



global witness

# Digging in corruption

**Fraud, abuse and exploitation in  
Katanga's copper and cobalt mines**



A Report by Global Witness July 2006

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Katanga's copper and cobalt mines**



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## Acronyms

**ANR** Agence nationale de renseignements

**CMKK** Coopérative minière Madini Kwa  
Kilimo

**COPIREP** Comité de pilotage de réforme  
des entreprises publiques

**DRC** Democratic Republic of Congo

**EITI** Extractive Industries Transparency Ini-  
tiative

**EMAK** Exploitants miniers artisanaux du  
Katanga

**EU** European Union

**FARDC** Forces armées de la République  
démocratique du Congo

**Gécamines** Générale des carrières et des  
mines

**IFC** International Finance Corporation

**MONUC** Mission de l'Organisation des  
Nations unies en République démocra-  
tique du Congo

**NGO** Non-governmental organisation

**OFIDA** Office des douanes et accises

**OCC** Office congolais de contrôle

**Policar** Police des carrières

**PMH** Police des mines et des hydrocarbu-  
res

**PPRD** Parti du peuple pour la reconstruc-  
tion et la démocratie

**SAESSCAM** Service d'assistance et d'en-  
cadrement du small scale mining

**SNCC** Société nationale des chemins de  
fer du Congo

Global Witness is a British-based non-governmental organisation which investigates the role of natural resources in funding conflict and corruption around the world.

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Cover picture: Young man carrying sack of minerals, Ruashi mine, Katanga, November 2005.

Back cover: Artisanal miner coming out of a mine-shaft, Katanga, 2005 © Private.

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## I. Summary



Map of Katanga province. Courtesy of the International Crisis Group, [www.crisisgroup.org](http://www.crisisgroup.org)

The province of Katanga, in the south-east of the Democratic Republic of Congo (DRC), is one of the world's richest copper and cobalt producing areas. Yet the people of Katanga, as in the rest of the DRC, remain extremely poor, and the state has failed to provide most of the province with basic infrastructure and public services, especially in rural areas.

The mining sector in Katanga is characterised by widespread corruption and fraud at all levels. A significant proportion of the copper and cobalt is mined informally and exported illicitly. Government officials are actively colluding with trading companies in circumventing control procedures and the payment of taxes. The profits are serving to line the pockets of a small but powerful elite – politicians and businessmen who are exploiting the local population and subverting natural riches for their own private ends. Large quantities of valuable minerals are leaving the country undeclared, representing a huge loss for the Congolese economy and a wasted opportunity for alleviating poverty

and enhancing development. A local source estimated that at the end of 2005, at least three quarters of the minerals exported from Katanga were leaving illicitly.<sup>1</sup>

The mining industry in Katanga has two parallel sectors: the formal sector, where foreign and multinational companies use industrial mining methods, and the informal or “artisanal” sector, where tens of thousands of individuals dig for minerals independently, in a completely unregulated environment. Most of the products mined artisanally are exported raw, usually in the form of heterogenite, which contains copper, cobalt and a range of other minerals, or, increasingly, as malachite, an important ore of copper. This means that even when these exports are declared, the DRC is losing out on the higher prices it could obtain if it processed the minerals before exporting and selling them. Instead, processing takes place in Zambia, South Africa, or in the final country of destination – most often China or other Asian countries – providing considerable economic gain for those countries but little added value for the DRC.

This report updates a Global Witness report entitled “Rush and Ruin: The Devastating Mineral Trade in Southern Katanga”, published in September 2004. The present report is based primarily on field research carried out by Global Witness in Katanga in November and December 2005. Global Witness researchers interviewed a wide range of people in and around the provincial capital Lubumbashi; in the mining areas of Likasi and Kolwezi; at Kasumbalesa (the border post between DRC and Zambia); in the Congolese capital Kinshasa; and in Zambia, DRC’s southeastern neighbour through which the minerals are exported. Those interviewed included miners, middlemen known as *négociants*, transporters, representatives of mining and trading companies, government and security force officials, trade unionists, members of non-governmental organisations and other members of civil society. Further research was carried out in Zambia and South Africa in January and February 2006.

The main focus of this report is on the artisanal mining sector. The exact number of artisanal miners in Katanga is not known – there are no accurate records or statistics – but at the end of 2005, their number was estimated at around 150,000 or more.<sup>2</sup> This report documents the ruthless exploitation of artisanal miners by government and security force officials and trading companies. At local and provincial levels, officials from various government departments, including the ministry of mines, the police, customs, intelligence services and local government offices, are all extorting large sums of money from miners in a system of institutionalised corruption. The association claiming to represent artisanal miners, *Exploitants miniers artisanaux du Katanga* (EMAK), is also extorting money from miners instead of protecting their interests. *Négociants* are financially exploited by the trading companies to whom they sell the minerals and are forced to accept prices which do not correspond to the real value of the products.

In addition to their financial vulnerability, artisanal miners in Katanga are working in harsh conditions, without protective clothing, equipment or training. Scores of miners die every year in preventable accidents, most commonly when they are trapped by collapsing mineshafts. No one is investigating or taking responsibility for these deaths or for the welfare of artisanal miners. Yet miners continue taking these risks, because there are so few alternative sources of livelihood for them.

The formal mining sector in Katanga has not been free of corruption, exploitation and abuse either. Global Witness did not carry out in-depth research into the formal sector in

Katanga in 2005, but has noted a number of worrying developments concerning large mining contracts drawn up under the transitional government of the DRC. This report outlines concerns about some of these contracts signed since 2004. These relate primarily to complaints expressed by people in Katanga about the imbalanced nature of these contracts which ensure disproportionately large shares of the profits for foreign or multinational companies and a negligible amount for the state mining company Gécamines. Local perceptions of imbalance and unfairness have been reinforced by the lack of transparency surrounding these contracts and the absence of public debate and consultation. This situation has created deep resentment among the population in Katanga who see potentially vast profits from these mining operations flowing out of the country, with little or no change in their standards of living.

The report also highlights the involvement of high level political actors in the negotiation of these contracts and in syphoning off the profits from the mineral trade in Katanga – the heartland of President Joseph Kabila.

The situation in Katanga has implications far beyond the province. Unlike other regions of the country, the southern part of Katanga, where the copper and cobalt mines are located, was not the scene of fierce fighting during the war in the DRC and has remained under government control. Despite this, extensive corruption, abuse and illicit practices have persisted in the mining sector, and the relative stability in the area has brought none of the expected benefits of the natural wealth. Katanga should serve as a stark warning for the future of mining areas in less stable parts of the DRC. If the government has been unable or unwilling to reform the management of natural resources in an area over which it has retained firm control, the chances of instituting such reforms in conflict-stricken areas of the country may be even more remote. The Congolese government and donor governments should take prompt action to reverse this situation in order to prevent a further slide into chaos.

Historic elections which are due to take place in the DRC in July 2006 represent a unique opportunity for fundamental reform. This report contains recommendations for action which should be priorities for the new government. If these reforms are embarked upon without delay, they could have long-lasting effects for the development of the country as a whole and for the revitalisation of its economy. They would also mark an important step in putting an end to decades of corruption and impunity in the mining sector and ensuring that the Congolese population finally starts to benefit from the natural wealth of their country.

## II Recommendations

### 1. To the Congolese government

#### i) Measures to eradicate corruption, improve export controls and increase returns from the DRC's minerals to the state

- Recognize the urgency of eradicating corruption across government departments and the security forces, at national, provincial and local levels, and implement reforms to this end without delay – including in OFIDA (the customs department), the Ministry of Mines, the police, the ANR (intelligence services) and the OCC (control agency). Investigate specific allegations of corruption against individuals in these and other departments; immediately suspend those responsible and, where appropriate, initiate prosecutions.
- Ensure that all revenues collected at the border are declared and that statistics on mineral exports are accurately recorded and channelled to the capital Kinshasa.
- With the assistance of donors, strengthen border controls, including the verification of quantity and quality of mineral exports and the provision of authentic, accurate documentation by exporters. Weighbridges should be used and maintained as a regular part of the control procedure.
- Issue strict instructions to officials responsible for export controls not to authorise exports which do not conform to legal requirements. Support officials who try to resist offers of payment in exchange for facilitating illicit exports.
- Encourage the development and refurbishment of facilities for processing minerals within the DRC in order to increase the value of exported goods.

#### ii) Measures to improve labour conditions and safety for artisanal miners

- Take immediate measures to exercise oversight over the artisanal mining sector, improve the working conditions of artisanal miners and ensure that existing legislation, including the Mining Code and the Labour Code, is implemented. The Ministry of Mines should take on overall responsibility for policy in this area, in coordination with the Ministry of Work, and should liaise closely with the police in enforcing the law at the mines.

- Ratify and implement the International Labour Organisation's Occupational Safety and Health Convention (no.155) and accompanying Protocol of 2002, and the Safety and Health in Mines Convention (no.176).
- Organise a basic training programme for all artisanal miners, including education about the law and health and safety requirements. This should be a priority for SAESSCAM in its programme of work in Katanga.
- Ensure that SAESSCAM has sufficient resources, training, government support and oversight to be able to operate effectively and independently. Safeguards against corruption should be put in place in SAESSCAM, as in other government departments. In order to ensure that it acts in the best interests of miners, SAESSCAM should not become involved in buying and selling minerals itself.
- Carry out thorough and independent investigations into all reported cases of deaths and injuries at the mines; provide compensation, as appropriate, to the victims or their families.
- Ensure that mines or sections of mines which are known to be unsafe (including Shinkolobwe mine) are permanently closed off and deploy an adequate and effective police presence to prevent miners from entering these areas. Police or military officials found to have facilitated or organised the entrance of miners in exchange for payment or a share of the profit of these illegal mining activities should be suspended immediately and prosecuted.
- Strengthen law enforcement and awareness-raising measures to prevent children from working in the mines. Police deployed at the mines should not allow children under the age of 15 to enter the mines under any circumstances.
- Ensure that law enforcement at the artisanal mines is provided by adequately-trained police personnel. Other officials, such as ANR and the Policar (EMAK's security arrangements), should be removed from the mines.
- Review the role of EMAK with a view to suspending its activities unless it can demonstrate that it is acting in the interests of miners and using membership fees in a responsible and transparent way.



Children working in a mine, Kolwezi, Katanga, November 2005. © Private

### iii) Measures to install transparency and fairness in mining contracts in the formal sector

- Ensure that the report of the parliamentary commission on contracts signed during the wars (Lutundula Commission) is debated without delay and its recommendations acted upon. In particular, contracts found to be invalid or illegal should be suspended immediately, and individuals found responsible for corruption, for using profits for personal enrichment and for other abuses should be prosecuted. Extend the mandate of the commission beyond the end of the transitional period and enable it to investigate contracts signed during the transition (2003 to 2006).
- Ensure that any future contracts with foreign mining companies are drawn up in a transparent way and provide a fair deal for Gécamines with a view to increasing revenues for the Congolese state. Final agreement on any such contracts should be preceded by an independent feasibility study into the potential of the mines and existing and potential capacity and resources in Gécamines. The value of Gécamines's contribution should be adequately reflected in the final agreement. Information about the contracts should be made publicly available.

### 2. To trading companies operating in the artisanal sector

- Systematically and accurately declare all exports of minerals and pay the appropriate official taxes.
- Ensure that the working conditions of artisanal miners who supply them meet minimum health and safety standards, including where the employment of miners is subcontracted to another company.
- Ensure that miners and négociants are paid at adequate levels and that prices are proportionate to the quantity and quality of the minerals offered.
- Provide protective clothing and equipment to artisanal miners who are supplying them or working for them.
- Refuse to buy products originating from mines where labour conditions do not meet basic health and safety standards.

### **3. To mining companies operating in the industrial sector**

- Investigate reports of corruption among employees, management or board members and take measures against those found responsible.
- Declare all payments made to the DRC government and to particular individuals in or close to the government.
- Participate in the Extractive Industries Transparency Initiative (EITI).
- Include provision for the absorption and training of local artisanal miners and former Gécamines employees in the context of staff recruitment for new or expanded operations.

### **4. To donor governments and international financial institutions**

- Pursue reform programmes aimed at improving the efficiency of government departments responsible for controlling exports and revenues, including the customs and tax departments. Priority should be given to tightening border controls, including through updated equipment, technology and training, and oversight mechanisms to cut down on fraud and corruption.
- Provide assistance to strengthen the capacity of the Ministry of Mines and the Ministry of Work at provincial and local levels, including through the establishment of well-trained and adequately resourced personnel.
- Encourage the Ministry of Mines to enforce regulations prohibiting the export of unprocessed minerals.
- Encourage the government to improve the labour conditions of artisanal miners and exercise oversight of the artisanal sector. Support initiatives aimed at absorbing artisanal miners into the workforce of industrial mining companies.
- Prioritise effective anti-corruption and governance reforms in the natural resources sector in the development of overall policy towards the DRC and in discussions with the Congolese government. Set specific conditions for non-emergency or humanitarian assistance and loans to the Congolese government, including measurable progress in tackling corruption, greater transparency

in the declaration of revenues and use of revenues from mineral exploitation for poverty reduction and development.

