille du défunt, il l'a été à la demande de la coopérative. La décharge ci-jointe renseigne clairement que cette somme avait été remise à titre d'assistance et non d'indemnisation."

⁷⁴ Letter to Amnesty International from Misa Mining, dated 23 May 2013.

⁷⁵ This was confirmed in interviews with Saesscam officials and representatives of cooperatives and has also been documented by other organizations. See for example: Bread for all, Catholic Lenten Fund, *Glencore*, April 2012, p.14.

⁷⁶ In a letter to Amnesty International, dated 23 May 2013, Group Bazano stated: "Nous sommes très surpris par votre affirmation selon laquelle la totalité du cuivre extrait de ce site a été vendue par Misa Mining à GB. Cette affirmation est totalement inexacte [...] à notre connaissance GB n'a pas acheté de produits provenant de ce site depuis la fermeture de cette mine par son propriétaire en 2008, et GB a pris toutes les mesures possibles pour s'en assurer, Misa Mining a été l'un des fournisseurs non-exclusifs de GB, avec laquelle GB a arrêté de travailler en 2011 en raison des conditions du marché."

⁷⁷ Glencore is the majority owner and operator of Mopani Copper Mines Plc (Mopani).

⁷⁸ Bread For All, Catholic Lenten Fund, *Glencore*, April 2012, pp.14-15.

⁷⁹ BBC News, Panorama questions over Glencore mines, 16 April 2012, at <http://www.bbc.co.uk/news/17702487>

⁸⁰ Glencore International Plc, "Glencore response to BBC Panorama broadcast", 16 April 2012, at: <http://www.glencorexstrata.com/assets/Uploads/201204160800-Response-to-Panorama.pdf>

⁸¹ CESCR, General Comment 18 on the right to work, 2005, para 35.

⁸² ILO Convention No. 182, Article 3(d).

⁸³ See ILO Recommendation No. 190, Worst Forms of Child Labour Recommendation, 1999, paras. 3(b) (work underground, under water, at dangerous heights, or in confined spaces), 3(c) (work with dangerous machinery, equipment, and tools), 3(d) (work in an unhealthy environment, including where children are exposed to hazardous substances, agents, or processes, or to temperatures, noise levels, or vibrations damaging to their health); International Labour Office, International Programme on the Elimination of Child Labour, *Children in Hazardous Work: What We Know; What We Need to Do*, Geneva: ILO, 2011, pp. 32-36 ("Mining and quarrying are forms of work dangerous to children in every way.").

⁸⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 14 on the right to Health, 2000, para 15

⁸⁵ Committee on Economic, Social and Cultural Rights, General Comment No. 14 on the right to

Health, 2000, para 15

⁸⁶ CESCR General Comment 14 on the right to health, paras 22 and 23.

⁸⁷ Loi No 015/2002 du 16 octobre 2002 portant Code du Travail, at: <http://www.droit-afrique.com/images/textes/RDC/RDC%20-%20Code%20du%20travail%202002.pdf>

⁸⁸ Article 109, *Code Minier*.

⁸⁹ According to Art 497 of the Mining Regulations the holder of a mine licence or permit or any kind of authorisation is obliged to keep a record of incidents: "Le journal de chantier dans lequel sont consignés les événements survenus à l'intérieur du périmètre minier ou de la zone d'activité minière, notamment les accidents". See also Articles 502 and 503 of the Mining Regulations, according to which the officials of the Mining Ministry are to review the incident reports and carry out regular inspections of mine sites. "Agents d'inspection de la Division des Mines et de la Direction chargée de la Protection de l'Environnement Minier" are responsible for security, health, hygiene and for carrying out regular inspections or whenever they are required. SAESSCAM is the agency responsible for training and providing technical assistance to artisanal miners and for ensuring that they operate in conformity with the mining code and regulations. It is present on many artisanal mining sites, including Tilwezembe. See also Pact Inc., *PROMINES Study*, June 2010: "The DRC government has a technical service for artisanal mining, SAESSCAM, and has defined roles for other state agents in the sector, however there is a major gap between their mandate, their resources and the reality on the ground", p. 5.

