

Demolitions at Kawama

RAID briefing, November 2012

The Non-Governmental Organisations **RAID**, **ACIDH** and **FIDH** have supported the efforts of the residents of **Kawama**, a village on the outskirts of Lubumbashi in the **Democratic Republic of Congo** (DRC), to seek compensation for their homes, which were demolished in an operation undertaken in 2009 by the Congolese police and the *Compagnie Minière du Sud Katanga* (South Katanga Mining Company – CMSK). At the time of the incident CMSK was a joint venture between *Entreprise Générale Malta Forrest* (EGMF) and Gécamines (the Congolese state-owned mining company). EGMF, a subsidiary of **George Forrest International**, had a majority shareholding in CMSK. For over two years, all attempts by representatives of the affected community to reach a settlement with the company and to obtain compensation from CMSK and the Congolese authorities were unsuccessful. In April 2012 ACIDH, FIDH and RAID filed a



complaint with the Belgian Government's National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises, after efforts to engage the parent company in negotiations were rebuffed.

On 24 November 2009 CMSK, which operates the Luiswishi mine near Lubumbashi, DRC, supported and participated in the demolition of hundreds of houses in the village of Kawama, in the vicinity of the mine. More than **500 homes** were crushed by bulldozers leased to CMSK, two children of hotel owner, **Kayembe**

Lupezo, died when the walls of their home collapsed, and several other people were seriously injured. In the twelve months leading up to this event, several people had been harmed or killed after being subjected to violence on the part of security personnel and police guarding the Luiswishi mine.

According to the Congolese human rights organisation ACIDH, there had been an increasing number of violent incidents between mine police and suspected *creuseurs* (artisanal miners) over the period immediately preceding the demolitions.

- **9 September 2008:** M Nono Kanda was locked inside a hut which was then set on fire allegedly by police engaged in protecting the mine. On 11 September 2008 M. Kanda subsequently died of his injuries at the Sendwe hospital.
- **19 September 2008:** M. Eradi Wakyona, who was visiting Kawama, was hit in the leg by a stray bullet, believed to have been fired from the CMSK concession.
- **23 September 2008:** at around 7pm M. Christian Yumba was allegedly severely beaten by a plainclothes police officer, Raymond Yombo of Bureau 2 (intelligence), after Yumba had tried

to assist an injured friend, M. Amuna Pauni. Pauni's legs had been crushed after allegedly being deliberately run over by a CMSK driver.



▪ **17 October 2009:** M. Boka Lilanga was shot at point blank range allegedly by Brigadier Ilunga, a police officer assigned to provide security to CMSK.

The Managing Director of CMSK, Edmond Twite Kabamba, in response to a press release, sent a letter to ACIDH on 15 December 2009, stating that it was the Congolese authorities who had ordered the removal of temporary shelters used by *creuseurs* involved in illegal mining on CMSK's concession. The company denied that any houses belonging to villagers uninvolved in illegal mining activity had been demolished. According to CMSK the evictions had been lawfully carried out on the basis of a warrant issued by the public prosecutor (*Procureur of the Tribunal de Grande Instance du Haut Katanga* at Kipushi).

The violent evictions and demolitions were apparently part of a campaign by CMSK to clamp down on alleged illegal mining by *creuseurs* inside the Luiswishi concession.

However, the brick houses and other buildings that were demolished on the 24 November 2009 did not belong to illegal *creuseurs* but to families who made their living mostly from farming or selling charcoal. As a result of this incident, nearly 500 families were left without shelter at the start of the rainy season.

The NGOs claim that in acting as they did, EGMF – and, by extension, the parent company, George Forrest International – was in breach of the recommendations of the **OECD Guidelines** as well as the Guiding Principles on businesses and human rights, adopted in June 2011 by the **UN Human Rights Council**. In September 2012, just before mediation under the Guidelines was due to start, GFI announced that it had sold back its shares in CMSK to Gécamines.



International human rights law enshrines the right to an effective remedy, which guarantees that victims of human rights violations have access to justice and compensation. Despite these clear abuses, neither the Congolese authorities nor CMSK have tried to reach a settlement with the people who lost their homes and property during the incident two years ago. The Governor of the Province made vague promises to the UN that the company would be prepared to settle but nothing has come of this. Moreover, the UN and villagers were warned by the governor's *Chef de Cabinet* that if they took legal action then any prospect of a settlement would be lost. According to

Desire Mukeba, the chief spokesperson for the affected families, whose dispensary and home were demolished, “After the demolitions, the Governor of Katanga’s office, which was in touch with CMSK management, told us not to make a formal complaint, because they would negotiate a settlement on our behalf. Lists were even drawn up, fixing the level of compensation to be paid to each of the affected households. But the dossier was blocked and the governor’s representative refuses to meet us any more.” On 8 October 2010, after a group of residents tried to see officials at the governor’s office they were beaten by police and some were briefly arrested.

The Forrest group denies liability.