- Urge the government to take action on the findings of the Lutundula Commission's report on contracts signed during the wars and to extend the mandate of the commission to investigate contracts signed during the transitional period.

### **5. To the governments of Zambia, South Africa and other countries through which minerals from the DRC are exported**

- In view of well-documented patterns of fraud at the DRC-Zambia border, develop and enforce stricter procedures to verify that imports of copper and cobalt ores and concentrates are legitimate and have not been smuggled or fraudulently exported from the DRC.
- Differentiate, in all statistics, between domestic production of copper and cobalt and that which is imported from the DRC, and record the level of concentration in the minerals.
- Improve communication and cooperation with the DRC customs office (OFIDA) with a view to preventing smuggling and illegal imports of copper and cobalt into their countries.

### **6. To the government of China**

- In cooperation with the government of the DRC, investigate allegations that Chinese individuals and companies may be sourcing and exporting copper and cobalt ores from the DRC illegally.
- Take appropriate action to ensure that Chinese individuals and companies buying ores in Katanga act according to the law in the DRC.
- Urge Chinese companies operating in Katanga to ensure that the labour conditions of their own workers and those who supply them meet minimum health and safety standards.
- Encourage the Congolese government to clamp down on corruption and on the illegal exploitation of minerals from Katanga.



### III Background



Village between Lubumbashi and Likasi, Katanga, November 2005.

#### 1. The conflict<sup>i</sup>

The war in the DRC is estimated to have claimed around four million lives since 1996. Military from the Congolese national army, a multitude of Congolese rebel groups and militia, and armies from neighbouring countries have all ruthlessly targeted the civilian population in their scramble for political and economic power. One of the key factors in the war has been the country's vast natural wealth. Indeed, much of the fighting, especially in the east of the country – the region most severely affected by the conflict – has been centred around the control of rich mineral deposits, including gold, diamonds, copper, cobalt, coltan and cassiterite (tin ore), as well as timber. Mining areas have changed hands repeatedly in power struggles between the army and rebel groups and between constantly shifting alliances of different army and rebel factions. These groups have all used the profits from these natural resources to fight an exceptionally brutal war.

Finally, in 2003, following protracted and difficult peace talks, a transitional government was created in the DRC. Headed by President Joseph Kabila – son of Laurent-Désiré

Kabila who toppled President Mobutu in 1997 – the transitional government is an uneasy coalition of all the main parties to the conflict, with leaders of the most violent rebel groups ruling alongside their former battlefield opponents; it also includes representatives of the political opposition who were not involved in the war.

The transitional government has done no better than its predecessors in restoring stability and respect for human rights in the DRC, nor in redistributing the country's natural wealth. On the contrary, the three years of its existence have been marked by systematic abuses and corruption. Despite the deployment of a UN peacekeeping force (known by its French acronym MONUC) authorised by the UN Security Council in 1999, fighting has continued throughout the transitional period, particularly in the eastern provinces of North and South Kivu and in the north-eastern district of Ituri, in Province Orientale. The plunder of the country's natural resources by the state and powerful individuals within it, as well as by rebel groups, has persisted, even though there may have been shifts in the patterns of appropriation.<sup>ii</sup> If anything, it has increased as the life of the transitional government is nearing its end. Elections, originally planned for 2005, are now scheduled for 30 July 2006.

<sup>i</sup>This section provides just a brief overview of the conflict in the DRC. More detailed information can be found in numerous reports by Congolese and international NGOs, UN agencies and others. For information about the role of natural resources and conflict in the DRC, see Global Witness reports "Same Old Story: a background study on natural resources in the DRC" (June 2004) and "Under-mining peace: Tin – the explosive trade in cassiterite in eastern DRC" (June 2005), and the four reports of the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the DRC, produced between April 2001 and October 2003. For information about human rights abuses committed during the conflict, see numerous reports on the DRC published by Amnesty International ([www.amnesty.org](http://www.amnesty.org)) and Human Rights Watch ([www.hrw.org](http://www.hrw.org)).

<sup>ii</sup> Under the transitional government, some of the wealth has been re-invested to ensure that key industries, such as mining, maintain a minimum level of production. This may be less out of a concern to revive the economy for the benefit of the population than to ensure that the political and business elite can continue drawing off the profits. In contrast, the government of former president Mobutu and the various leaders and rebel groups who held power throughout the conflict from 1996 to 2003 simply plundered these resources without any form or pretence of re-investment in the country.

These will be the first democratic elections in the DRC for more than forty years.

Until recently, the southeastern province of Katanga was spared the worst of the conflict. The heartland of President Kabila's family, Katanga remained in government hands throughout the war. However, in 2005, fighting between the *mai-mai* armed group and the *Forces armées de la République démocratique du Congo* (FARDC, the national army) erupted in central and northern parts of Katanga. By 2006, humanitarian organisations estimated that more than 150,000 people had been displaced by the fighting and by grave human rights abuses in this area.<sup>3</sup> The southern part of the province, however, where most of the copper and cobalt mines are located, has remained relatively untouched by the war.

## 2. Poverty and economic neglect in Katanga

Copper and cobalt are the lifeblood of Katanga. The economy of the province is almost entirely dependent on mining; the development of other industries and sources of livelihood has been persistently neglected by successive governments, almost to the point of non-existence. The transitional government has done little or nothing to reverse this trend. The result is that those working in the mining sector are especially vulnerable to exploitation.

The economic situation in Katanga, as in the rest of the DRC, has been desperate for several decades, as a direct result of government mismanagement and corruption. Despite its vast natural resources, and the fact that the copper and cobalt mining areas have not been directly affected by the war, the province – with the exception of its capital Lubumbashi – is not significantly more developed or prosperous than other parts of the country. In the 1960s and 1970s, the state mining company Gécamines provided many of the services which are more commonly provided by the state, including health, education and housing. However, since Gécamines's financial collapse in the 1990s, these services have become dilapidated or ceased to function altogether, and in most cases, the government has not replaced them. The collapse of Gécamines also led to a rise in unemployment. In 2003, as part of a World Bank-supported restructure of Gécamines, more than 10,500 Gécamines workers – almost half the total workforce – were made redundant; many of them had not been paid for more than two years, and by 2006, a significant proportion are still unemployed.

As the government has failed to harness the revenues from the mining sector to lift Katanga out of its economic de-

spair, even well-educated people have been forced to turn to artisanal mining in the absence of other sustainable sources of employment. Those working as miners at the end of 2005 included qualified lawyers, doctors and engineers – all working in harsh conditions and sometimes earning no more than around US \$3 a day. A typical example was a young man interviewed by Global Witness, who worked both as a miner and a *négociant*; he had completed the first year of a law degree but had been working as a miner for more than five years. He had initially interrupted his degree in order to earn money to support his pregnant fiancée, but he had never had the opportunity to resume his studies. He now had three children to support and was effectively trapped by his family commitments.<sup>4</sup> Former Gécamines workers, many of whom were professionally trained and highly skilled, have also turned to artisanal mining following the mass redundancies.



Miners' camp, near Kawama mine, Katanga, November 2005.

### Quotes from miners

We know that the Congo is rich. But despite this... we don't even have enough to eat. Only one category of people profits.<sup>5</sup>

I don't want to do this work. There are lots of dishonest people. You work very hard for almost nothing. I do it because I don't know what else to do. People are getting rich off us... I've done this work for about 10 years but I have nothing.<sup>6</sup>

This is not a job. We are slaves. We're obliged to do this because there are no other jobs [...] We thought that mining would be a pot of honey. Instead, what we found was vinegar.<sup>7</sup>

### 3. Developments in the mining sector in Katanga since 2004

Global Witness researchers who visited Katanga in November 2005 found that most of the problems which they had documented during their previous visit in May 2004 were still prevalent.<sup>8</sup> In eighteen months, there had been little improvement: corruption and smuggling were still widespread and very little benefit from the mining trade was flowing back to the population.

#### i) Artisanal mining

Corruption in the artisanal sector has become better organised since 2004. When Global Witness researchers visited the artisanal mines in May 2004, the only government department with representatives at the sites was the *Agence nationale de renseignements* (ANR, the intelligence services). By late 2005, most of the government departments who were taking a cut from the trade had officials based at the mines to facilitate their collection of payments. Global Witness found representatives from the ANR, the *Police des Mines* (the branch of the national police force responsible for law enforcement in the mines) and the Ministry of Mines based at the entrance and exit to the mines, each demanding payments directly from the miners and *négociants*. The presence of EMAK officials at the mines (see section V,4,i below) – another recent development – was an additional source of harassment for those working in the mines.

There has also been a large increase in the number of foreign trading houses operating in Katanga. In particular, there has been an influx of companies and individual traders from China and other parts of south and east Asia. Rather than establishing mining operations in Katanga, these operators usually work as intermediaries – buying from Congolese *négociants*, organising the export and transport of the minerals, then selling them to larger international companies and processing plants outside the DRC. These companies and individual traders are making little investment in the DRC and often no value is added to the minerals before they are exported.

#### ii) Increase in foreign investment in the industrial sector

It is the formal mining sector that has seen the most significant developments since 2004, in particular an increase in the number of large contracts signed with foreign or multinational mining companies (see section VI for further details). The primary goal of the Mining Code, introduced in

It's the holy grail of the copper industry. Companies are saying: to hell with the political risk, we just have to be here.<sup>9</sup>

CLIVE NEWALL, CEO, FIRST QUANTUM

2002, was to attract foreign investment to the DRC. This strategy finally appears to have paid off, with a number of medium-sized international companies commencing operations in the copper and cobalt sector of Katanga. Previously, armed conflict and insecurity had been among the factors discouraging companies from investing in the country. However, the gradual decrease in conflict over the last two years, the establishment of a transitional government in 2003, the advent of elections in 2006 and the adoption of the Mining Code in 2002 have all contributed to creating a more propitious climate for international investment. High copper prices and rising cobalt prices have also led to a surge in companies wanting to exploit the DRC's rich copperbelt. Unless the security situation deteriorates significantly, a further increase in the number of foreign mining companies investing in Katanga can be expected in 2006 and beyond.

#### iii) Government initiatives

The Congolese government has taken a number of initiatives to regularise activities in the mining sector since 2004. However, to date, most of these have been on a theoretical level and have had very little impact in reducing corruption and illicit activities on the ground.

**Data collection:** One of the problems uncovered by previous Global Witness research in the DRC (in Katanga and elsewhere) had been the absence of statistics collected at the local and provincial levels and the failure of provincial and local officials to channel these figures to the capital Kinshasa. Up until 2004, the national government had also failed to insist that provincial and local authorities produce these statistics. In contrast, in 2005, Global Witness was shown a letter from the Secretary General of the Ministry of Mines, dated 10 May 2005, requesting all the provincial offices of the Ministry of Mines (known as *Service des Mines*) to provide the ministry with production and export statistics on a monthly basis.<sup>10</sup> The provincial offices had apparently started collecting these figures and sending them to the Ministry of Mines. Global Witness was not able to compare these figures and statistics with those of other government departments such as OFIDA.

The collection and recording of statistics by OFIDA has also improved since 2004. Statistics provided by OFIDA to Global Witness in November 2005 were more accurate and comprehensive than those provided in 2004 (see section XI on statistics below). However, in early 2006, some senior officials at OFIDA at the provincial level described their own 2005 statistics as unreliable.<sup>11</sup>

**Mining Plan:** In 2006, the Ministry of Mines circulated terms of reference for its *Plan Minier* (Mining Plan).<sup>12</sup> Originally conceived in 2004, the Mining Plan lays out the practical application of the principles of the Mining Code, the main legislation governing mining in the DRC adopted in 2002, and covers the industrial sector and the role of private investment as well as artisanal mining. It is a wide-ranging document which outlines the government's plans for reviving the mining industry in the context of the country's broader development objectives. At the time of writing, it is still a theoretical document. Its successful implementation will be dependent on the will and commitment of the new government after the 2006 elections. However, the Mining Code itself is already being applied, albeit in an incomplete and erratic way (see section VII on failure to enforce the law, below).

**EITI:** In March 2005, Jean-Pierre Bemba, Vice-President in charge of economic and financial affairs, announced that the DRC was signing up to the Extractive Industries Transparency Initiative (EITI). The EITI is a voluntary initiative launched by British Prime Minister Tony Blair in 2002; it brings together governments, extractive companies, investors, financial institutions and civil society to work towards improved governance of natural resources through the publication of company payments and government revenues from the extractive industries.<sup>13</sup> Following Vice-President Bemba's announcement, preliminary measures were put in place to set up the relevant committees and other structures for EITI in the DRC. However, it was only eight months later, in November 2005, that President Joseph Kabila officially endorsed the DRC's participation in EITI, through a presidential decree. As a result of these long delays, EITI has not yet got off the ground in the DRC, and it is likely to be many months before any impact is seen.