⁹⁰ International Covenant on Civil and Political Rights (ICCPR), Art 9.

⁹¹ UN Guiding Principles, Principle 11.

⁹² UN Guiding Principles, Principles 13, 19.

⁹³ OECD (2013), *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Second Edition*, OECD Publishing.

<http://dx.doi.org/10.1787/9789264185050-en>

⁹⁴ Amnesty International interview with long term residents of Luisha, in April 2012.

⁹⁵ Amnesty International interviews with EMAK and with artisanal miners in Luisha October 2011 and with The Carter Center, Lubumbashi in March 2013.

⁹⁶ See: <http://www.crecg.com/en/tabid/176/Default.aspx>

⁹⁷ According to J. Jansson, *The Sicomines Agreement*, Occasional Paper No.97, October 2011, p.7 COVEC held a 35.38 per cent shareholding, Gécamines 28 per cent and China Railway 36.72 per cent. In April 2012 the Amnesty International delegation was informed by COMILU that, as a result of internal reorganization of the parent company, COVEC has ceased to be a party to the joint venture. In its Annual Report 2011, China Railway states that it is the controlling shareholder of COMILU.

⁹⁸ The Annual Report China Railway Group 2011 confirms that it is the controlling shareholder in both CIMCO and COMILU: "The Group obtained control of Luisha Ming Co., Ltd., MKM Ming Co., Ltd. and Congo International Mining Corporation by modifying the contractual agreements with other shareholders to hold majority voting rights. The above three companies were previously jointly controlled entities of the Group and were held as to 71%, 72% and 51%, respectively, by the Group." At: http://www.mzcan.com/china/601390/finacial/9/EN/2011%20Annual%20Report_nriJ2qjCN6q.pdf (page 161)

⁹⁹ Amnesty international interview with a Congolese government official, an agent of the Office Congolaise de Control, and workers at CIMCO, interviewed in Luisha, October 2011.

¹⁰⁰ Amnesty International interview with a negociant from Likasi, October 2011, who explained that he bought minerals from artisanal miners who had obtained it from neighbouring concessions owned by other companies which he then sold to CIMCO. When Amnesty International visited Luisha in October 2011, Amnesty could see a queue of people waiting to sell minerals at the entrance to CIMCO's plant.

¹⁰¹ Amnesty international interviews with affected families, October 2011 and with the Directeur-Generale Cadastre Minier, in Kinshasa on 24 April 2012.

¹⁰² Amnesty international interviews with the displaced families, Luisha, October 2011. In an interview with the Managing Director of COMILU in Luisha, April 2012, he stated: "[an] Adminstrator of Kambove District sent an agent to survey each house and its surface area and work out appropriate level of compensation. He also arranged for a suitable replacement land and the company cleared the area for them with their machines. Each family has a defined plot. We transport water to them on a daily basis and make no charge."

¹⁰³ The compensation amount was confirmed in interviews with around 10 relocated families, Luisha, October 2011.

¹⁰⁴ The notice was verbal from a local government official, according to displaced families interviewed in Luisha in October 2011. Teachers and village elders confirmed this in subsequent interviews in Luisha in

October 2011.

¹⁰⁵ Amnesty international interviews with displaced families, Luisha, October 2011. When Amnesty International delegates paid a follow up visit in April 2012, their situation had not changed.

¹⁰⁶ CESCR, General Comment 7 on the right to adequate housing: forced evictions, 1997, para 8, at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/959f71e476284596802564c3005d8d50?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/959f71e476284596802564c3005d8d50?Opendocument)

¹⁰⁷ CESCR, General Comment 7 on the right to adequate housing, 1997, para 8.

¹⁰⁸ Basic Principles and Guidelines on Development-Based Evictions and Displacement, Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/4/18, 5 February 2007, which were considered by the Human Rights Council in 2007, at http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf.

¹⁰⁹ CESCR, General Comment No. 7 on the right to adequate housing: forced evictions, 1997, para 13; see also CESCR, General Comment No. 4 on the right to adequate housing, 1991, para 18.