Impact of the demolitions on people’s lives and livelihoods

NGOYI SABINA, 56 years old, she has lived in Kawama since 2003. Her children are no longer in school and she is living in a tent made of plastic sheets. “Since my home was destroyed I am always ill. The Government of Katanga chased us away when we tried to go there for help.”

MAYONGA KABWIZA, 45 years old, a widow with five children. She has lived in Kawama since 2007. “Since the demolitions I no longer have work and my children are no longer able to continue their studies. When we went to the governor’s office to complain we were driven away like idiots, some people were beaten and others were arrested.”

TSHITEBA SONI JEAN, born 1983, father of three children, he has been living in Kawama since 2003. “Now my wife and my children and I are all living in a single room. I am not able to rebuild my house. My children no longer go to school as I have no financial means. “

YAV NDAMBU , born 1962, father of four children, he has lived in Kawama since 1970. “CMSK bulldozers destroyed my house, which had 12 rooms, and all our belongings with it. When they destroy your home, they kill you. It is not easy to rebuild the house.”

KALENDA THOMAS, born 1963, eight children, he has lived in Kawama since 2000. “Now I live in a plastic tent with my wife and children. They no longer go to school. We complained to the governor’s office but nothing came of it. In fact the police at the governor’s office beat us up and some of us were arrested.”

MULIKITA TSHOLA SYLVAIN: born 1980, father of three children. He was born in Kawama and has lived there all his life. “I worked in the fields before the demolition and I still do. But after this blow, it is difficult to pick up the pieces.”

MASKEA RAYMOND: 65 years, unemployed married with 8 children and 25 grandchildren. He has lived in Kawama since 1966. “CMSK destroyed my four-roomed house and many of my belongings like beds and clothes. As a result of the demolition, my life is like that of an insect.”

KAYEMBE LUPEZO: 58 years, unemployed, father of 13 children who has lived in Kawama since 2005. “CMSK destroyed my hotel. It was called Grand Lac and had 48 rooms. During the demolition I was unable to recover any of my belongings. Everything was destroyed. The worst thing was the loss of two of my children, who were killed when the walls collapsed on top of them. Since the demolition of my hotel I have gone through a truly difficult time. At the moment I live in a plastic tent because I don’t have money to build. Since my hotel was destroyed I feel that I am already dead.”

SEBASTIAN BADIBANGA NSAMBUKA: born 1964, father of eight children. He has lived in Kawama since 2006. “I had a two-roomed house, one room was used as a dispensary. I lost \$3000 worth of pharmaceutical products stored there and all my belongings. I now rent a single room. One of my children died after the demolition because I didn’t have money to take him to hospital.”

DESIRE MUKEBA: 45 years, father of five children. He has lived in Kawama for 15 years. He is the representative of the affected families. “I lost my dispensary and my house and all our belongings. I lost microscopes, beds, medicines, chairs, televisions, radios, clothes, my children’s school things. Now I am living in two rooms with some of my children and the others live in Lubumbashi. I earn my living as a petty trader selling clothes in Kolwezi, which is 300 Kms from Lubumbashi. I give credit and wait to be paid at the end of the month. It is difficult for me because I used to work as a doctor but now I am forced to travel on trucks with all of the risks just to sell clothes on credit. It is difficult to keep the children in school as I am often late in paying their school fees.”

OECD Guidelines – no remedy for claims of alleged corporate abuse

The complaint was filed only after it became clear that the Congolese authorities were blocking an inquiry by the prosecutor into the forced evictions and when all attempts to have a constructive dialogue with the company in the DRC and Belgium had been rebuffed. The company denies all responsibility for the demolitions and other human rights abuses. According to GFI its mine had been invaded by artisanal miners and it was the Congolese authorities who had authorised and carried out the evictions.

The complaint alleged that a number of human rights provisions of the OECD Guidelines had been breached. Three meetings took place between September and November in Brussels under the auspices of the NCP. The company’s unwillingness to take the process seriously was evident throughout. The OECD’s procedural guidance requires the NCP to act in a manner that is impartial, predictable and compatible with the principles and standards of the Guidelines. In the Kawama – Forrest Group case, the OECD procedures were completely disregarded from start to finish and the mediation was deeply flawed. The well documented complaint was belatedly declared ‘inadmissible’ but no grounds were provided. Despite rejecting the OECD complaint, the NCP undertook mediation. But there were no agreed terms of reference and the Belgian NCP, far from being neutral, took unilateral decisions about the scope of the discussions and the nature of the remedial action that might be considered. Information provided to the NCP – such as the report of the Belgian consul – was not shared with the NGOs. It appeared that the company was not engaging in the process in good faith and was simply dictating its terms to the NCP. The company’s offer, though it has some proposals to improve access to water and health services in Kawama, does not offer any compensation for those directly affected by the demolitions and those individuals who sustained serious injuries. The offer therefore cannot be seen as an effective remedy. The Belgian NCP expressed the view at the start of the procedures that the purpose of the OECD Guidelines was to help improve the image of Belgian companies, though whether this has been achieved is open to question. The OECD Guidelines are supposed to be a means of upholding responsible corporate behaviour and against that benchmark the Belgian NCP’s efforts must be judged a failure.