#### iv) Donor initiatives: customs reform

In the context of broader programmes of assistance to the DRC government, the French government and the European Union have co-funded a project to reform the OFIDA

customs and control post at Kasumbalesa, the border crossing between the DRC and Zambia. It is one of three pilot projects to reform OFIDA; the others are located at the port of Matadi, in southwestern DRC, and Kinshasa-Est. The total cost of the Kasumbalesa project is between 2.5 million and 3 million euros. The French government is funding 1.5 million euros; the rest will be funded by the European Union (EU).<sup>14</sup>

The Kasumbalesa project is designed to improve the organisation of customs and export and import controls with the aim of increasing revenues and ensuring that these revenues reach the state treasury. The reforms would re-organise and simplify OFIDA operations at Kasumbalesa, partly through the provision of new premises, equipment and computer technology – in 2005, none of the OFIDA records at Kasumbalesa were computerised – and partly through training, technical and organisational assistance and capacity building.<sup>15</sup> The project aims to provide a “one-stop shop” (*guichet unique*) for controls of exports and imports, to replace the plethora of different government agencies currently operating alongside each other at the border and competing for bribes.

When Global Witness visited Kasumbalesa in November 2005, the project was not yet completed, and the new warehouse, intended to house the OFIDA controls, was still under construction, several kilometres from the border. The deputy head of OFIDA in Kinshasa told Global Witness that OFIDA had applied for further funding from the EU for other projects in Kasumbalesa, including the provision of weighbridges and road improvements.<sup>16</sup> In March 2006, construction of the new warehouse was still underway but it was reported that a weighbridge had been installed at Kasumbalesa; Global Witness has been unable to verify whether or how effectively it has been functioning.<sup>17</sup>

In principle, these reforms of OFIDA at Kasumbalesa could be beneficial in cutting down fraud and increasing revenues from mining exports. However, in order to be effective, they will need to include strong oversight mechanisms and the imposition of firm penalties against officials found to be subverting laws and regulations. Their success will also be dependent on adequate salaries for border officials and – critically – on political will on the part of the government to support officials who resist attempts at corruption. By late 2005, some positive signs were reported, with an increase in recorded trade and in revenues collected at the border.<sup>18</sup>

## IV. Global overview of copper and cobalt trade

### 1. Prices and demand

**Copper:** The price of copper has quadrupled since 2001,<sup>19</sup> standing at US \$7,603 per tonne in May 2006.<sup>20</sup> At the time of writing, copper is still in high demand, particularly from industrialising countries such as China and India, who suffer from scarce domestic resources. In 2006, world production of copper is expected to increase by 6% and total use by 5%.<sup>21</sup>

**Cobalt:** Cobalt prices rose rapidly in 2003 and 2004 as a result of increased demand in China and Japan, but have since dropped due to increased production. Nevertheless, prices have remained fairly high: in April 2006, the price of cobalt stood at US \$15.90 per pound or US \$35,053.46 per tonne.<sup>22</sup> The region which consumes the most cobalt is Asia at 44%, followed by Europe and North America at 30% and 26% respectively.<sup>23</sup>

Chinese demand for cobalt has grown from around 1,000 tonnes per year in 1997 to 9,500 tonnes per year in 2005. This can be attributed to economic growth in the country and to a high demand for rechargeable batteries.<sup>24</sup> China's own cobalt reserves are very limited. Between 2001 and 2005, an estimated 75% to 90% of concentrates and ores that were imported into China originated from the DRC.<sup>25</sup>

However, the cobalt market differs from other base minerals, as world demand remains fairly low. A relatively small

#### Uses of copper

Electrical uses of copper, including power transmission and generation, building wiring, telecommunication, and electrical and electronic products, account for the vast majority of total copper use. Copper is a good conductor of heat, so it is also used in motor vehicle radiators, air-conditioners and home heating systems.



#### Uses of cobalt

The largest use of cobalt is in superalloys, which are used to make parts for gas turbine aircraft engines. It is also used to make magnets, tyre adhesives and catalysts for the petroleum and chemical industries. The recent growth in demand for cobalt has been for rechargeable batteries used in mobile phones.



number of traders control a large proportion of the trade and artificial shortages are sometimes created. Some price movements may be attributable to these factors rather than to significant changes in real levels of supply and demand.

### 2. The role of the DRC in the international copper and cobalt market

The copperbelt running through Katanga and Zambia contains 34% of the world's cobalt and 10% of the world's copper. The current 'metals mania' – the huge increase in global demand for metals – has encouraged resource companies, banks and institutional investors to begin looking at regions and countries previously considered too risky for investment, such as the DRC.<sup>26</sup> Record metal prices have led mining companies to double their investment in Africa from 2004 to 2005, reaching US \$3.5 billion in 2005.<sup>27</sup>

Gécamines, the DRC's state copper and cobalt mining company, has concessions which cover a surface of 30,000 square kilometres in Katanga, located around the towns of Kolwezi (West Group), Likasi (Central Group) and Lubumbashi (East Group).<sup>28</sup> In 1989, Gécamines provided 85% of the DRC's export earnings and 42% of public revenues, making it by far the most important company in the country.<sup>29</sup> In the 1980s, the DRC's copper output amounted to 7-8% of global production.<sup>30</sup> However, since the virtual collapse of Gécamines in the early 1990s, production in the DRC has fallen dramatically. Nevertheless, the DRC still plays a major role in the global cobalt market; in 2005, China produced 23% of the worldwide production of cobalt and 85% of its feed is estimated to have come from Congolese ores.<sup>31</sup>

The recent rise in world copper prices has led to an increased focus on malachite (an important ore of copper), with trading houses moving away from the 'cobalt rush' experienced in 2004. At the end of 2005, industry analysts estimated that with the new surge of mining companies investing in the DRC, Congolese copper output would increase from virtually zero to a possible 100,000 to 120,000 tonnes<sup>iii</sup> in the next five years, with a potential output of between 500,000 and one million tonnes in ten to fifteen years.<sup>32</sup> This would mean that the DRC would become a significant player on the world copper market once again.

<sup>iii</sup> The article used the spelling 'ton' as opposed to 'tonne', but Global Witness has assumed that the author was referring to metric tonnes, rather than the imperial system formerly used in the UK.

## V. The artisanal mining sector



Young boy with sacks of minerals at Ruashi mine, Katanga, November 2005.

### 1. Corruption and extortion in the artisanal mining sector

Corruption, both in the state and private sector, is not unique to the mining industry. It is widespread throughout the DRC and has been one of the fundamental causes of the country's disastrous economic situation and enduring poverty for several decades. It has also been one of the factors perpetuating the conflict and threatening the fragile transition process.

In the mining sector, corruption is particularly pronounced because the stakes are so high. It is the single biggest problem affecting the mining industry; almost all the illicit and abusive practices in the sector have their roots in corruption. Unless it is addressed explicitly and radical measures taken to eliminate it from the top down, little positive change can be expected.

Corruption is prevalent in both the formal and the informal mining sectors. The information below relates primarily to the artisanal sector, but corruption is rife in the industrial sector too, especially during the process of negotiation of contracts (see sections VI and VIII,1 below).

In the artisanal sector, corruption takes place at every stage of the mining process. At the entrance point to each mine,

at the mineshafts where artisanal miners dig for minerals, at the exit point from the mines, along the roads, at checkpoints and at border posts, a bewildering range of officials are preying on miners, négociants, transporters and traders, and demanding sums which, once totalled, represent a significant amount of money. Those who work in the sector have little choice in the matter: their ability to work, to buy and to sell is dependent on paying these bribes. The practice has become so institutionalised that it is no longer challenged. These sums of money, commonly referred to as "per diems", are handed over in cash to officials from the various government departments and usually go straight into their pockets. There is not even any pretence that these payments constitute official taxes or that they contribute to the budgets of the departments concerned.

The officials collecting money in this way include those from the Ministry of Mines (sometimes from several different departments in the same ministry), the Police des Mines (a branch of the national police, responsible for en-

Everyone is involved, so no one can accuse anyone else: they all have dirty hands.<sup>33</sup>

LOCAL SOURCE WORKING IN THE MINING SECTOR,  
LUBUMBASHI, NOVEMBER 2005

forcing law and order in the mines), OFIDA (the national customs agency), the ANR (the intelligence services), the *mairie* (mayor's office) of Lubumbashi, local traditional chiefs, and officials of EMAK (the organisation supposed to represent the interests of artisanal miners, see section V,4,i) below). In addition, at the border at Kasumbalesa, bribes are paid to officials from the Commerce extérieur (department of external trade) and the OCC (Office congolais de contrôle, Congolese Office of Control). Sometimes these different departments divide up the money between them; on other occasions, they each keep the money they collect for themselves.

At the level of the mines, officials sometimes demand payment in kind rather than in cash. For example, a miner explained to Global Witness researchers that when he used to work at Kisankara mine, the Police des Mines used to take three bags of minerals per mineshaft: "The police come and demand it. You can't refuse. If you don't pay, they arrest you and make you pay double."<sup>34</sup> Even in those artisanal mines where the military were usually not present,<sup>iv</sup> miners reported that soldiers would occasionally come for the sole purpose of demanding money. A miner who had worked in Luisha mine in 2004 said that the military used to come there every Saturday and ask for 200 francs (around US \$0.5) per person. If the miners were unable or unwilling to pay, the soldiers would beat them or take their tools or the minerals they had dug, by force.<sup>35</sup>

The négociants too have to hand cash over to a range of officials. In order to trade, they are first required to obtain an official document from the Service des Mines (part of the Ministry of Mines) which costs US \$215 a year. Not all négociants do this as it is so expensive. Some club together and share the costs between four or five of them. In addition to this legitimate document, the officials they encounter at the exit from the mines all demand payments for other documents variously described as "receipts" or "visas". In late 2005, these usually totalled around 30,000 or 35,000 francs (around US\$ 67 or \$78), depending on the mines and the area. A négociant in Kolwezi broke down the different fees: "For the police, it's 10,000 francs [around US \$22]. For EMAK, it's 5,000... Then along the road, we have to pay the *mairie* 10,000 for a receipt, the ANR 2,500 for a visa, another visa from the Police des Mines for 2,500, the Assistance du Service des Mines 2,500, the rights for the traditional chief 2,500."<sup>36</sup>

The fees rise further along the road. A transporter explained that at the border at Kasumbalesa, the government depart-

<sup>iv</sup> There is a military presence at some but not all artisanal mines.

## Overview of the trade

### Stages in the artisanal mining sector:

**1.** Congolese artisanal miners hand-pick heterogenite and malachite in various Gécamines and ex-Gécamines concessions around Lubumbashi, Likasi and Kolwezi.

**2a.** Artisanal miners sell the ore to Congolese négociants (middlemen). The négociants then sell this ore to Congolese or foreign trading houses.

**2b.** In some instances, trading houses buy ore directly from the artisanal miners.

**3.** Increasingly, these trading houses are establishing local furnaces to part-process the ore. However, most of the ore is still being exported as raw material from the DRC.

**4.** The ore is analysed by one of four licensed analysis companies who determine the quality of copper and cobalt present in the ores.

**5a.** Numerous transport companies transport the ore by truck to Zambia via the Kasumbalesa border post.

**5b.** A smaller proportion of the ore is transported by rail into Zambia via the Sakania border post.

**6a.** Some of the ore merely transits through Zambia en route to South Africa or Tanzania. Often trucks entering Zambia are over-loaded, so they will split their loads onto two or three trucks to continue their journey.

**6b.** Numerous smelters (large and small) located on the Zambian Copperbelt process imported Congolese ore alongside local production.

**7a.** Raw materials, semi-processed concentrates and processed metals are transported by truck or train to South Africa.

**7b.** Raw materials, semi-processed concentrates and processed metals are transported by truck or train to the port of Dar es Salaam, Tanzania.

**8a.** Some of the raw materials are processed by companies in South Africa, before being sold on and shipped from Durban port to companies mostly based in China and other parts of Asia.

**8b.** Some of the raw and processed materials are re-tested by analysis companies in South Africa before being directly shipped from Durban port to companies mostly based in China and other parts of Asia.

**8c.** The raw and processed materials are shipped from Dar es Salaam port to companies based in the Far East and Europe.