¹¹⁰ These include, among others, "a) an opportunity for genuine consultation with those affected; b) adequate and reasonable notice for affected persons prior to the scheduled date of eviction; c) 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;... g) provision of legal remedies; and h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts", CESCR, General Comment No. 7, para 15.

¹¹¹ These include "(d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise", Committee on Economic, Social and Cultural Rights General Comment No. 7, para 15. See paras 45 – 51, Basic Principles; see also requirements in relation to protection of rights to life and security of person in the International Covenant on Civil and Political Rights that any use of force respect the principles of necessity and proportionality, including guidance offered to law enforcement officials on use of force such as the 'Basic Principles on the Use of Force and Firearms by Law Enforcement Officials'.

¹¹² Amnesty International interviews with affected community members, 20 April 2012. Amnesty International delegates also saw the impact directly.

¹¹³ Amnesty international interview with local police, teachers at the nearby school and other witnesses living in Luisha, 20 April 2012.

¹¹⁴ Amnesty International interview with Managing Director of COMILU, Luisha, 21 April 2012

¹¹⁵ CESCR, General Comment 15, on the Right to Water, 20 January 2003, para 12 (c).

¹¹⁶ CESCR, General Comment 15, on the Right to Water, 20 January 2003, para 56.

¹¹⁷ UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>



**I WANT
TO HELP**

WHETHER IN A HIGH-PROFILE CONFLICT OR A FORGOTTEN CORNER OF THE GLOBE, **AMNESTY INTERNATIONAL** CAMPAIGNS FOR JUSTICE, FREEDOM AND DIGNITY FOR ALL AND SEEKS TO GALVANIZE PUBLIC SUPPORT TO BUILD A BETTER WORLD

WHAT CAN YOU DO?

Activists around the world have shown that it is possible to resist the dangerous forces that are undermining human rights. Be part of this movement. Combat those who peddle fear and hate.

- Join Amnesty International and become part of a worldwide movement campaigning for an end to human rights violations. Help us make a difference.
- Make a donation to support Amnesty International's work.

Together we can make our voices heard.

☐ I am interested in receiving further information on becoming a member of Amnesty International

name

address

country

email

☐ I wish to make a donation to Amnesty International (donations will be taken in UK£, US\$ or €)

amount

please debit my

Visa ☐

Mastercard ☐

number

expiry date

signature

Please return this form to the Amnesty International office in your country.

For Amnesty International offices worldwide: www.amnesty.org/en/worldwide-sites
If there is not an Amnesty International office in your country, please return this form to:

Amnesty International, International Secretariat, Peter Benenson House,
1 Easton Street, London WC1X 0DW, United Kingdom

amnesty.org





PROFITS AND LOSS

MINING AND HUMAN RIGHTS IN KATANGA, DEMOCRATIC REPUBLIC OF THE CONGO

The Democratic Republic of the Congo (DRC) has some of the world's most important mineral reserves, including copper and cobalt. However, natural resource wealth has not brought lasting benefit to the majority of the people; on the contrary, mining has been associated with serious and widespread human rights violations.

In the southern province of Katanga, people's lives have been torn apart as a result of mining operations. Small-scale miners working in appalling conditions have suffered arbitrary detention, beatings, ill-treatment or even death at the hands of the police or the mines' security personnel. Communities have been forcibly evicted from mining areas without compensation, or consultation.

Chinese companies are on course to become the most influential foreign economic actors in the extractive sector in Katanga and the DRC. They will have a major impact on the lives of millions. But how well do these companies comply with their responsibility to respect human rights, and what is the role of the DRC and Chinese governments in regulating the companies?

This report highlights significant human rights abuses in Katanga's mining sector, involving Chinese – as well as other – companies. It calls on mining companies to abide by the law and uphold their responsibility to respect human rights, and on governments to hold the industry to account.

amnesty.org

Index: AFR 62/001/2013
June 2013

AMNESTY
INTERNATIONAL

