

MINING EXPLOITATION IN KATANGA PROVINCE: *local's communities given up*

Case of GROUPE BAZANO and C.M.S.K.



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TITLE: MINING EXPLOITATION IN KATANGA PROVINCE: *Local communities given up* Case of GROUPE BAZANO and C.M.S.K.

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COVERT ILLUSTRATION: A view on KAWAMA village, LUSWICHI site, in the background, CMSK embankment.

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ABBREVIATIONS AND ACRONYMS

A D G: Administrateur Directeur Général (Director General Administrator)

CAMI: Cadastre Minier (Land Mining Registry)

CHEMAF: Chemical of Africa

CMSK : Compagnie Minière du Sud Katanga (Mining Company of South Katanga)

COMIDE: Congolaise des Mines et de Developpement (Congolese Mines and Development)

EGMF : Entreprise Général Malta Forrest (Malta Forrest General Companies)

EIE: Etudes d'Impact Environnemental (Survey of environment impact)

GECAMINES: Générale des carrières et des mines (General of Quarries and mines)

GFI: Groupe Forrest International (Forrest International Group)

MECNT: Ministère de l'Environnement Conservation de la Nature et Tourisme (Ministry of environment, nature protection and tourism)

MUMI: Mutanda Mining

ONG: Organisation Non Gouvernemental (Non - Governmental Organisation)

PAR: Plan d'Atténuation et de réhabilitation (Alleviation and Rehabilitation plan)

P.E: Permis d'Exploitation (Exploitation Permit)

PEPM: Permis d'Exploitation de la Petite Mine (Exploitation Permit of a small mine)

PFNL: Produit Forestier Non Ligneux (Non Woody Forest Product)

PGEP: Plan de Gestion Environnemental du Projet (Project Environmental Management Plan)

POM: Plate forme des Organisations de la société civile Œuvrant dans le secteur Minier (Civil Society Organisation Group Working in the Mining Sector)

PREMICONGO: Protection des écorégions de miombo au Congo (Protection of Ecoregions of Miombo in Congo)

SOMIKA: Société Minière du Katanga (Mining Company of Katanga)

TFM: Tenke Fungurume Mining

UNILU: Université de Lubumbashi (University of Lubumbashi)

EXECUTIVE SUMMARY

This study has been achieved with the support of **Friends of the earth Netherland /Milieudedefensie**, in the framework of Mining Limits project: It consists of monitoring report of the compliance with environmental and social norms by the mining companies of Katanga through the case of **GROUPE BAZANO** and “**Compagnie Minière du Sud Katanga**”. The study presents a panoramic view of environmental and social impacts of the mining exploitation in the province as well as different strategies and actions of companies in order to manage them. It is also interested in the structure and policies of the two above mentioned companies for solving such issues with communities. It also describes answers given by the two companies to the expectations of the residing communities.

In the introduction based on the dispositions of the Congolese legislation, we describe the most frequent negative impacts caused by the mining exploitation; pollutions, expropriations, relocations as well as planned dispositions for the Congolese mining code for avoiding or at least alleviation.

Moreover the study sets up the panoramic view of environmental and social impacts of the mining exploitation sites of the two companies as well as the different strategies and policies implemented by GB and CMSK for managing these aspects against the real achieved actions by each of these two companies in order to meet the expectations of the communities.

In the presentation of two monitored companies, we start by generalities wherein the concerned company's main lines descriptions have been made. Besides, the study describes environmental problems noticed on each exploitation site, and solutions brought by the companies as well as noticed weaknesses. Furthermore, we list social achievements by each of the companies while bringing to light the procedures used, choices made and their appropriateness against the residing communities expectations and priorities.

Each of the parts about companies ends by a conclusion containing pertinent recommendations such a:

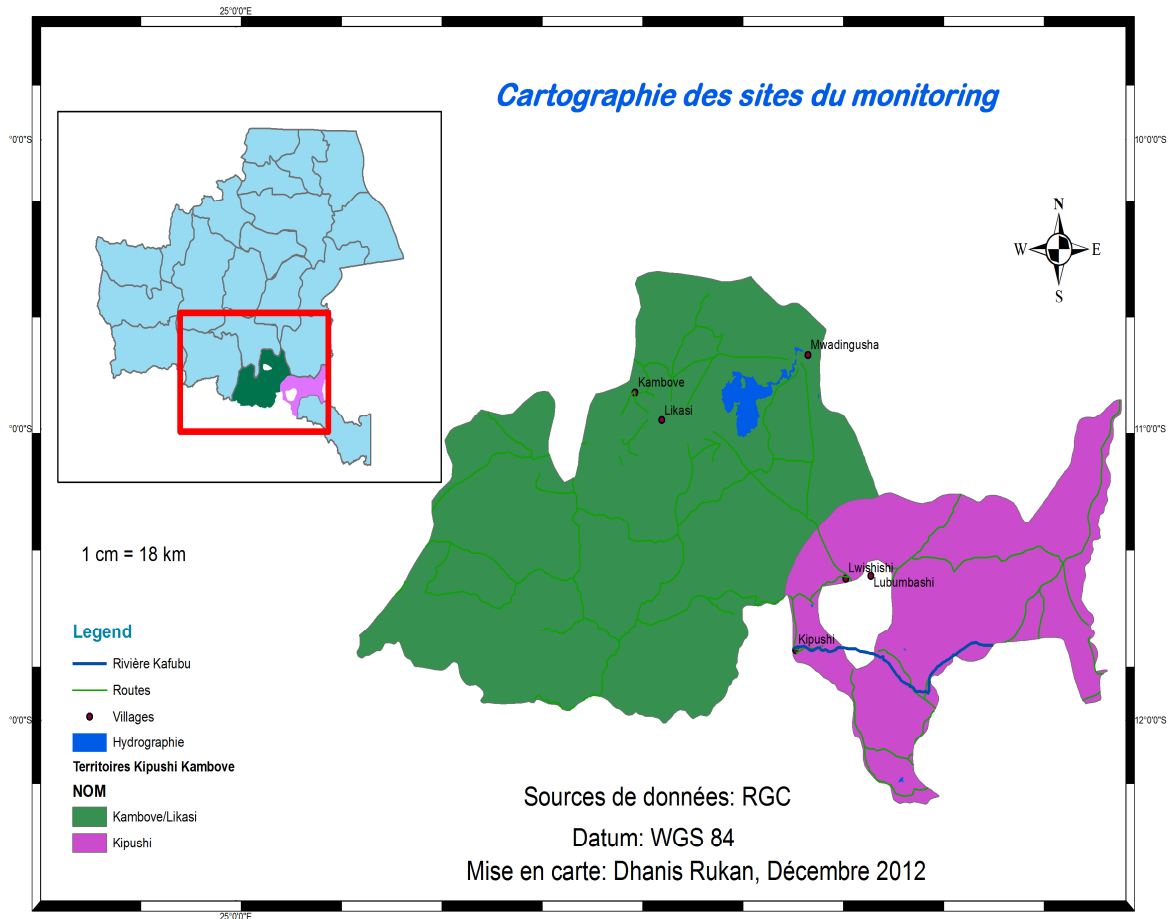
- Need of modernization of the implemented technologies in order to alleviate negative impacts on the environment.
- Urgent setting of a permanent consultation framework with the residing communities of the mining exploitation sites.
- Compensation of pollutions and expropriations victims.

The conclusion and recommendations are addressed to the Congolese government. They are in the context of the mining code revision and display the flaws of the legislation.

They are mainly:

- Make the publication of EIE, PGEP, PAR and PDD compulsory by mining companies. These documents must obligatorily be published on the web sites of companies and of the ministry of mines (national and provincial) with hard copies accessible to the public, mining offices, ministries and administration copies for informing and protecting the residing communities.

- Straightaway implement a territory rehabilitation plan in order to separate residential zones from industrial zones in towns
- To insert a precise legislation mechanism of compensation of expropriation victims.



0. Introduction

0.1. Context

The mining boom which has characterized Katanga province for 10 years constitutes the populations' hope specially in terms of employment and economy. However, the mining exploitation is not possible without any negative impacts on social and environmental plans. For minimizing these impacts, PREMICONGO does the monitoring and advocacy in order to get companies comply with legal norms. Our organization brings the population back to their rights.

The mining limits project in which we have taken part since the beginning of this year aims at improving the mining governance in the domains and the respect of social rights of communities. Thus, we gather data that may make up the advocacy within the European Union that constitute one of the main destinations of the mining products in the DRC so that the extraction and commercialization conditions may be considered by metals purchasers.

0.2. Methodology

For collecting necessary data in order to make this report, we resorted to the direct observation, written documents and interviews. We also received the concerned companies before the publication of this report.

The direct observation consisted in a visit of the exploitation site of these two companies first in LIKASI where there is a smelting plant of GB, in LUSHICHI and in KIPUSHI where there are CMSK installations. This activity gave us access to the conditions under which minerals extraction and transformation are done. In LIKASI, we were also interested in the artisanal mine of SHAMITUMBA where GB gets minerals from. We also went to KAMBOVE on the road from LIKASI to MWADINGUSHA.

- Written documents consisted in a deep analysis of previously published documents of the two companies. We also reread the mining exploitation in Katanga province. We also resorted to the official web sites and that of the carter centre of Lubumbashi.
- Interview : we shared with different persons; managers of GB, the secretary general of GFI, the holding to which CMSK makes part, employees of the Ministry of mines and of MECNT in Lubumbashi and LIKASI representatives from the civil society of Lubumbashi, LIKASI, KOLWEZI employees of GB and CMSK (who wanted to be anonymous)

0.3. Faced difficulties

The major difficulty was the impossibility of having access to main environmental management documents and the implementation of RSE by mining companies: EIE, PGEP, PDD, environmental audit reports. GFI was willing to collaborate in the research on CMSK, but the September appointment failed due to the negotiations with GECAMINES that ended into the transfer of the GFI shares in this company. GB received us only after having submitted to them the draft of this report. We thereafter had to

recheck some aspects of the report on which we could not agree before the publication of this final version.

0.4. The Mining code and the environment management

Environmental issues constitute great worries for people at the beginning of the 21st century. Challenges about the climatic changes, garbage management, the biodiversity retreat get the world worry about tomorrow. Mining activities have a considerable impact on the respect towards environmental norms so that the actual and future generations may fully benefit of this development. The mining exploitation always pollutes air, soil and water.