Miners coming out of a mineshaft, Katanga, 2005. © Private

ments usually asked for between US \$3,000 and \$5,000 per truck, regardless of the weight or value of the products.<sup>v</sup> This was in addition to the official 1% exit tax on the declared value of the goods. The fees sometimes varied, depending on the individual demanding the bribe: “If the official knows the product well, it will be higher.”<sup>37</sup>

When Global Witness researchers spoke to officials of some of these government departments, they denied that they were collecting taxes from miners or négociants. If interpreted literally, their statements are true: these are not taxes but undisguised bribes. These same officials admitted candidly that individuals working for their departments collected “per diems”; they justified this by explaining that they received very low salaries. Even at the senior levels, there is a generalised acceptance that corruption is inevitable. The deputy head of OFIDA in Kinshasa told Global Witness: “Corruption is everywhere. If there are low salaries, I’m not surprised [...] The economic operators also have a responsibility not to corrupt.”<sup>38</sup> A senior officer of the Police des Mines in Lubumbashi said: “Do small payments count as corruption? It enables low level officials to

survive, especially when their pay is so low.”<sup>39</sup> Likewise, a provincial representative of the Ministry of Mines admitted that his staff received “small tips” but claimed that these payments were voluntary.<sup>40</sup> The Minister of Mines himself stated that if staff were not well paid, corruption would continue, and acknowledged that corruption was inherent in political life in the DRC.<sup>41</sup>

At the higher levels of the chain, bribes are even larger. A representative of the trading company Chemaf told Global Witness that to transport goods from Kolwezi to Lubumbashi by train, they had to pay \$50 per tonne (one train wagon carries 40 tonnes); this money covered fees to EMAK, the mayor’s office, the ANR, the Police des Mines, the Commerce Extérieur and the Service des Mines. The Chemaf representative complained that the authorities kept increasing the prices: “They demand every time money, money money.”<sup>42</sup>

In some cases, the arrangement between the trading companies and the authorities is even more institutionalised. Several local sources told Global Witness that some of the main trading companies paid the equivalent of regular monthly salaries to senior officials of OFIDA, ANR and other government departments to secure their cooperation.<sup>43</sup> In practical

<sup>v</sup> Both Congolese francs and US dollars are commonly used in the DRC. Larger amounts are often paid in US dollars. At the end of 2005, the rate of exchange was approximately 450 Congolese francs to US \$1.



terms, this “cooperation” usually means allowing trucks to cross the border either without documents or with documents which misrepresent the contents of the truck. According to one source, these payments ranged from US \$500 to \$1,000 a month, “depending on the services provided.”<sup>44</sup> Once again, this money would usually be kept by the individuals, not by their department. This practice follows patterns observed by Global Witness in other countries, where state officials receive payments from companies equalling and sometimes exceeding their official salaries. Such a situation can easily create divided allegiances, internal conflict within government departments and the security forces, and ultimately a potential for instability.

Some companies and individuals have worked out their own arrangements for paying off officials to cut out the number of stages and simplify the bribing procedures. Some Congolese businesses, including at least one private customs agency, were in the habit of paying \$50 to the governor of Katanga “for him to tell the various government agencies to leave us alone”.<sup>45</sup>

## 2. The trading companies

Heterogenite mined artisanally is exported from the DRC by trading companies, many of them owned and run by foreign nationals, in particular Indians, Chinese and Lebanese. In 2004 and 2005, these companies have proliferated, sensing an opportunity to make quick profits in an unregulated environment. The larger and more visible trading companies include Chemaf, Groupe Bazano and SOMIKA, all of whom have been operating in Katanga for several years. Another is Congo Cobalt Corporation (CoCoCo) which operates in both the artisanal and the industrial sector. Many newer companies have also emerged in recent months, at such a rate that when Global Witness researchers visited Katanga at the end of 2005, even local sources working in the mining sector had not heard of several of the names mentioned. In addition, throughout 2005 there has been an influx of individual traders – many of them Chinese – buying and exporting heterogenite, apparently in a private capacity.<sup>46</sup>

With a few exceptions, most of these trading companies do not have their own processing factories. They buy the artisanally-mined heterogenite from the négociants, then export it in its raw form by road or by rail to Zambia, then on to South Africa or Tanzania and, from there, to other countries, especially China (see section X below). Some have recently started setting up their own processing factories, furnaces or washing plants, but by the end of 2005, few of these factories were operating to full capacity.

Global Witness has serious concerns about several aspects of certain trading companies’ operations, in particular:

- allegations of fraud and illicit exports
- exploitation of artisanal miners and négociants
- failure to take responsibility for the labour conditions in the mines which supply them.

### i) Illicit or fraudulent exports

There are numerous ways in which trading companies subvert laws and regulations for exporting minerals. The most common are over-loading trucks, under-declaring their contents, and providing false or inaccurate certificates.

A truck carrying heterogenite to the Zambian border will usually be loaded with at least 50 tonnes, and sometimes as much as 80 tonnes or more. However, exporters almost always under-declare the load, sometimes by as much as half the real weight, in order to pay lower fees. Through private arrangements with officials manning the checkpoints, the over-loaded and under-declared trucks are usually allowed to pass through unhindered.

Local sources reported that trading companies not only often presented inaccurate documents, but sometimes presented no documents at all, or occasionally recycled documents relating to earlier consignments of goods.<sup>47</sup> A local NGO which carried out an investigation into exports of minerals by rail by Chemaf documented four such incidents between January and April 2005 in which they alleged a total of 32 wagons of minerals, weighing 1,416,816 kg, were exported without official documentation or with fake or recycled documents.<sup>48</sup> The total value of the minerals was not known. Global Witness wrote to Chemaf for their response to these allegations; at the time of finalising this report, no reply had been received.

Occasionally border officials have tried to stop trucks which did not present the correct documents or which were overloaded. Their attempts to enforce the law have been undermined by the intervention of more senior officials, often from the security forces, who have waved the trucks through – and in some cases even paid to facilitate their passage – in full knowledge of the irregularities. An individual working at the Kasumbalesa border gave a typical example: “Once we stopped some trucks at the border control because they had no documents at all. We called the customs inspector. The major from the Traffic Police then paid for the trucks to be let through.”<sup>49</sup> In other cases,



SOMIKA headquarters, Lubumbashi, November 2005.

private individuals, some of whom are well-known in the mining sector as intermediaries or unofficial agents for companies, operate at the border and intervene whenever a problem arises.<sup>50</sup>

Once trucks have crossed the border into Zambia, then transit through neighbouring countries, it can become more difficult to evade controls. The usual route, from the border crossing at Kasumbalesa, runs first into Zambia, then through Botswana or Zimbabwe and South Africa. Each of these countries has its own systems and regulations. However, the rigour with which officials in these countries enforce these regulations varies, and while corruption may not be as systematic as in the DRC, exporters who are familiar with the systems in these different countries can sometimes find ways of averting the controls there too (see section X,1 below).

As explained below, minerals destined for export from the DRC have to be analysed by one of four officially approved analysis companies, and exporters have to show the analysis certificate before the export can be authorised. They also have to show a radio-activity certificate proving that the minerals do not exceed the legal limit of radio-activity. In a number of cases, trucks arriving at the checkpoints or at the border have been found to be carrying loads which did not correspond in quantity, quality or levels of radio-activity to the information on the accompanying certificate. Nevertheless, following bribes and, in some cases, threats by the trading companies, many of these consignments have been allowed through, sometimes with the collusion of government and security force officials.

In two separate incidents in 2004 and 2005, officials from the analysis company Alex Stewart International Corporation (ASIC) clashed with Chemaf over radio-activity tests.

The first incident, in October 2004, involved about 18 trucks of Chemaf minerals which were stopped at the checkpoint at Kisanga, on the way to the border. Witnesses interviewed by Global Witness presented two slightly different accounts of the incident. According to one version, when ASIC officials tried to stop the trucks from passing through the checkpoint, the chairman of Chemaf, Shiraz Virji, who was accompanying the trucks, threatened the ASIC officials and said that

if they didn't allow the trucks through, he would go and fetch his revolver. Eventually, after he had paid various officials at the checkpoint, the trucks were allowed to pass.<sup>51</sup> According to the second version, a Chemaf representative responsible for exports first tried to prevent ASIC from testing the products. When ASIC insisted on testing them, he tried to pay them. He also tried to pay the police and OFIDA, but all of them refused to allow the trucks through without the tests. Shiraz Virji then came and personally offered them money. When they refused again, he reportedly threatened them and insulted them. According to one witness, he took a revolver out from the waistband of his trousers and told the officials they could not do anything to him. The officials called the military who seized the trucks and took them away. Eventually, the trucks were released after Chemaf regularised its documents.<sup>52</sup>

A second incident, in around mid-2005, concerned around 21 trucks of minerals destined for export by Chemaf. Some samples tested by ASIC exceeded the legal radio-activity limit. When Chemaf refused to offload these bags, ASIC officials called the commander of the Police des Mines, who told them that Chemaf had a right to export its products and ordered that the trucks be let through. An official from the provincial governor's office was also present and agreed that the vehicles should be allowed to go through. When the trucks reached the border at Kasumbalesa, ASIC officials tested them again, confirmed the high level of radio-activity in some bags and tried to stop the trucks once again. They managed to take out two or three bags but were not able to control them all, so the rest of the load crossed the border.<sup>53</sup>

Global Witness wrote to Chemaf for their response to the allegations about these two incidents; at the time of finalising this report, no reply had been received.

## Chemaf

The founder, chairman and managing director of Chemaf is Shiraz Virji. Virji, who is of Indian origin but has strong links with the United Kingdom<sup>vi</sup>, has been doing business in the DRC for twenty years, according to his company's website.<sup>54</sup> Chemaf is part of the Shalina Group of companies, of which Shiraz Virji is also the managing director. Shalina Laboratories is a pharmaceutical company with its headquarters in Mumbai, India. It has a chain of pharmacies in several African countries and exports products to the DRC, Angola, Zambia, Tanzania, Nigeria and Ghana.<sup>55</sup> Chemaf began producing copper and cobalt in the DRC in 2001 and intensified its activities from 2003. In 2003, it became the sole licensee operating in the large Etoile mine outside Lubumbashi, and has since acquired rights to exploit mines at Kananga, Dialala and Makala, outside Kolwezi.<sup>56</sup> Information from the company's website and from Global Witness interviews with Chemaf representatives indicates that the company has plans to extend its operations significantly from 2006 onwards.

In November 2005, Global Witness researchers made repeated visits to Chemaf's offices but were unable to speak to the senior directors in Lubumbashi. Despite the fact that Chemaf is one of the largest and most active trading companies in the area, the commercial director of Chemaf in Lubumbashi, on the instructions of the director of the company, told Global Witness that Chemaf was still in the preliminary phases of its operations and that it was therefore premature to give out information. He suggested postponing the interview to the following year.<sup>57</sup> Eventually, in March 2006, the director of Chemaf in Lubumbashi, Mr Azim, agreed to meet a representative of Global Witness. Mr Azim explained that Chemaf was in a construction phase and that it had set up a factory to begin processing the minerals. He said that Chemaf no longer exported heterogenite since it had set up its own factory. The company's target, from 2006 onwards, was the production of 4,000 tonnes of cobalt and 40,000 tonnes of copper a year.<sup>58</sup>

Global Witness researchers tried to visit the Etoile mine in November 2005, but were denied access by Chemaf officials at the entrance to the site.

<sup>vi</sup> Some sources told Global Witness that Shiraz Virji was an Indian national, others that he was a British national; Global Witness has not been able to confirm his nationality.

### ii) Exploitation of artisanal miners: no rights and no security

Artisanal miners' pay is very low. The price and quantity of minerals may differ significantly from mine to mine, and figures of average earnings quoted by miners to Global Witness varied accordingly. In many cases, however, their daily earnings did not exceed US \$2 or \$3.<sup>59</sup>

Most artisanal miners are not employed directly by the trading companies. They work independently, sell their products to the négociants who then sell them on to the companies. However, a number of companies, including Chemaf, Groupe Bazano and SOMIKA, take on miners as day workers and pay them at the end of each day. These day workers do not receive a contract of employment and their work can stop abruptly from one day to the next. Under this system, workers have no rights; the company does not have to take care of their transport, health care or other benefits, nor does it have to pay insurance or taxes.

According to Congolese law, day workers acquire the right to a permanent contract of employment if they work more than 22 days over a two month period.<sup>60</sup> However, many artisanal miners claim to have worked for the same company for prolonged periods – sometimes for several months at a time – without receiving a contract or commitment to long-term employment. Global Witness is not aware that the authorities have ever investigated such claims or verified whether these companies' practices conform to the law.

Global Witness researchers were told that some trading companies occasionally sub-contracted the process of employing miners to other companies or individuals. For example, according to local sources, Chemaf sometimes employed day workers through an apparently fictitious company called Baobab. Each morning, the miners would come to a designated post to see if any work was available; those who were taken on would be given a token marked with a number and the name "Baobab", without any further information. Chemaf did not keep a record of the identity of the day workers. Some miners continued working for them on a daily basis for long periods, sometimes for one or two years. When some miners complained to Chemaf that their work had suddenly stopped, Chemaf officials claimed they didn't know them and referred them to Baobab. However, these miners had no further recourse as they had no information on who Baobab was or how to contact them.<sup>61</sup> Global Witness wrote to Chemaf for their response to these allegations; at the time of finalising this report, no reply had been received.

