

24 September 2009



KATANGA BRIEFING

CONVICTION OF GOLDEN MISABIKO, AND THREATS AGAINST FOUR OTHER HUMAN RIGHTS ACTIVISTS - A SIGNAL THAT THE MINING INTERESTS OF THE DRC'S POLITICAL AND MILITARY ESTABLISHMENT ARE "OFF LIMITS".

Rights and Accountability in Development (RAID), which closely monitors human rights in the Congolese mining sector, expressed its profound concern about the conviction of Golden Misabiko, the 53-year-old President of the Katangan branch of the *Association africaine de defense des droits de l'homme*, ASADHO-Katanga, a respected Congolese human rights organization. Mr Misabiko was charged with "propagation de faux bruits" (spreading of false information) which purportedly constitute "a threat to the internal security of the state" (« atteinte à la sûreté interne de l'Etat ») under article 199 *bis* of the Congolese Criminal Code. On 23 September 2009, a Lubumbashi court sentenced Mr Misabiko *in absentia* to four months in detention with a further eight-month suspended prison term. Mr Misabiko's lawyers are expected to lodge an appeal.

Mr Misabiko was first arrested in July 2009 after the publication by ASADHO-Katanga of a report entitled, « *Mine uranifère de Shinkolobwe: d'une exploitation artisanale illicite à l'accord entre la RD Congo et le groupe nucléaire français AREVA* ». The report, published on 13 July 2009, alleged that minerals from the Shinkolobwe uranium mine, despite a formal ban, were being exploited. The report claimed that the trade was controlled by senior figures in the Congolese Armed Forces (Forces Armées de la République Démocratique du Congo, FARDC). The FARDC have a military camp, Camp Moura, adjacent to the Shinkolobwe concession. ASADHO's report referred to an incident in early February 2008 in which a FARDC Captain and soldiers from Moura Camp kidnapped a group of military policemen, who had come to investigate the illegal exploitation of minerals from Shinkolobwe. Lieutenant Ngalamulume, an official of the Likasi military prosecution service, was shot dead while attempting to free his colleagues. The Military Prosecutor (*Auditeur Militaire*) in Likasi filed a report to his commanding officers about the incident (RAID has had sight of the prosecutor's report).

In April 2009, ASADHO had called upon the French company to provide assurances that it would take steps to protect communities and the environment near its sites. ASADHO's report also called for clarification of the terms of the agreement signed in March 2009, during a visit by President Sarkozy to the DRC, between the Congolese government and France's state-controlled nuclear energy group Areva ([CEPFI.PA](#)) to prospect and mine uranium in Katanga, including the Shinkolobwe. Both the DRC and

French governments are members of the Extractive Industries Transparency Initiative (EITI).

In August 2009, Amnesty International, Global Witness, Protection International and RAID called on the Congolese authorities to withdraw all criminal charges against Mr Misabiko. According to RAID, the proceedings did not conform to international standards for a fair trial. At the time of his arrest, the authorities in Katanga had neither seen nor read a copy of ASADHO's report and so had no legitimate grounds to detain him. According to Samentha Goethals, a RAID staff member, who observed the hearing on 26 August 2009, Mr Misabiko, whose health is poor, was put under intense pressure by the Court to disclose his informants. The court disallowed information from other published sources, which might have corroborated ASADHO's allegations. The main evidence used against Mr Misabiko - a report of a DRC official Commission of Inquiry (sent to Shinkolobwe to verify the allegations in ASADHO's report) - was not disclosed to the defence lawyers.

While the more serious charge of treason was dropped, RAID is nonetheless concerned about the sentence handed down by the Lubumbashi Magistrate's Court (*Tribunal de Paix*). The sentence is a violation of the right to freedom of expression and seems to be intended as a warning to Congolese human rights defenders not to overstep the mark. The Kinshasa authorities have not objected to NGO criticism of other companies like First Quantum Minerals (FQM) and Freeport McMoran. Last week, following the cancellation of its contract for the Kingamyambo Musonoi Tailings project (KMT), FQM's newly constructed copper and cobalt processing plant in Kolwezi was seized by the Provincial Attorney General and its workforce were ordered to leave. FQM has declared '*force majeure*' and is expected to take the case to international arbitration.

"The harsh treatment of Mr Misabiko and the threats against the other NGOs is a warning that they shouldn't meddle in mining activities in which members of the political and military elite are implicated," said Patricia Feeney, RAID's Director."

Mr Misabiko was released on bail on Thursday 20 August on medical grounds. While in custody he developed severe abdominal and chest pains. He is currently receiving medical treatment.

"It is clear from the medical reports from the *Polyclinique Medicare*, the private clinic which treated him, and from my own personal observation of Mr Misabiko, whom I visited at the end of August, that he is not in a fit mental or physical state to withstand more months in detention" said Samentha Goethals.

In recent days, three other prominent human rights activists, who had organized protests about Mr Misabiko's detention and trial, have received anonymous telephone death threats. Emmanuel Umpula Nkumba (Executive Director of *Action contre l'impunité pour les droits humains*, ACIDH and OECD Watch), Grégoire Mulamba

(Executive Secretary of the *Centre des Droits de l'Homme et du Droit Humanitaire*, CDH) and Timothée Mbuya (Vice President of ASADHO-Katanga) were warned that 'they would be next' and that 'once they were dead they'd be unable to organize any more marches'. The telephone calls were made from two numbers, which should be easy to trace. Some messages contained indirect threats against a fourth person, Madame Dominique Munongo, a member of the Royal Sanga family and head of the *Centre de développement pour la femme*, a Lubumbashi-based NGO working for women's rights. [Mme Munongo is the daughter of the Traditional Chief of the Bayeke, leader of the southern Katangan, Sanga tribe. He was a Minister in the short-lived, secessionist government set up by Moïse Tshombe in Katanga - formerly Shaba - at independence. Her brother is a Senator in the ruling *Parti du Peuple pour la Reconstruction et la Démocratie*, PPRD.] The anonymous callers also mocked the NGOs for relying on the UN for protection.

According to artisanal miners interviewed by RAID in August 2009 in Likasi, the town nearest to the Shinkolobwe mine, the exploitation of uranium-rich minerals has declined over the past year. In part, this is due to a clamp-down by the authorities on the purchase by trading houses of minerals, which have a significant radioactive content. Traders have been given Geiger counters to measure the level of radioactivity. Even so the clandestine trade continues allegedly carried out by soldiers from Moura camp.

The threats against the human rights defenders have continued and become more aggressive. On 18 September, the three of the NGO activists received renewed threats immediately after they had held a press conference, which was widely reported on local television and radio stations. On 21 September 2009, they received text messages warning them that they and Dominique Munongo had 48 hours to get out of Lubumbashi. According to the NGOs, to date the authorities have taken no effective action either to track down or apprehend those responsible for the threats despite their having been given the mobile phone numbers that the calls and texts were made from.

There are other signs of mounting tensions in Katanga. On 10 September 2009, the Provincial Minister of Mines, Juvenal Kitungwa, was detained by agents of the Congolese intelligence services (*Agence nationale des renseignements*, ANR) allegedly on the orders of the President's mother, Maman Sifa. The Minister's body guards had allegedly seriously assaulted an individual, who had falsely claimed to be an official from the Land Registry (*Cadastre Foncier*) and had illegally distributed plots of land. Some of the buildings constructed on these unauthorized plots allegedly belong to members of the President's family. It was reported that Juvenal Kitungwa would be transferred to Kinshasa for prosecution.

Since July 2009, there has been a growing intolerance to any perceived criticism of the Kinshasa Government and its circle.