- Air pollution is caused by plants escapes and dust caused by mining activities. Small particles contain heavy metals and other substances like silica that may greatly damage the fauna, vegetations as well as human beings
- Population and soil degeneration result from plants smoke; incorrect banking of mining thrown ups and dusts that falls back on the soil. Concentration of heavy metals and acids reach very high levels. The soils have become dry and infertile. This pollution contaminates crops and food.
- Pollution and water degeneration result not only from plants but also from dumpings and bad management of mining thrown ups that rest in rivers under the shapes of sand and dust. This pollution gives way to the damage of the fauna and water vegetation, prevents people to have access to drinking water and have bad consequences in case of continuous consumption.

These risks are taken into account by the mining code that presents much progress against the 1981 mining legislation. This progress is in:

- The creation of a service in charge of protecting the environment within the ministry of mines (article 15)
- Compelling companies to present an EIE and a PGEP before the project start (articles 69, 71, 73,)
- Compelling companies to go through environmental audit each two years
- The constitution of the financial safety that may allow the government to rehabilitate the site after exploitation in case the company is unable to do it.

Even companies that are still at the exploration stage must have a PAR (an alleviation and rehabilitation plan). Our study aims at checking whether all these dispositions are respected by GB and CMSK

0.5 The Mining code and social responsibilities of companies

The setting up of a company in a given area entails transformations and sometimes social changes. Some are positive and others negative, job opportunities, increase of incomes and economic activities in the area, relocation of people, loss of farming lands, outburst of STI and HIV/AIDS. It sometimes happens that the misery of the resident population gives way to claims that result into violence as it is the case at Niger Delta. The social responsibilities of companies constitute a sort of compensation that the company willingly gives to the residing community. In this sense, the RSE seems to be a social regulation tool that favours the cohabitation between the company and the community. This is a good practice that improves and humanizes the image of the company facing the communities.

The mining code of DRC and its measures legalize the practice of RSE. The appendix 9, article 127 develops a plan for contributing to the residing population's welfare.

This plan, (PDD) is made according to the consultations that the company must organize with the residing populations before the project start. The PDD domains are already defined by the mining legislation: health, education, infrastructures and production. In the following lines, we notice how GB and CMSK comply with these dispositions.

Figure 1: GB, LIKASI foundry



1. GROUPE BAZANO (BAZANO GROUP)

1.1. Generalities

The “GROUPE BAZANO” (GB) is a business company created in 2002 by Mr Hassan Hamze, a Lebanese businessman. Since 2004, this company has been concerned with the mining sector with the construction of a smelting plant of Likasi which started operating in 2007. The head office of the company is in Lubumbashi, N° 32, Kigoma Avenue, industrial quarter, Kampemba Commune. However, the mining activities are essentially developed in Likasi (plant) and in Kolwezi (a warehouse and a purchasing post)

The company has exploitation permits of the small mine (PEPM):

- Permit 1886 for the production of copper, cobalt and gold. It is between permit n° 123 & 4729 of TFM Company and permits 802, 808 and Africa minerals Barbados, located between KANSENIA AND KATE, it contains 144 mining squares.
- Permit n° 2114 is an active title and in the course of being renewed. It contains 68 mining squares meant for the production of copper and cobalt. It is in the south-East of MAMFWE village in the neighborhood of KINSEDA.
- Permit N° 4003 for the small mine meant for the production of copper and cobalt. This permit is located in SHAMITUMBA and contains 32 mining squares.
- The last exploitation permit in N° 4 4004. It is located in LUPOTO village, not very far from Lubumbashi. It contains 174 mining squares and it is also meant for the production of copper and cobalt.

In these concessions, the company carries out intensive research activities on the importance of deposits a modern laboratory examining samples taken from different sites.

While waiting for an exploitation decision of these deposits, the company is supplied by artisanal mining exploiter for its smelting plant. This supply is done via other companies such as: MATADOR MINING which has the purchase supremacy on the mining products of SHAMITUMBA.

GB is a company with an undeniable dynamism. Its smelting plant and warehouse are not its only mining activities. The company offers other services to partners: staff transport, drilling, excavation, contents, mining, infrastructures...

Another proof of its dynamism is its partnership with GLENCORE- the world giant in mining exploitation, with whom it holds shares in MATANDA Mining project (MUMI) near Kolwezi

As for the selling of the products of Likasi plant various investigations have proved that GLENCORE was the main purchaser of copper and cobalt produced by GB.

1.2. **BAZANO Group and the environment management**

The environmental management of a mining company is first of all assessed against different surveys conducted before and while exploiting. They are namely: EIE, PGEP, Audit reports, inspection reports from the environmental services of the Ministry of mines. This allows checking whether the actions planned for alleviating negative impacts on the environment have been implemented and noticing some weaknesses in these studies and putting forth improvements. Unfortunately, we did not have access to any of these studies and the services in charge of the environment protection of the Ministry of mines explained to us that they were reluctant due to the fact that these studies would be plagiarized by other companies. Those answers were not convincing and proved the weakness of our state institutions on one hand and a will of non openness of companies on the other hand.