### iii) **Négociants exploited by trading companies**

Even though some négociants make a reasonable living from buying and selling minerals, and typically pay the miners very low prices, others struggle to break even and find themselves exploited by the trading companies. Some négociants work directly for specific trading companies and sell exclusively to them. Others work independently and sell their products to whichever company offers them the best price. Under both systems, négociants interviewed by Global Witness were deeply dissatisfied. Whereas a pre-existing arrangement with a company offered at least a semblance of security, the company often took advantage of the exclusivity of the arrangement to pay the négociants prices which did not correspond to the real value of their products. Négociants who did not want to enter into this kind of disadvantageous contract ended up touting their products from company to company, in search of the best price, with no guarantee that they would be able to sell their product at all. The prices offered by the companies were sometimes so low that the négociants would not want to sell to any of them; eventually, they would end up accepting the least bad offer for want of an alternative.<sup>62</sup>

One négociant told Global Witness: “ ‘Négociant’ is a false name: we don’t negotiate. We just accept or reject what the companies give us... There’s no time or room for negotiation... They say the price is set up front. If you don’t like it, you can go away. Mostly we’re forced to accept a low price. We can’t afford not to.”<sup>63</sup>

The prices offered by companies are normally calculated on the basis of the grade of the minerals. Each company has a scale of prices corresponding to the percentage of copper and cobalt. Prices vary from company to company and from area to area; for example, prices paid in Kolwezi are generally lower than those paid in Likasi because of higher transport costs. Prices may also increase during the rainy season when there are fewer miners working.

A négociant in Kolwezi said that Groupe Bazano’s scale started at 3% grade and that in November 2005, Groupe Bazano was offering 35,000 Congolese francs (approximately US\$ 78) per tonne of cobalt for 3% grade, 45,000 francs for 4%, 68,000 for 5%, and 102,000 for 6%. He said that in contrast, Chemaf’s official scale only started at 5%. They gave 65,000 francs for 5% and 100,000 francs for 6%.<sup>64</sup>

Overall, one of the most common complaints of négociants was that even when the products they were selling had a high copper or cobalt content, the companies offered them a price corresponding to a lower percentage.<sup>65</sup> For example,

several négociants in Kolwezi complained that Groupe Bazano set a ceiling of 13%. One of them explained: “The grade of heterogenite can be 20% or more, but Bazano will never pay beyond 13%. If it’s 10%, he cuts off 2% and pays you for 8%. But anything over 13% is just paid at 13%.”<sup>66</sup>

The trading companies test a sample of the product to ascertain its content before buying it. Négociants in Kolwezi complained that they were not usually present when the company carried out the test; they were just shown the result without being able to verify it or check the samples tested. One négociant told Global Witness: “They [the companies] take the samples away and just give us the results. We can’t even discuss it. There is no counter-analysis. If we don’t like it, we can take our product away, but they will ask for \$20 for the lab test and the transport costs of about 1,000 francs per tonne.”<sup>67</sup>

#### **Example of prices offered by trading companies to négociants**

*Average prices in Congolese francs for 1 tonne of cobalt in Kolwezi in November 2005, quoted by a négociant.<sup>68</sup> The price varied between companies by about 5,000-10,000 Congolese francs. The rate of exchange at the time was around 450 Congolese francs to US \$1.*

3%	35,000	12%	335,000
4%	45,000	13%	360,000
5%	65,000	14%	375,000
6%	90,000	15%	385,000
7%	118,000	16%	395,000
8%	165,000	17%	405,000
9%	215,000	18%	420,000
10%	275,000	19%	430,000
11%	305,000	20%	450,000

*Prices offered by SOMIKA in Likasi for 1 tonne of heterogenite (November 2005)<sup>69</sup>*

4%	\$100	12%	\$750
5%	\$175	13%	\$850
6%	\$215	14%	\$950
7%	\$250	15%	\$1,050
8%	\$300	16%	\$1,200
9%	\$400	17%	\$1,300
10%	\$550	18%	\$1,400
11%	\$650	19%	\$1,500
		20%	\$1,700

Some of the *négociants* had a sample tested themselves before going to the companies, so knew that the real grade was higher.<sup>70</sup> Others reported that different trading companies, and sometimes the very same company, produced different test results for the same product. A *négociant* in Kolwezi explained: “Sometimes we take a product and get 6%. The next day, they may give you 3% for the same product. For example, Chemaf once gave me 3% for what was 6% or 8% before. They made me pay the cost of the lab test (\$20 per batch), even though I didn’t sell it to them... I took it to Bazano. Bazano offered me 4%. I sold it there. For another product, Chemaf offered me 4% and Bazano offered me 2%. I was very disappointed.”<sup>71</sup>

### 3. Analysis of minerals

All minerals destined for export are required to go through an analysis of content and a radio-activity test. From February 2004 to around April 2005, the British company Alex Stewart International Corporation (ASIC) had the official monopoly for analysis in Katanga. In 2005, the government broke the monopoly and other companies started setting up analysis laboratories. By the end of 2005, four companies had been officially approved by the government to perform this function: ASIC, Robinson, Labo Lubumbashi and Société de surveillance minière (which was not yet operational at the end of 2005). As a result of the competition, the price of analysis of mineral samples dropped from around \$800 for 40 tonnes (when ASIC held the monopoly) to around \$400 at the end of 2005.<sup>72</sup>

The role of these companies is to test mineral samples to ascertain the content and grade of copper and cobalt and to test the level of radio-activity. They then issue a final certificate with the result of these tests, as well as details of the weight and quantity of the products, which the trading companies must produce before they can export the products.<sup>73</sup> If the radio-activity level exceeds the legal limit, the analysis company marks the bags accordingly and asks the exporter to remove these bags. In the case of ASIC, samples are first analysed at the company’s laboratory; a second test is then carried out at a checkpoint at Kisanga, on the road to the border, or at Lubumbashi for goods transported by rail.

*Négociants*, members of civil society and other local sources criticised the performance of some of these analysis companies to Global Witness; they also complained about the high price they charged for their analysis.<sup>74</sup> Global Witness was not able to independently verify these allegations of poor performance but believes the relevant authorities should investigate them and ensure that the analysis companies are all performing in accordance to the law and regulations.

A local source showed Global Witness an example of a “provisional” certificate provided by an analysis company. He explained that the laboratories usually gave provisional certificates because they were under pressure from the exporters to produce the documents quickly. They were supposed to produce the definitive certificate later, but rarely



Analysing minerals, ASIC laboratory, Lubumbashi, November 2005.



Preparing the minerals for analysis, ASIC, Lubumbashi, November 2005.

did as it was no longer needed once the products had been exported.<sup>75</sup>

Numerous sources in the mining sector and others interviewed by Global Witness stated that Labo Lubumbashi was owned by Chemaf and therefore could not be viewed as an independent laboratory.<sup>76</sup> Labo Lubumbashi was set up in April 2005, soon after clashes between Chemaf and ASIC officials over border controls described above. However, the manager of Labo Lubumbashi told Global Witness that it was an independent company, not linked to any other company operating in Lubumbashi, and that its owner, based in Germany, and three other shareholders were all Congolese.<sup>77</sup> Global Witness wrote to Chemaf asking for information about the relationship between Chemaf and Labo Lubumbashi; at the time of finalising this report, no reply had been received.

Some sources alleged that Labo Lubumbashi was not a “real” laboratory at all. They claimed that unlike other companies which took two or three days to produce the results of the analysis, Labo Lubumbashi was willing to provide them in a few hours.<sup>78</sup> Global Witness researchers visited the office of Labo Lubumbashi in November 2005. The manager said that normally tests took 48 hours but that they would deliver them in 24 hours if asked to do so. He said he could not authorise Global Witness researchers to visit the laboratory without a written permission from the director. Global Witness researchers were therefore not able to confirm whether a laboratory existed on the premises.<sup>79</sup>

## 4. Organisations set up to assist artisanal miners

### i) EMAK: “the eye of the state”

EMAK (*Exploitants miniers artisanaux du Katanga*) was created in 1999, ostensibly for the purpose of protecting the interests of artisanal miners and négociants. Part trade union, part cooperative,<sup>vii</sup> it is officially independent of the government, yet often acts like a government body. A member of a local human rights organisation described EMAK as “the eye of the state. It is like an informal state structure.”<sup>80</sup> A representative of one of the trading companies – a manager at Groupe Bazano in Likasi – told Global Witness that EMAK was their intermediary for all contacts with the authorities.<sup>81</sup>

For the first few years of its existence, EMAK had a virtual monopoly on the “organisation” of artisanal miners and négociants in Katanga. For a variety of reasons, not least the chaotic and disjointed nature of the artisanal sector where most individuals simply work for themselves rather than on a collective basis, neither miners nor négociants have succeeded in forming a proper trade union or organisation to represent their collective interests.<sup>viii</sup>

The official role of EMAK is to protect and supervise artisanal miners and négociants and look after their general welfare. It is also supposed to register all artisanal miners and keep records of the number and identity of workers. When Global Witness visited Katanga in November 2005, EMAK was effectively managing all activities in mines where concessions had not been allocated to specific companies and had officials based in all these mines.

EMAK officials are themselves either miners or négociants – and sometimes both. Critics of EMAK have pointed to this as an obvious conflict of interest and claim it is impossible for EMAK officials to act independently when they have a direct economic interest in mining activities themselves.<sup>82</sup>

In theory, EMAK functions on the basis of membership fees it receives from miners and négociants, and its officials do not receive salaries from the government. According to the president of EMAK in Kolwezi, in 2005 the membership card for a miner cost 2,500 francs a year, and for a négociant 15,000 francs a year.<sup>83</sup>

<sup>vii</sup> EMAK describes itself as a trade union. However, in mid-2005, it was officially declared a cooperative.

<sup>viii</sup> Trade unions are virtually absent in the artisanal sector. However, in the formal sector and in the state company Gécamines, some workers are members of recognised trade unions.

Membership of EMAK is not compulsory. Indeed almost none of the miners and négociants interviewed by Global Witness were members of EMAK and had no intention of joining, despite pressure on them from EMAK to do so. Miners interviewed by Global Witness did not see any benefit in becoming members and did not believe that EMAK was working to protect their interests. Several commented that the only help EMAK ever provided was the occasional payment for the funerals of miners who died in accidents or assistance with hospital fees of those who suffered injuries.<sup>84</sup> One miner told Global Witness: “EMAK provide coffins – that’s the only thing they do.”<sup>85</sup> (See section V,5,i below).

In practice, EMAK officials collect their money less through annual subscription or membership fees than through sums extorted from miners and négociants. In a pattern of behaviour similar to that of government officials, EMAK officials charge fixed “fees” to both miners and négociants. A miner who worked in Ruashi mine, outside Lubumbashi, said miners there had to pay EMAK 1,000 francs (about US\$2) every month.<sup>86</sup> However, an EMAK official claimed

the monthly fee was 500 francs.<sup>87</sup> After buying products from the miners, the négociants also have to pay EMAK before they can even take these products away from the mines. In Ruashi Pompage mine, négociants had to pay EMAK 200 francs per bag of minerals.<sup>88</sup>

EMAK has its own internal “police” or security force, known as the Policar (*Police des carrières*). The Policar is not a law enforcement agency and is completely separate from the Police des mines, the official branch of the national police force responsible for law and order in the mines. The main functions of the Policar are to protect the products from the mines against theft or substitution and to resolve disputes between miners or between miners and négociants. According to the president of EMAK in Kolwezi, the Policar do not receive salaries, only “a small premium to encourage them, a per diem.”<sup>89</sup> A miner said that in Kisankara mine, miners used to have to give the Policar one bag of minerals per mineshaft. If they refused, the Policar would go down the mineshaft themselves, as many of them were miners, and take minerals by force from the mineshafts where other miners were digging.<sup>90</sup> In other mines,



Sorting the minerals into bags, Ruashi mine, Katanga, November 2005.

such as Luisha, the Policar made the miners pay them to guard the materials; this was in addition to whatever sum the miners had already paid to EMAK.<sup>91</sup>

The only difference between the racket operated by EMAK at the mines and that operated by the various government departments is that EMAK pretends to represent the interests of miners. Global Witness presented its findings about the systematic extortion by EMAK to government officials at provincial and national level. Several of these officials agreed that EMAK was not playing a helpful role, yet to date, the government has done nothing to curb it. The Minister of Mines told Global Witness that he did not appreciate EMAK but claimed that his ministry was not in a position to control it.<sup>92</sup>

## ii) CMKK

From around 2004, internal divisions began surfacing within EMAK and it looked as if it was starting to lose its hold over the artisanal mining sector. A rival organisation was set up: CMKK (*Coopérative minière Madini Kwa Kilimo*, meaning “after stones, agriculture” in Kiswahili). Un-

like EMAK which initially purported to be a trade union, CMKK was formed as a cooperative. By the end of 2005, its base and membership were still less extensive than those of EMAK, but it had offices or representation in the main mining towns of Katanga. A fierce competition had developed between EMAK and CMKK, with EMAK expressing resentment that CMKK was encroaching on its territory and luring its members away by offering them cheaper subscription fees.<sup>93</sup>

Global Witness researchers visited a camp near the Kawama copper and cobalt mine, outside Kolwezi. Artisanal miners working in Kawama, as well as few local farmers, lived in the camp. CMKK ran a section of Kawama mine, and the miners there were all working for CMKK. The local CMKK representative told Global Witness that CMKK membership cost 1,000 francs for miners and 2,500 francs for négociants; these were one-off rather than annual payments.<sup>94</sup> The arrangement was that the miners would sell the products they mined to CMKK and CMKK would look after and promote their general interests. The miners whom Global Witness spoke to in Kawama at the end of November 2005 had been working for CMKK for up to one month, but none



Miners' camp, near Kawama mine, Katanga, November 2005.





Inside a miner's tent, near Kawama mine, Katanga, November 2005.

of them had been paid since the beginning. As they had been hired by CMKK and had an agreement with them, they were not able to sell their products to other buyers. Even miners who had chosen not to become members of CMKK were obliged to sell to CMKK if they worked in Kawama.<sup>95</sup> Global Witness was informed that the miners finally received their first payment from CMKK in early December 2005.<sup>96</sup>

The miners' living conditions in the camp in Kawama were very basic. The camp, which resembled a small refugee camp, housed several hundred people. It consisted of makeshift huts or tents, most of them covered in plastic sheeting. Some miners lived there with their families; others lived alone after moving there for the work. In some cases, their families were far away. The camp had no running water or other facilities. Its residents had to walk three or four kilometres to fetch water from the river which they used for washing, drinking and all their other needs. One miner explained that the 180 residents in his part of the camp had only two bicycles between them to fetch water from the river. CMKK provided food to the miners and ran a small dispensary, which, according to residents, was not yet stocked in medicines at the end of November 2005.<sup>97</sup>

### iii) SAESSCAM

When Global Witness researchers raised the many problems faced by artisanal miners with Congolese government authorities, the standard response was that SAESSCAM would soon be working to resolve these problems. SAESSCAM (*Service d'assistance et d'encadrement du small scale mining*) was set up by the government in 1999 to help organise and exercise oversight over artisanal and small-scale mining. Initially working across several ministries, in 2003 it



Health centre, near Kawama mine, Katanga, November 2005.

became an official government department located within the Ministry of Mines. Its remit is not limited to copper and cobalt mining; it covers the mining sector as a whole, across the country. To date, it has mostly been active in the diamond sector, around Tshikapa in the province of Kasai Occidental. It was only in the second half of 2005 that it began turning its attention to the copper and cobalt mines in Katanga. While most of its functions relate to increasing productivity and improving the conditions of artisanal mining, one of its stated objectives is also to help cut down fraud by improving methods of tracing products from the mine to the point of sale.<sup>98</sup>

Officials in the Ministry of Mines were keen to present SAESSCAM as the answer to most of the problems of artisanal mining in Katanga. They explained that SAESSCAM would be the official state body with a comprehensive oversight of artisanal mining and would look after artisanal miners' interests not only in terms of organisation, training and health and safety, but also in assisting them to obtain better prices for their products, for example through cooperatives.<sup>99</sup>

At the time of writing, it is still too early to judge SAESSCAM's effectiveness in Katanga. At the end of 2005, it had just started setting up offices in the province but was not yet operational. If SAESSCAM can remain free of corruption, is allowed to work without political interference and is provided with adequate means and training, it could play a positive role in improving the conditions of artisanal miners. However, SAESSCAM will not by itself be able to solve all the problems in this sector. Alongside SAESSCAM's programmes, the government will need to implement a number of other broader-ranging measures aimed at better regulation, control and protection of workers.



Artisanal miners digging in Ruashi mine, Katanga, November 2005.

## 5. The daily risk of death: labour conditions in the artisanal mines

Labour conditions in the artisanal mines are deadly. Tens of thousands of people dig for copper and cobalt with their bare hands, without any protective clothing or equipment. In most cases, the only tools they have are spades, hammers and shovels. In some mines, people work day shifts, take a short break, then return to work at night. Scores of people have died from work-related accidents, most often when they are trapped under collapsing mineshafts. The risks are well-known to the authorities and to the companies buying from these mines; yet by the end of 2005, fatal accidents were still occurring regularly and the government had not adopted any strategy of prevention.

The miners themselves are also fully aware of these risks – several told Global Witness that they were afraid of dying in the mines and had personally witnessed the deaths of their colleagues – but their economic desperation and the lack of

alternative sources of employment compel them to continue working in these conditions. The risks of accidents is reflected in the price of minerals. A miner in Likasi explained that because digging was more dangerous in the rainy season, the price of a bag of 50kg would go up from 2,000 to 3,000 francs.<sup>101</sup>

The DRC has ratified the International Labour Organisation's (ILO) eight fundamental conventions concerning international labour standards.<sup>102</sup> However, it has not ratified the Occupational Safety and Health Convention and accompanying Protocol, nor the Safety and Health in Mines Convention.

In terms of national legislation, the *Code du Travail* (Labour Code), adopted in 2002, contains several provisions relating to health and safety at work. Current practices in the artisanal mining sector in Katanga are in clear breach of these provisions. The Labour Code specifies that all companies and establishments have specific responsibilities towards security

How can the authorities let people work there in those conditions? They are killing our children.

I don't know how to talk about it. It is as if animals have died.<sup>100</sup>

FATHER WHOSE SON DIED WHEN A MINESHAFT COLLAPSED IN SHINKOLOBWE IN JULY 2004

at work and should set up a health and safety committee whose duties include the technical supervision of workers and supervision of health in the workplace, and the conception and implementation of a policy of prevention of accidents of work.<sup>103</sup> The Labour Code does not include an explicit provision for the safety of informal workers such as artisanal miners who are not employed by a specific company or establishment; however, in such cases, Global Witness believes that it is reasonable to expect the state to take responsibility for their labour conditions and to enforce the law.

Artisanal miners work in a completely unregulated environment and have little or no information about which areas are safe for digging. The majority are not professional miners and have received no training. Some may only have been working in the mines for a few weeks to earn extra money; they are among the most vulnerable as they are the least likely to spot fissures or other signs of likely collapses in the mineshafts.

Hundreds or even thousands of miners may be digging independently in and around the same location without coordination. No one keeps an accurate record of who is working where at any one time. The miners simply head for the sites where they believe they can find the richest vein and where they can make the highest profits, regardless or unaware of previous mining activity in the area which may have weakened the soil or made it unsafe for further digging.

### i) Fatal accidents

Global Witness researchers visiting Katanga in November 2005 were alarmed at the frequency of fatal accidents in the mines. Comprehensive, accurate statistics are not available, as many accidents are unreported. Miners may die without anyone knowing about their death, except their closest colleagues and family. Often the victims' bodies are not even retrieved. A miner who had worked in about five different mines over five years said that during that period, "it has happened too many times to count"; at least eight of his friends had died in mining accidents.<sup>104</sup>

From information gathered from miners and other local sources, Global Witness believes that scores of miners died in 2005 alone. In 2005, accidents were occurring on a weekly basis in some mines; in others, it was once every few months. The number of deaths increased significantly during the rainy season, when the earth is more likely to crumble. Typically, the number of victims in each accident ranged from one to five; in a few cases, it was higher. Specific cases reported to Global Witness for 2005 totalled at least 41 deaths, the majority caused by collapsing mine-

## Accidents in artisanal mines



Mineshaft, Ruashi mine, Katanga, November 2005.

There are several reasons for the high rate of accidents in the artisanal mines, including:

- lack of official control and oversight of artisanal mines
- lack of training and basic information on safety for artisanal miners
- absence of protective clothing and equipment for the miners
- absence of solid supporting structures for the mineshafts
- failure of local officials present at the mines to intervene to assist miners, to advise them on risks or to prevent accidents
- failure of the government to take responsibility for the safety of miners and to enforce laws and regulations
- failure of the authorities to close mineshafts which have recently collapsed or sections of mines known to be unsafe
- the willingness of trading companies to continue buying products mined in these conditions without taking responsibility for the welfare of workers.



Artisanal miners carrying bags of minerals, Mutoshi mine, Katanga, November 2005. © Private

shafts.<sup>105</sup> This was just a sample, not an exhaustive count; the total number is likely to be considerably higher. Figures for 2004 were almost certainly higher because of a major accident in Shinkolobwe mine on 8 July 2004, in which dozens may have died.<sup>ix</sup> A miner who had worked in Shinkolobwe for about nine months, in 2003, recalled that there were frequent accidents there; he estimated that a mineshaft would collapse on average twice a month, even before the major accident in 2004.<sup>106</sup>

Global Witness asked EMAK for statistics on the number of deaths and injuries in the mines. A chart provided to Global Witness by EMAK indicates that 12 people died and 16 were injured in mines in the Kolwezi area between January and November 2005; the chart does not provide details on the circumstances of these incidents or on incidents which occurred in other areas.<sup>107</sup> However, information provided by other local sources in Kolwezi, including miners themselves, indicated that the real number was higher.

<sup>ix</sup> For background on the Shinkolobwe mine, see Global Witness report “Rush and Ruin: the devastating mineral trade in southern Katanga”, Section 7: “Case study on artisanal mining: Shinkolobwe mine”. In November 2005, Global Witness interviewed several relatives of victims of the collapse at Shinkolobwe on 8 July 2004. These relatives believed that at least 60 people, and possibly more, may have been killed and that others were still unaccounted for. However, the total number of victims has never been confirmed, as only six or seven bodies were recovered. There has been no official investigation into these deaths and the relatives interviewed by Global Witness had never been contacted by the authorities. (Global Witness interviews, Likasi, November 2005.)

Deaths usually occur when miners are digging holes – sometimes 20 metres or deeper – then digging horizontal corridors, known as *kalolo* or galleries, as they follow the cobalt or copper veins. These *kalolo* sometimes extend over stretches of more than 50 metres. The galleries are low, so the miners have to crouch down. The miners sometimes create enlarged spaces along these corridors where they can stand up; these are known as the *salons* (lounges). Miners usually work in teams of three to five people. One or two start digging down the mineshaft – a process called *l’attaque* (the attack) – while the others remain at the top. After a few hours, the first group climbs back up and the second group takes over. Those who remain at the top are usually the first to spot signs of crumbling earth and try to warn their colleagues of the dangers – often too late. As the mineshaft starts collapsing, they may attempt to rescue their colleagues trapped underneath. In some cases, they succeed. In other cases, they have themselves been trapped by falling rocks, injured and even killed in the process of trying to save their team-mates.

In a typical example, a 19-year-old miner, ‘A’, died on 19 November 2005 in Tilwizembe mine, about 30 km from Kolwezi. Three of his team-mates, aged between 19 and 25,

<sup>x</sup> The victims’ names are withheld for the security of their families and colleagues.

were injured. One of the survivors, also aged 19, described to a local source how the accident occurred:

I was in front. 'A' was behind. We were cutting the earth [digging]. Suddenly I heard a loud noise. I heard people shout "watch out!" but it was too late as a block of earth was coming towards me. The first layer fell onto my stomach. I tried to move from under it but I couldn't. Then a second layer fell up to my neck. I started screaming as my head was still free. People (other miners) came and pulled me out. They asked me: "how many were you?" I said: "Four. The other three are down there." I started fainting [...] Then I don't remember anything. I woke up in the recovery room in hospital.<sup>108</sup>

A. was still alive when he was pulled out of the mineshaft, but died on his way to the hospital. One of the survivors believed that the miners who were trying to rescue the victims may inadvertently have contributed to A's death. They had not realised that A. was also buried there; as they tried to dig around their other injured colleagues to pull them out, they had piled more earth on top of A. and compressed the earth by standing on it.<sup>109</sup>

Sometimes the holes are too deep and too much earth has collapsed for the miners to pull their colleagues' bodies out with their bare hands. No equipment is provided for this purpose and the authorities provide no assistance whatsoever. The only efforts to save trapped miners and to retrieve the bodies of the victims are made by the miners themselves.

In the event of deaths or injury, EMAK sometimes covers the costs of hospital bills and funerals. However, the task of informing the families of the victims is left to the miners. The authorities do not inform or contact the families, and in most cases, the families do not receive official confirmation of the death.

Following such accidents, the area around the mineshaft which collapsed may sometimes be closed off for a few weeks, then reopened after the loose debris have been removed. In most cases, no other preventive action is taken. There is no system for warning miners of the dangers of working in particular locations; the only information they may get is communicated by other miners in an informal and haphazard way. A local journalist reported that in Shituru, near Likasi, a mineshaft had collapsed three times in the same place, most recently in mid-November 2005.<sup>110</sup>

In addition to deaths resulting from collapsing mineshafts, there have been a number of fatal accidents in other circumstances. For example, at Kimono mine, in mid 2005, six or seven people, including several students temporarily

working as miners, died of asphyxiation when a motor pump was used inside a mineshaft. The pump, used to pump water out of the mineshafts, was supposed to be placed at the top of the mineshaft; it had apparently been placed inside the mineshaft by mistake.<sup>111</sup>

## ii) Other health risks

The lack of protective equipment and clothing exposes miners to a variety of other health hazards. Miners climb down the mineshafts with bare feet, without ropes or other equipment, then spend several hours working underground, in extreme heat and near darkness, with just a few torches and candles. Workers who clean the minerals before they are packed in bags may stand in water for hours at a time, often barefoot, washing the minerals with bare hands, handling gravel and dust without gloves and working in a polluted environment. Workers popularly known as "*kwanda*" (a nickname meaning dromedaries) work in especially bad conditions, carrying bags of 50 kg of minerals on their shoulders, sometimes two at a time, then loading them onto trucks. *Négociants* at Didioviani mine, near Likasi, would pay the *kwanda* 200 francs (less than US \$0.5) to carry bags over a distance of 100 metres and 250 francs for a distance of 150 metres.<sup>112</sup> A miner in Likasi said that *kwanda* who worked for the trading company SOMIKA were paid 1,400 francs (around US \$3) for a full day's work without a break.<sup>113</sup>

The suspected presence of uranium remains a real concern for many people working in and around the copper and cobalt mines. High levels of radio-activity were one of the factors which led to the official closure of Shinkolobwe mine in February 2004.<sup>114</sup> Sources in Katanga have reported that even though Shinkolobwe remains officially closed, clandestine digging was continuing there at the end of 2005, with the complicity of police and military responsible for guarding the mine who were directly profiting from the mining instead of preventing people from entering.<sup>115</sup> Radio-active material was reported to be present in other mines too. However, the absence of reliable or accurate systems of analysis and control makes it difficult to know the real extent of the presence of uranium in the mines.