We thus limit our description of weaknesses noticed on the field before giving suggestions for any improvement.

1.2.1. Effluents processing

The smelting plant has a processing system of liquid effluents in closed circuit. This system allows to get back used water to be reused. There is no throwing up of effluents in the nature outside the installations

1.2.2. Atmosphere pollution

The pyrometallurgic plant of GB is located in KAMATANDA, a new residential quarter in LIKASI. It is on the Abattoirs Avenue. The inhabitants of this area keep complaining against many nuisances and incommodities since the setting up of this plant since 2005/2005. The main complaint is the atmospheric pollution. It is noticed through dust and smoke from the plant furnaces.

Dust

The Likasi smelting plant is located at the roundabouts of three main roads, two are tarred but they have completely degenerated and the third is in hard soil. The busy traffic, characterized by the regular passage of vehicles and other engines has greatly destroyed these roads that are turning into muddy puddles during the rainy season and give out much dust during the dry season. During the latter season, houses are invaded by dust that spreads over walls and furniture's. During our visit on the site, we met women in their homes and two young boys Joaquim BANZA 21 years and MUIMBA Gloire 19 years – both students at Likasi university who explained to us that in 2009, inhabitants made a delegation to meet the company authorities in order to ask them to tar these major roads so that nuisances may be alleviated, but till today there has been no solution.

As for the managers of GB, it is the residential quarter that has followed the plant and not the contrary. Moreover, they explain that the company warned against this nuisance by putting slag's on the concerned avenues. We are not convinced by these answers, on one hand the new KAMATANDA quarter started many years before the setting up of the

plant and on the other hand, we noticed that slag's were absorbed in the soil. Thus, that precaution was inefficient.

We should also point out that the territory rehabilitation makes part of the government's duty. The distribution of residential spaces to mining companies or to protected sites such as; park, expanses of water and the like have brought about controversies for years through the province. It is up to companies, specially in this context of a weak state like ours, to take measures that take into account the communities welfare.

Smoke emission

The smelting plant works for high scale production and gives out smoke specially at right and on week-ends. We noticed that during our stay in LIKASI. It is generally around 20 hours that the furnaces are activated. Chimneys are not very tall and smoke spreads everywhere on the land while making the breathing painful.

For all the above mentioned people we talked to in KAMATANDA, there are more and more cases of lasting coughing and pulmonic diseases. Due to the lack of means in order to conduct a deep exam in order to determine whether the particles responsible for people's health degeneration and the decrease of fruit trees productivity are from these companies in the quarter we visited.

1.2.3. Deforestation

KAMBOVE territory which contains LIKASI town experiences an intensive deforestation. This high pressure on forest has not started today and it is justified by the town expansion, search of wood energy and alternative farming with burning. Deforestation has greatly increased with the mining companies' need of wood and charcoal. Most of those using the pyrometallurgy as a processing mode of minerals use charcoal and wood and GB is one of them. The smelting plant daily use heating wood and charcoal for its production. Heating wood is used for drying essentially products, as said previously, got from the artisanal exploitation.

As said above, they are from the artisanal exploitation. The extraction and conservation of these products are done in humid environment. During the rainy season, humidity is acute due to rains and drying is thus an important aspect for the processing.

As for charcoal, it is used in the smelting plant for heating furnaces before activating them. The company purchases great quantities of wood and wood charcoal. Its main supplying site is along the road linking MWADINGUSHA to LIKASI at about 80 Km in the south of LIKASI. We stayed on the site for two days and noticed all the damages caused by the increase of needs of wood and charcoal. In general, farming has decreased as peasants are looking for immediate incomes from wood cutting and charcoal burning. For many people we discussed with – Father Médard KATUNASA, head father of Sainte Helene parish of MWADINGUSHA GB is to be blamed for a high scale deforestation of MWADINGUSHA territory. These consequences of deforestation are noticed already:

- Biodiversity degeneration giving way to the disappearance of forest woody products that peasants used to trade during hard times before the next harvest.

- Drying of water and of water expanses, access to drinking water becomes hard everyday and the situation is getting worse and worse due to the vegetation disappearance
- Decrease of farm products is very risky as people are busy with wood cutting and charcoal burning that gives incomes to the communities. What will happen when there will not be wood or charcoal to supply to GB? Where will people get money to purchase food in town from ?

The company managers do not agree with this saying that the quantity of wood they use is insignificant and they cannot be blamed for deforestation. This opinion is rejectable since responsables of the ministry of mines estimate about 20 tons of weekly needs of wood and charcoal by GB. That is an annual average of 1040 tons

This activity of GB and other mining companies in KAMBOVE territory will give way to great poverty in the future and farming will restart with difficulties due to the soil degeneration.

Figure 2: In time, a slag has been absorbed by the ground



Figure 3: A view of KAMATANDA



Figure 4: On LIKASI - MWADINGUSHA axes, this peasant say to resigned to the farming for trees cut...



1.3. GROUPE BAZANO and social responsibilities

To assess the achievement of commitments of GB towards the residing community against its smelting plant, we should have access to consultation reports as well as to PDD made by the company. Unfortunately, as for other environmental studies we did not have access to these documents and in the following lines we will only describe the social achievements of GB while insisting on potential conflicts with the community.

1.3.1. GROUPE BAZANO social achievements

- Bazano Farming

The company has got a farm “Bazano Farming” which spreads over 3000 hectares. It is meant for the production of maize and cattle rearing. This production is not only for employees, but for all the inhabitants of Likasi town who also appreciate the company's sales price.

- Bazano market

It is the most important of the GB's achievements in Likasi in Toyota quarter on the road to Lubumbashi. This market has contributed to the working conditions of traders in this quarter as well as to the quality of services to consumers who are Likasi inhabitants in general and of the quarter in particular.

- The green park

This park is beside BAZANO MARKET. Besides the space, neighbouring inhabitants fetch drinking water thanks to boreholes and tanks placed for maintaining the landscape of the park.

- Other achievements

GB has achieved other projects which are not always visible for the community. The report on the artisanal exploitation mentioned above gives the following list:

- Surgeon and traumatology center in Lubumbashi
- Water pumping station and an electric station with a generator at DACO hospital in Likasi
- Rehabilitation of a school (NGUZ training center) in Kolwezi
- Rehabilitation of MANIKA stadium in Kolwezi
- Etc....

1.3.2. Potential conflicts with the local communities

Social achievements of GB do not prevent quarrelling issues with the community. Our research allowed us to discover three potential causes of conflicts with the community; the relocation process, employment and access to drinking water.

Relocation

As for relocations, there is a permanent conflict between GB and a local church – Ngunga Africa. The latter used to occupy its followers' concession of seven hectares on Kamatanda road, but GB has bought this concession for storing its sterile. Ngunga Africa's followers were expelled from their concession and GB annihilated their action in justice. We would like to precise that according to the Congolese land right, a farming concession is generally distributed to physical or moral people through emphytheosis by the state. The emphytheosis is the plain right to enjoy a land belonging to the state, under one condition – to valorise it, entertain it or to pay the rent in nature or in cash (article 123 of the land law).

It is a temporary law whose period may not exceed 25 years. For the time being, it is threatened by research permits (or exploitation permits) that the ministry of mines delivers without checking on the field.

The above stated case is just an illustration. And it is regrettable to notice that companies take advantage of getting rich very quickly which prevails in land services of the state in order to commit such abuses.

We shared with Mr Emmanuel Mulango – spiritual head of this church – on this issue. He was sorry to see the company's procedure and the carelessness of justice services, who according to him, always side with the strongest party while explaining how GB put an end to the justice process launched by his church in 2005.

Access to employment

The setting of the company in Kamatanda quarter raised employment hopes in Young inhabitants in this quarter and in its neighboring areas, but they are very unhappy till today. The interlocutors we met as well GB employees said that at the time of setting up the company, many unqualified young people were hired. But with the activation of the smelting plant, things became more complicated. Access to employment, even for daily laborers, was possible only through sponsorships. They can't remember anything about

any job opportunity offer during all these years. Daily laborers are compelled to give 10% of their incomes to their sponsors and frustration is more than their initial hopes.

Access to drinking water

Kamatanda is one of the new neighboring quarters as we can see in our towns of South Katanga; no used water and rain water drainage, no connection to REGIDESO drinking water, neither to SNEL electric network.

As for drinking, inhabitants fetch water from ancient quarters at some hundreds meters and women have to walk this distance twice a day with containers on their heads.

Many times, requests were made so that a borehole would be drilled in the quarter by the company or women could be allowed to fetch water from the company installations where boreholes were drilled for the production of metals unfortunately, the company completely ignored these requests.

1.4. Partial conclusions and recommendations to GROUPE BAZANO

The population of Kamatanda quarter in Likasi has suffered very much from the setting up of the smelting plant on the exploitation site. It seems that many other companies we monitored previously like GB substitute political authorities to the community. They mostly take into account their opinions and a consideration while everybody doubts their commitment to the welfare of the common service.

However, managers of GB do not share our point of view. They assert that consultations are regularly organized with the community, the last one dated on June 2012. But all the people we questioned know about only one consultation dated back to 2005 – before the setting up of the smelting plant.

Joacqim, Gloire and other people (including the mines services of the state) we interviewed and did not want their names to appear in this report state that the company is not ready to listen even if the dialogue invitation is issued by the community.

Our First recommendation will be the opening of a permanent dialogue between GB and the Residing community. The good intelligence with this one constitutes security guarantees and prosperity for this important investment. The consultation idea by the mining legislation is the setting up of a permanent dialogue. Thus, there is need of setting up a consultation framework between the company's representatives and the representatives of the population of the smelting plant. This framework will serve for discussion on environmental impacts alleviations, the conception and implementation of PDD. The collaboration between political and administrative authorities should not be considered to be enough for ensure peace with the community.

On the environmental plan, we recommend to the company:

- To equip itself with a modern equipment that will prevent it to resort to wood and charcoal, and that will have dispositions for alleviating the damaging effect of its smoke.
- To tar the neighboring roads of the Likasi plant (or to regularly water them during the Dry season) in order to alleviate dust.