## iii) Responses to deaths and injuries in the mines

The general reaction to deaths and injuries in the artisanal mines, on the part of those in a position to do something about it, is one of indifference and an absence of any sense of urgency. Neither government officials nor representatives of companies buying from the mines are prepared to accept responsibility for the lives and welfare of miners,



Young men washing minerals, Ruashi mine, Katanga, November 2005.

even though many of them are profiting directly from their work. Government officials, company representatives and EMAK officials interviewed by Global Witness all tried to shift the burden of responsibility onto each other.

#### *The response of the government*

Government officials interviewed by Global Witness shrugged off responsibility for the artisanal miners on the basis that they were clandestine workers, operating outside the framework of the law, and that it was therefore difficult, if not impossible, to control them. Some officials pointed to the fact that despite the designation of specific areas for artisanal mining as part of the government's attempts to regulate the informal sector, miners preferred to work in other areas where they believed they could earn more money.<sup>116</sup> Some government officials claimed that once SAESSCAM was operational in Katanga, it would improve the working conditions of miners. However, there seemed to be no government programme to address the issue in the interim or in the several years that artisanal mining has already been going on in Katanga.<sup>117</sup>

In 2005, a team of inspectors from the Bureau des Mines in Lubumbashi (part of the provincial division of the Ministry of Mines) had been compiling regular reports on deaths and injuries in the artisanal mines. Global Witness was shown some of these reports, which included details of the identity of the victims and circumstances of the accident

(where known) as well as recommendations for action. The Bureau des Mines sent copies of all these reports to the Minister of Mines in Kinshasa, but there was rarely, if ever, any follow-up from the Ministry.<sup>118</sup> Staff at the Bureau des Mines who tried to investigate cases of accidents were thwarted at the most basic level. For example, in one case, an inspector who visited a mine in Ruashi in November 2005 after learning of an accident there was blocked at the entrance by other government officials and was made to pay to enter the mine. In another case, an inspector on a visit to Pompage mine was beaten by military because he was trying to obtain information on illegal activities.<sup>119</sup> Such incidents, and the absence of government support and interest, have discouraged inspectors from investigating cases in any systematic way.

In discussions with Global Witness, the Minister of Mines recognised that conditions in the artisanal mines constituted a problem. However, he said that law enforcement was not his responsibility, but the responsibility of the judiciary.<sup>120</sup> Local officials, however, said that investigations by the *parquet* (prosecutor's office) were rare, and that investigations by the Ministry of Mines' own inspectors did not lead to any results. "It becomes routine," one official told Global Witness, "people are just used to it."<sup>121</sup> None of the sources interviewed by Global Witness, including government officials themselves, were able to give any examples of cases where such deaths had led to prosecution or compensation.

The Ministry of Work has been even less effective. Desperately under-resourced, it has little power to enforce change. At the provincial level in Lubumbashi, sporadic information about working conditions and accidents is recorded and sent to the Ministry of Work in Kinshasa and to the Institut national de sécurité sociale (INSS, National Institute for Social Security), but there is rarely any follow up action. The head of the provincial office of the Ministry of Work in Lubumbashi seemed genuinely concerned about some of these problems, but lacked both the logistics and the influence to change these practices. His office did not even have any vehicles for travelling to the mines. He complained that the police, instead of enforcing the law, were often part of the problem.<sup>122</sup> The Inspector General of Work in Kinshasa told Global Witness that his Ministry's responsibilities were limited: "We control, observe, note problems and ask the police to do its work. If the police don't react, we can't do anything." Even within the ministry itself, there seemed to be a vicious circle of ineffectiveness. The Inspector General said that if provincial inspectors reported problems, he would ask them to solve them at the provincial level; at the same time, he acknowledged that the provincial offices didn't have the means to do so.<sup>123</sup>

### *The response of trading companies*

The trading companies buying the products from the artisanal mines have refused to take responsibility for the miners' labour conditions, yet are content to buy huge quantities of minerals from them and to make large profits in the full knowledge that the miners are putting their lives at risk every day. Their typical response to Global Witness was that their company did not employ these miners, therefore they were not responsible for their working conditions.

Global Witness asked representatives of SOMIKA, Chemaf and Groupe Bazano – three of the largest trading companies – for their response to the labour conditions in the artisanal mines.

A senior representative of SOMIKA in Kolwezi told Global Witness: "There is no commitment or responsibility between the miners and our company. They have their own bosses [...] They're taken care of by the négociants."<sup>124</sup> In reality, some but not all miners work for particular négociants. Even those who do will not necessarily enjoy better working conditions than those working independently.

A representative of SOMIKA in Likasi said he did not know anything about the working conditions of miners, initially

claiming that he was not allowed into the mines because the authorities did not allow foreigners in. When Global Witness asked him specifically about the mines that SOMIKA was managing, he continued to plead ignorance. He eventually conceded that he had been to the SOMIKA mines, but "only as far as the office".<sup>125</sup> However, a miner who worked in Kabolele mine, which is managed by SOMIKA, said SOMIKA representatives were usually present at the mine. He had been working there for two years. He worked six or seven days a week and slept at the mine. As he worked directly for SOMIKA, the company gave him food, hammers and spades, but no other equipment or clothing.<sup>126</sup>

The director of Chemaf in Lubumbashi claimed there were no problems with the miners at the Etoile mine (one of the main mines exploited by Chemaf, just outside Lubumbashi). He acknowledged that in other mines, labour conditions were not well controlled but said it was the responsibility of the state to improve them; companies could help, but could not start the process.<sup>127</sup> Representatives of Chemaf in Kolwezi told Global Witness that in 2004 and 2005, there had been three incidents in which mineshafts had collapsed in Mutoshi – one of the mines where Chemaf was working – and that three people had died since 2004. They then claimed that these people had died of natural causes. When Global Witness researchers sought clarification, the Chemaf representatives said that these cases were treated as accidents because the deaths had occurred during working hours.<sup>128</sup>

A senior representative of Groupe Bazano in Likasi told Global Witness that people in the mines were "dying like mice" but said it was the role of EMAK, rather than the companies, to register and organise the miners. He later added: "We're a company, not a philanthropic organisation."<sup>129</sup> The Director of Groupe Bazano, however, was keen to show that his company was concerned about the labour conditions of artisanal miners. He told Global Witness that the company would be restricting access to its mines so that only people wearing helmets and the right clothing would be allowed to enter.<sup>130</sup> By early 2006, Groupe Bazano was reportedly training its own guards to prevent children from entering the mines.<sup>131</sup>

Some companies, including Groupe Bazano and Anvil Mining (the latter an industrial mining company) said they had distributed protective clothing to miners in the past but complained that the miners had sold on the clothing instead of wearing it themselves.<sup>132</sup> Eventually, at the end of 2005, Groupe Bazano distributed a new consignment of 4,000 helmets, overalls and boots to miners in Tilwizembe, near Kolwezi, and Mashamba Est, at Kapata.<sup>133</sup>



Young boy taking a break from carrying minerals, Mutoshi mine, Katanga, 2005. © Private



Young boy carrying minerals, Katanga, 2005. © Private

#### iv) Children working in the mines

The Labour Code specifies in its introduction that the revision of earlier national labour legislation was inspired, among other things, by the ILO's conventions and recommendations.<sup>134</sup> In this context, some of the Labour Code's provisions on child labour explicitly reflect the DRC's commitments under the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention 182), which the DRC ratified in 2001.

The Labour Code also raises the legal age of employment from 14 to 18. However, children aged 15 or over may be exempt from this rule if they have explicit authorisation from the Inspector of Work and from their parent or guardian. Employing children under the age of 15 is forbidden in all circumstances.<sup>135</sup>

However, as with the Labour Code's provisions on health and safety requirements, there appears to be a loophole in the law. Article 133 of the Labour Code only specifies the age limit for children employed by companies, whereas most of the children working in artisanal mines are not employed by companies, but work independently.

In any event, in the artisanal mining sector in the DRC, the legal age limit is routinely disregarded, and even though trading companies may not be directly employing children, they buy products which have been mined or worked on by children. The presence of children in the mines is so visible that it is very unlikely that companies would not be aware of the problem. Children under 15, including some as young as 8 or 10, still regularly work in the mines, especially during school holidays. Information collected by Global Witness in late 2005 indicated that the number may be lower than in previous years, but that the practice was continuing. Some children were digging, as it is easier for them to crawl into narrow holes, but most were washing, sifting and transporting the minerals. Global Witness researchers spoke to a number of children who worked in the mines and saw many others who were clearly under the age of 15. However, when asked about their age, they claimed they were 18 or over, because they were aware that it was illegal for them to work at their real age.<sup>136</sup>

A miner told Global Witness that children as young as 8 or 10 worked in and around the mines in the Likasi area. They usually worked in teams and together lifted bags weighing between 50kg and 90kg then loaded them onto vehicles. The transporters preferred the heavier bags as they could load more into one lorry and pay lower tax and customs fees. The





Young boys sifting minerals, Kolwezi, Katanga, 2005. © Private

children were afraid that if they complained about the weight of the bags, or refused to carry the bags, they would be accused of being weak and would not be allowed to work anymore. Neither the police nor the Policar did anything to stop this practice. Children worked in teams of 15 or 20; each child would receive 800 francs for loading a 20 tonne vehicle, or 1,000 francs for loading a 40 tonne vehicle.<sup>137</sup>

Children have been among the victims of deaths and serious injuries in the mines. A provincial official of the Ministry of Mines told Global Witness that most of the victims of accidents about which he was notified were aged between 15 and 20.<sup>138</sup> Some were even younger. For example on 24 August 2005, a 10-year-old boy, Kalume Daniel, was found buried under a mound of earth at Pompage mine, near Lubumbashi. He had been wandering near a large heap of soil, when the heap started collapsing and an avalanche of rocks fell over him.<sup>139</sup>

Some provincial government authorities, including the governor of Katanga province and the mayor of Lubumbashi, have made efforts to reinforce the prohibition on the employment of children in mining activities. In a number of mines, officials from the Police des Mines and other government departments have chased children out, but often the children have found ways of getting back in. In other cases,

the police have taken no action, and the directives of the authorities have been ignored. In an illustrative example of lack of enforcement, the mayor of Kolwezi set up a committee in July 2005 to tour the mines and explain that all the children there had to leave within one month. Two months later, nothing had changed. When a local journalist asked the mayor about the lack of progress, the mayor told him to report it to the police. When he went to the police, the police commander told him he had not received any written instructions from the mayor to chase the children out.<sup>140</sup>

Official and unofficial sources explained to Global Witness that in most cases, the children worked in the mines for the same reasons as the adults: because of economic necessity. Many children typically begin to work in the mines during school holidays; some then drop out of school completely because their families cannot afford to keep paying their school fees. Due to the high levels of poverty and unemployment, entire households may end up living off the earnings of their children. In 2005, the provincial government embarked on a campaign to raise public awareness of the dangers and illegality of children working in the mines. However, the absence of alternatives for many families, particularly educational opportunities, coupled with families' desperate economic circumstances have tended to undermine the effectiveness of this campaign.

## VI. Developments in the industrial mining sector



'Big Hill', copper and cobalt slag heap, Lubumbashi, November 2005.

The Congo is so rich in mineral wealth, you can't just ignore it.  
You don't want to be the last guy at this party.<sup>141</sup>

GERHARD KEMP, RAND MERCHANT BANK, JOHANNESBURG

As stated in the summary, this report is not intended to provide an in-depth analysis of the formal mining sector in Katanga. However, it provides an overview of major developments in 2005 relating, in particular, to a number of large mining contracts signed during the transitional period which have significant, long-term consequences for the economic future of the province, and for the country as a whole.

Congolese in Katanga have raised serious concerns about these recent deals, relating primarily to three aspects: the perceived imbalance in the shares of the contracts allocated to the private companies and to Gécamines, resulting in vast profits for the private companies and a serious depletion of Gécamines' resources and ability to generate revenues; the duration of the contracts, some of which cover periods of 30 or 40 years; and the fact that these contracts were signed by an unelected transitional government, composed of many of the same parties and individuals who have been systematically looting the country's natural resources over the last ten years.