On the social plan :

- May the company take into account the population's priorities in its social achievements? We particularly think of access to drinking water and to employment by the population of Kamatanda quarter.
- To establish a constructive dialogue with Ngunga Africa church for a pacific resolution of the conflict that opposes them.

But in general, we call the companies' managers to evolve towards more transparency in order to save the image of GB.

Figure 6: BAZANO market at LIKASI



Figure 5: verdure park



2. The “Compagnie Minière du Sud Katanga” (CMSK)

2.1. Generalities

The mining company of South Katanga, CMSK in short, was created on May 14th, 2004 by a contract signed between GECAMINES and EGMF in the development framework of some deposits. Adopted on May 18th, 2004 the statutes of the new company will be modified due to the mining contracts reviews. The modified statutes were adopted on November 29th, 2009. This contract was a joint venture wherein GECAMINES brought the Luswichi mine, located at some 20km in the north of Lubumbashi town, on Likasi road. In the initial contract, GECAMINES had 40% of shares and EGMF 60%. In 2011, a conflict started between the two shareholders on the sale of the shares of EGMF to a third person. This conflict gave way to an agreement of September 25th, 2012, whereby GECAMINES got back the entire shares of the company. Officially, that agreement pleased the two parties; for Mr David Malta Forrest, this agreement gave to GFI the

opportunity to invest in priority sectors such as energy, public works and civil engineering. The General Delegate Administrator of GECAMINES registers the acquisition of shares of GFI in a very large frame that reorganizes GECAMINES so that it may be the first independent economic operator. This agreement proves the end that engulfs CMSK (maybe for a short period) in GECAMINES.

The exploited deposit during seven years by CMSK is thus located in Luswichi (P.E.527 IN CAMI). The name of the site is drawn from the river flowing in the area. This river is an affluent of another important river, KISWICHI, in Kawama village, a locality of about 6000 souls. KAWAMA is near the Benedictine Monks of (Notre dame de source) monastery. Exploited since the colonial period, the mine was closed in 1962 by UMHK because the exploitation condition became bad. EGMF, thus, brought in this partnership the mining activity.

The production was of 45 907.87 tons of concentrated copper and cobalt in 2010. The content was of 24.21 % of copper and 7.11% of cobalt. POLYTRIA Company is in charge of minerals transport and the export way is as follows: from Luswichi mine towards the transformation plant located in Kipushi, then from Kipushi to Dar Es Salam CK & K SERVICE MUKUBA warehouse, Dar Es Salam, (Tanzania) via KASUMBALESA. The minerals embarked in Dar Es Salam are brought to Belgium to the purchaser – CTA, at N°9 Pasteur Avenue, 1300 WAVRE.

It should be specified that the monitoring conducted in this survey was done before September 25th, 2012. It is related to CMSK company in its original shape.

Figure 7: A view on CMSK installation at LUSWICHI



2.2. ENVIRONMENTAL MANAGEMENT AT CMSK

CMSK inherited its installations from GECAMINES, which in its time did not take care of the environmental aspects. But we noticed that CMSK keeps increasing the pollutions that were already worse with its predecessor.

2.2.1. The pollution of Kafubu.

In Kipushi, CMSK processes its minerals by lixiviation and effluents are thrown up in Kafubu. This important water flow runs through the southern part of Kipushi city and Lubumbashi town. The Kafubu valley has always been green; the populations living in many villages all along this river live on gardening and artisanal fishing. They draw water from wells dug all along this river. Many farms are located in this valley and they are the main suppliers of fruits and vegetables to neighboring urban centers. Some farms have even started breeding fish.

Since the restarting of the mining exploitation noticed in the province since 2005, this river has become a banking place for effluents from mining companies. In 2006 and 2007 already PREMICONGO conducted research on the sources of pollution of Kafubu River. We pointed out CHEMAF as being the main responsible of the Kafubu ecosystem degeneration.

With time, pollution was going from bad to worse that motivated other NGOs to tackle this issue, too. Thus, recent researches have designated CHEMAF, SOMIKA and CMSK companies as being responsible for that pollution.

Consequences of this pollution are harmful for the population living in these villages; the whole Kafubu valley is dominated by a persisting disgusting smell. Water from wells has become improper to consumption due to an acute taste and smell. Garden crops are never produced as it is impossible to water them during the Dry season.

In fact, where they are watered with water from wells or the river, vegetables intently fade as if they were put in boiling water. In fish rearing étangs, fish die while struggling to put their heads out of water as if they were suffocated. The disaster is thus big for ecosystems as well as for the economic production of these peasants. Some months ago, civil society organizations took part in a court case against the concerned companies, among which CMSK.

2.2.2. Environnemental management at Luswichi

At the Luswichi mine, the environment management is not better than at Kipushi. We noticed air, water and soil pollution.

Air pollution is caused by the banking from the mine. Specially during the dry season, dust raised by winds spreads all over the locality. We previously explained the consequences of such pollution on the fauna, vegetation and people.

Luswichi mine is in the open air. After many years of exploitation, it has gone deep and is regularly filled up with water from the water table as well as from rain. This water is evacuated by powerful motor pumps for allowing the normal extractions activities.

It is immediately rejected above the mine banking and flows over a slope towards the village whose first houses are at about a hundred miles from the banking. The village is regularly floated in its western area (while considering the main road towards Likasi as a median). Surely, water carries with it harmful products contained in the mine and on the backings, with all the consequences for animals, plants and people. People should get ready for more harmful consequences in the future.

Alluviums end their flowing in Kiswichi river that flows in the south of the village. After having destroyed the vegetation and water fauna, these materials have made up a sand layer that is an important river obstacle. This day, the river is crossed on foot during the dry season. Water has found its way underground.

Figure 8: KAFUBU pollution by the mining activity



Figure 9: It's trough this canalization that CMSK drain off mine effluents toward Luswichi



Figure 10: right in the rain season, maize field in the layer of LUSWICHI

Figure 11: LUSWICHI source bellow a CMSK embankment



2.3. Social achievements of CMSK

At the social level, CMSK intervenes in different domains namely : education, health, infrastructures, arts,We should note that these achievements are not directly carried out by the company since GFI already made a specialized structure in the implementation of social actions on the exploitation sites of the group companies. This structure is Rachel Forest foundation.

2.3.1. At the education level

In Kipushi

The company has finalized the constructions and equipment of a secondary school, Mulumba Lukoji institute. Besides, while paying teachers' salaries, the company has made free the education of pupils going to this school. The annual financing of this school is 200, 000 USD.

In Kawama and Kiswichi

CMSK has started up the construction of a school since 2005, but we noticed that the school is still unfinished till today. It is thanks to parents' contributions that walls and

roofing were completed. These days pupils study in rooms without doors, windows and floor.

In Kiswichi, at about five hundred miles away from there, CMSK contributed to the rehabilitations of *NEHEMA institute* belonging to benediction monks. The financing of 600, 000 USD allowed the construction of a boarding house, two supplementary classes and a bathroom.

At Mimbulu (a village between Lubumbashi and Kipushi).

In Mimbulu village, a primary school has been under construction since 2011.

2.3.2. At the health level

- The rehabilitation of health center and the maternity of Kawama.
- The rehabilitation of Mimbulu health center (45 000 USD)
 - As for access to drinking water, CMSK contributed to the entertainment of a pumping station in order to improve the distribution of drinking water in Kipushi (project cost: 127, 187 USD) as well as the drilling of some boreholes in Kawama.

2.3.2. At the infrastructure level

2.3.2.

Besides the schools infrastructures, other infrastructures have been built or rehabilitated with the support of CMSK namely:

- The setting up of public light in Kawama.
- The construction of the chief's house in Kawama.
- A new catholic priests' parish house in Kipushi

2.3.2. At the production level

For complying with the provincial government's regulation that requests mining companies to back the farming production, the company keeps supporting the farming campaigns since 2008 while taking care of farmers through SHALAMO and ASVIE NGOs on the way from Luisha to Katanga. As Kawama – Kipushi farmers, they are under the care of PAKSHI and APFE NGOs. The contribution to the farming campaign 2010 – 2011 is about 439,075 USD.

2.4. Conflicts with local communities

The social achievements of CMSK do not protect this company from conflicts with local communities;

2.4.1. In Kafubu Valley

In Kafubu valleys with peasants and farmers are aware of the responsibility of this company (and two more others) on the destruction of their vital space. These communities organize themselves with the support of NGOs and claim for justice. An association of victims of this disaster has been made and Mr Ilunga of Umba Kyamitala farm is its president. He is determined to go everywhere so that victims may be

rehabilitated in their rights. This association claims for the end of pollution (which continues until now) and the compensation of all the damages done.

2.4.2. In Mimbulu

The initiative of constructing a school at Mimbulu is not the choice of the company. In 2007, a vehicle of the company knocked down a child of the village who was crossing the big road linking Lubumbashi to Kipushi. As a reaction, villagers took as “hostage” the company’s vehicles and banned their circulation on this road. Mr Bupe Kashioba – prince of Kaponda chieftaincy explains: We have been asking the company to construct speed breaks at Mimbulu village for years. They pretend not to hear until this unfortunate incident. All of a sudden they are ready for any concessions: speed – breaks have been placed and a school built in compensation. It is regrettable that these companies always wait for such events for talking to the communities living around their exploitation sites.

2.4.3. In Kawama

In Kawama, the situation is not better. Relationships between CMSK and the Kawama local community are not good. They are made of conflicts that sometimes result into violence. Conflictual topics are multiple:

Employment for young people.

Young people of Kawama criticize the company for not giving them employment in priority. The complete number of employees, part – time and permanent ones are recruited outside their village in towns. It is true that these young people do not often have professional qualifications, but it is noticed that in Kawama, not all employments require qualification and at the Luswichi mine, the company employs many unqualified workers.

Young people of Kawama develop a feeling of hatred and are ready at any action to damage the company.

Illegal minerals exploitation

These uneducated young people launch themselves into the illegal minerals exploitation. However, it should be said that all the young people are not natives of Kawama. Some come from big towns – Lubumbashi and Likasi for business. On the spot they find their allies who are ready to lend them some money.

These illegal exploiters sneak into CMSK installations and come out with minerals which they hide in the village for future evacuation to sales tables in Lubumbashi or Likasi.

Those who are discovered, they are arrested and sent to the court. But they have first of all be tortured by the industrial guard of CMSK according to some witnesses. For Mr Kiampo Jean, nephew to the chief of the village, the arrested people are ill-treated by the industrial guard post which also serves as a prison. They are beaten and starved to show examples to others.

This consequently increases the people’s hatred towards the company. Even those who disapprove of the actions of illegal exploiters are against the behavior of the industrial

guard of CMSK. These frustrations and humiliations justify the harsh hostile feeling of the population; these foreigners loot our resources and humiliate us on our ancestors' land.

Unfinished building sites

Another reason of the community unhappiness towards CMSK in Kawama is the fact of starting building sites which never finish. We have previously spoken about the construction which started in 2005 is still unfinished. Chief KAWELE Michel being away, we were received in his home by his wife. She is astonished by the fact that CMSK is incapable of finalizing its own initiative of building the chief's house. Her opinion is that the company's error is to give the project management to other people.

She condemns the monastery of "Notre dame des sources" that might have received the responsibility of social projects management on Luswichi site. For the monks we contacted, Rachel Forrest foundation partly financed the construction of the school, the boarding house and even a dispensary at Kawama which is managed by the congregation. But the projects backed up by the foundation at Kawama were under a convention between the foundation and a monk – personally. Or this monk passed away before finishing all the works and the congregation is unable to carry on with these works since they were not associated to these projects managements. The situation is embarrassing, at the same time for monks and the foundation. This is an illustration wherein partners fail when the company avoids collaborating straight with representatives of communities.

2.5. Partial conclusions and recommendations to CMSK

At the time of the publication of this report, CMSK does not exist anymore, except in its original formula. But these recommendations are addressed to this non – existing company. Those who have replaced it may draw inspiration from this for improving environmental and social management in the exploitation sites.

We, thus recommend to CMSK:

- To start up a dialogue framework with the local community in Luswichi, Kipushi as well as Kafubu valley for environmental and social impacts management.
- To revise the E I E of Luswichi mine, and the Kipushi concentration in order to modernize the measures taken for the attenuation of impacts (the decantation basin, bankings management, and cleaning of Luswichi).
- To compensate victims of the Kafubu valley.
- Complete projects started at Kawama namely the construction of a school and the chief's house.
- Train its industrial guard on human rights in order to put an end to tortures and violence on illegal exploiters who are arrested by the security of the society.

Figure 12: A KAWAMA village, chief house site since 2005, and unfinished school...



3. General conclusion, recommendations to the Congolese state

The flaws and weaknesses noticed in the implementations of social and environmental norms in Likasi, Kipushi, in Kafubu valley and in Luswichi are not due only to GB and CMSK companies. They are explained by the weaknesses of the mining legislation at work and in the disfunctioning of the state structures in charge of the monitoring of the implementation of the legal dispositions. As for the legislation weaknesses, an improvement opportunity is given to us with the future revision of the mining legislation at work and in the disfunctioning of the state structures in charge of the monitoring of the implementation of the legal dispositions. As for the legislation weaknesses, an improvement opportunity is given to us with the future revision of the mining code, the revision in which PREMICONGO actively takes part with other organizations members of the civil society organizations association working in the mining sector (POM). Recommendations addressed to the state are related to the flaws also noticed in the application of other legislations such as forest code and land code.

Nobody thinks that the flaws in the mining code on environmental issues may be filled in by the law on fundamental principles related to the environment protection, law published on July 9th, 2011. But its implementation needs to meet some conditions that are not ready until today. We think that it is important to introduce reforms on the environmental aspects in the mining legislation.

As for environmental aspects, here are the main problems we noticed as well as improvement suggestions:

- 1) The mining code blames the research or exploitation permit holder as being responsible for the damages caused on the environment by his activities only in case where he has not respected his environmental management plan (article

405 of the mining regulation). This means that GB and CMSK could answer for the caused damages only if they were planned in their respective PGEP. Which is a contradiction against the Universal principles admitted in environment principle which states that “polluter – payer”. We, thus, suggest that be introduced in the mining code an article which explicitly refers to the dispositions of articles 10, 11 and 12 of the law containing fundamental principles related to the environment protection.

- 2) Access to environmental and social surveys (E I E, PGEP, PDD, audit reports) being impossible from companies as well as state services, we suggest that the law makes easy the access to these documents in order to allow the communities to be well informed and protected. May companies be compelled to publish these survey’s on their websites and may national and provincial ministries websites also take these publications with hard copies that may be accessible to the public in the companies’ offices, ministries of mines and local administrations.

In relation with the compensation right, we suggest with the PDM :

- May the damages undergone by the communities be classified in two categories: category A that will relate to damages caused on villages relocation, fields expropriation and environment pollution. Category B will be related to other damages.

The article 281 of the mining code should be revised.

It is necessary that the dispositions of the law n°77 – 001 of February 22nd, 1977 on expropriation for public use be inserted. We suggest that a special compensation procedure for village’s relocation and field’s expropriation be defined by ministry directive.

- May the mining code give to peasants ‘associations and National registered NGOs working for the defense of communities’ rights the right to resort to the courts as a civil party for facts and damages undergone by their local communities.