There is a widespread perception both inside and outside the DRC that the transitional government is not making deals that will benefit the Congolese population – a percep-

tion aggravated by the lack of transparency surrounding these contracts and the absence of public debate and consultation. In less than three years, the transitional government has effectively been allowed to sell off some of the DRC's most valuable assets; some of the largest contracts are described below. A senior Gécamines official, speaking in his private capacity, told Global Witness: "The whole western area [of Katanga] is being given away."<sup>142</sup> Once the new government is elected in 2006, it may find it difficult to generate revenues from copper and cobalt resources as there will be almost no concessions left to negotiate.

This situation has created deep resentment among the population of Katanga, not only towards the government, but also towards the foreign companies who are perceived as playing a predatory role and 'stealing' the country's natural resources. Initiatives by some companies to fund social development programmes in Katanga, such as the construction of schools, hospitals and roads, have done little to appease popular hostility. Most of the people interviewed by Global Witness in Katanga believed that these development programmes were still very limited and, in any event, did not compensate for the fact that the Congolese state (and thus the population) was getting such a poor deal from most of the large mining contracts.<sup>143</sup>

## 1. The World Bank programme and the restructure of Gécamines

Although a recent World Bank study described the DRC as the worst country in the world in which to do business,<sup>144</sup> the World Bank's strategy for kick-starting the mining sector in Katanga has been to promote foreign investment. This was evident in the introduction of the Mining Code in 2002, which strongly favours private investors, and in its approach to restructuring the bankrupt Gécamines, which is based around attracting foreign partners to take control of Gécamines' assets.

The World Bank's Emergency Early Recovery Project in 2001 outlined the need to restructure the struggling state enterprises, in particular Gécamines. The World Bank's Private Sector Development and Competitiveness Project set up a Steering Group for the Reform of Public Enterprises (Comité de pilotage de réforme des entreprises publiques, known as COPIREP).

The first phase of the restructuring project was the reduction of the workforce of Gécamines, which led to over 10,500 redundancies in 2003. Programmes of assistance to those made redundant have been limited. By the end of 2005, many of these former Gécamines employees remained out of work and without adequate support. The situation of many of them has been aggravated by the fact

that they had not been paid their salaries for months or even years before their redundancy; they have also lost access to vital services previously provided by Gécamines, such as schools and healthcare.

The second phase of the project involves a complete restructure of Gécamines, under the guidance of the IMC Group, a company of UK consultants appointed by the World Bank to design the programme. In 2004, a French management consultancy, SOFRECO, won an international tender to manage the IMC's restructuring plan and has taken on the unenviable task of re-launching Gécamines within 18 months.

SOFRECO's work has got off to a difficult start. It has been alleged that the Congolese government deliberately stalled the process, with the result that SOFRECO only commenced work in January 2006, whereas the World Bank's restructuring programme was due to be completed by December 2004. During this time, the transitional government has systematically "sold off" to private companies most of the mines or plants that would have enabled Gécamines to become commercially viable. Many of these deals were rushed through in 2005 before SOFRECO could commence work. "What will SOFRECO do when they come? There is nothing left to exploit," a Congolese mining expert told Global Witness.<sup>145</sup>



Railway line used to transport copper and cobalt between Likasi and Lubumbashi, Katanga, November 2005.

The target that SOFRECO has been set by the World Bank and the Congolese government is to increase Gécamines' copper production to 100,000 tonnes per annum, with an annual turnover of US\$25 million, within 18 months. However, the recent deals that have been pushed through effectively mean that Gécamines has been asset-stripped and SOFRECO has very little left to work with. For example, Gécamines has been deprived of the rich Luiswishi open-pit mine near Lubumbashi, which has been sold to George Forrest, an influential Belgian businessman whose family has been operating in the DRC since 1922.<sup>146</sup> A number of other mines around Kolwezi and plants in Likasi have also been sold off to various private operators.

The International Finance Corporation (IFC), the World Bank's private investment wing, has provided finance for a feasibility study carried out by Adastra, a Canadian mining company with its head office in the UK, which is establishing a copper and cobalt project in Kolwezi. In October 2005, the IFC exercised its option so that it now has a 7.5% stake in Adastra's project.<sup>147</sup> In April 2006, Adastra was taken over by First Quantum, another Canadian mining company.

The Kolwezi project is particularly significant as it is the first investment in the DRC by the IFC, which provides funding for private sector projects in developing countries. It is not yet known whether the IFC will invest in other mining projects in the country. In a meeting with Global Witness, a representative of the IFC explained that other

projects in the DRC had been considered but would have been too difficult "from a governance point of view"; the unpredictability of the political situation also continued to be a deterrent.<sup>148</sup>

## 2. Recent joint venture contracts

Recent contracts signed by the transitional government (see box, right) have been heavily criticised by many people in Katanga for being 'one-sided', in that they provide huge benefits to the private companies involved but leave Gécamines with such a low share that the state will be unable to generate profits from the deals. One local source summed up the situation as follows: "Gécamines just got the crumbs."<sup>149</sup> Furthermore, it will be two or three years before most of these companies can start exploiting the mines, during which time Gécamines will not be able to generate revenue from these projects at all.

The majority of contracts signed over the past few years provide Gécamines with a maximum share of 25%; in some cases, its share is significantly lower. For example, Gécamines has a 20% in the STL plant in Lubumbashi, with the remaining 80% split between the US company OMG and Forrest.

In November 2005, an agreement was finalised for the control of Tenke Fungurume, the world's richest copper mine, giving the US company Phelps Dodge 57.75% ownership,



Copper and cobalt processing plant, Lubumbashi, November 2005.

## Recent joint venture contracts

Since the establishment of the transitional government in June 2003, key contracts that have been signed include:

- October 2003: **Kolwezi Tailings copper and cobalt project.** The final agreement was reached with Adastra, a Canadian company with its head office in the UK. Gécamines has a 12.5% share in the deal and the DRC government has a 5% share over a 40 year period. In May 2005, Adastra received loans totalling US \$5.9 million from the IFC. In April 2006, Adastra was taken over by First Quantum, a Canadian mining company which already operates several mining projects in Katanga.
- February 2004: **Kamoto copper mine, the Dima-Kamoto Concentrator and the Luilu hydrometallurgical plant.** Kinross-Forrest signed a deal with Gécamines, giving Kinross-Forrest a 75% share and Gécamines 25%. The main shareholders of Kinross-Forrest are George Forrest International and the Canadian company Kinross Gold Corporation.
- June 2004: **Ruashi copper and cobalt mine.** The South African company Metorex and its junior partner Sentinelle signed a deal with Gécamines, giving Gécamines a 15% share in the project.
- September 2004: **Kamoto Oliveira Virgule open-pit mine and Kananga and Tilwizembe deposits.** A deal was reached with Global Enterprises Corporate Ltd (GEC), a new firm set up by Beny Steinmetz Global Resources and Dan Gertler International and registered in the British Virgin Islands, giving GEC 75% ownership of the project and Gécamines a 25% share over a 35 year period.
- November 2005: **Tenke Fungurume copper mine.** The final agreement gives the US company Phelps Dodge 57.75% ownership, Canadian Tenke Mining 24.75% and Gécamines 17.5%.

Between them, the Kinross-Forrest, GEC and Phelps Dodge deals cover 70% of the DRC's known copper reserves.

Canadian-owned Tenke Mining Corp 24.75% and Gécamines 17.5%.<sup>150</sup>

The ore in Katanga is so rich that companies only need to make a small investment in order to begin making immediate profits. Some of these contracts span several decades. For example, the Adastra KMT deal involves a US\$200 million investment on the part of Adastra – money which the company should see returning very quickly in profits; yet it has a contract to operate the mine for forty years.

Several Gécamines employees and mining experts in Katanga described to Global Witness how individuals from President Kabila's office have intervened directly when contracts were being negotiated and exerted pressure on Gécamines' staff to 'rush' the contracts through.<sup>151</sup> Witnesses also described how the management structure of Gécamines was 'corrupted' by private companies. An inside source said: "It's a system based on corruption. People are not appointed on the basis of competence."<sup>152</sup>

In addition to these recent joint-venture deals, there are a number of operators who have been semi-industrially mining heterogenite for several years in Katanga. One of the largest exporters of heterogenite in 2005 and early 2006 is believed to be the Congo Cobalt Company (known as CoCoCo), run by Billy Rautenbach.<sup>153</sup> Rautenbach, a Zimbabwean citizen, was formerly Chief Executive of Gécamines from November 1998 to March 2000, an appointment which was described in a UN Expert Panel report as a deal struck between then President Laurent Kabila and President Mugabe of Zimbabwe. The deal was criticised as a 'blatant conflict of interest' because of other companies Rautenbach managed concurrently in Katanga.<sup>154</sup> It was reported in the press that in October 2000, a warrant for Rautenbach's arrest was issued in South Africa on charges of fraud, theft and corruption relating to his control of the South African operation of the Hyundai Motor Corporation.<sup>155</sup> The National Prosecuting Authority of South Africa confirmed to Global Witness that this warrant remained in force in May 2006, but were not able to confirm the exact charges.<sup>156</sup>

Numerous sources interviewed by Global Witness in Katanga in late 2005 suggested that CoCoCo was among the companies which might have been involved in illicit exports of heterogenite.<sup>157</sup> Global Witness has not carried out its own investigations into the operations of CoCoCo in Katanga or into allegations of illicit activities by the company.

It was reported that in February 2006, Rautenbach sold most of his interest in CoCoCo to the Central African Min-

ing and Exploration Company (CAMEC), a company listed on the London Stock Exchange's Alternative Investment Market (AIM) and whose Chief Executive is ex-England cricketer Phil Edmonds.<sup>158</sup> Rautenbach reportedly maintains 17% shares in CAMEC.<sup>159</sup>

### 3. The Lutundula commission

As part of the peace talks held in South Africa in 2002, a resolution was adopted requesting the transitional National Assembly to establish a commission to examine the validity of economic and financial contracts signed during the war (from 1996 to 30 June 2003) and the financial costs of the war. Known as the Lutundula commission, after its president Christophe Lutundula, the commission, created in 2004, is made up of 17 parliamentarians from a cross-section of political parties. In 2005, it completed a 271-page report containing detailed information gathered during investigations in different parts of the DRC, as well as in other countries including Belgium, the UK and the USA.<sup>160</sup> The investigations divided up the country into four regions: central, Katanga, east and west. Many though not all the contracts they reviewed were mining contracts.

The commission found that dozens of contracts signed during the war were either illegal or contributed little or nothing to the development of the country. Its report recommends that some of these contracts be rescinded and that others be renegotiated or amended. It also recommends a moratorium on new contracts until after the elections.

In Katanga, the commission examined a total of 40 contracts signed with Gécamines, 10 contracts with the Congolese state, 7 contracts with Sodimico (a smaller mining parastatal) and 3 with the Société nationale des chemins de fer du Congo (SNCC), the state railway company. The report raises serious concerns about several of these contracts and in some cases recommends that the contracts be cancelled.

In particular, the report highlights contracts where the state had agreed to major tax exemptions to joint ventures for periods of 15 to 30 years, leading to the loss of significant tax revenues which would have been essential to the country's development. The report also denounces the interference of high level politicians in the negotiation of contracts. It notes the failure to conduct feasibility studies before contracts were signed with Gécamines and the fact that Gécamines was always negotiating from a position of weakness. This had led to deals which were disproportionately advantageous for the private companies and failed to reflect the resources and facilities (such as installations and other infrastructure) contributed by Gécamines. The report also

raises concerns about the fact that the majority of ore being exported from the DRC is unprocessed and thus with no value added.

The Lutundula commission submitted its report to the President of the National Assembly in June 2005. Eventually – after much national and international pressure, and despite attempts by some political actors to suppress the publication of the report – the National Assembly agreed to make the report public in February 2006. However, almost a year after the report was submitted, it has still not been debated by the National Assembly, and the prospects of such a debate taking place are receding as elections approach. The transitional government has not only failed to take any action on the report but has continued to act in ways which have been consistent with the abuses documented by the Lutundula commission, in particular by signing large contracts which deprive the state of revenues from its natural resources.

One of the key recommendations of the report is that the commission's mandate be extended to review contracts signed by the transitional government since 2003; this would include many of the large mining contracts mentioned in the present report. In its general conclusions, the report states that it is "indispensable and urgent" for the National Assembly to review contracts signed by the transitional government as according to the information gathered during its investigation, "the transitional government has not done any better than those who held state power during the period of the wars of 1996-1997 and 1998. On the contrary, the draining of the country's natural resources and other forms of wealth has increased under the cover of the impunity guaranteed by the Constitution to those in governmental positions."

### 4. The Kilwa incident

The political risk of operating in Katanga is perceived as substantially lower than in other parts of the country, as the main mining areas of the province have been relatively unaffected by the war. However, there have been several incidents which suggest that southern Katanga has not escaped the political and human rights problems experienced in other parts of the country. The most striking example was an incident which took place in October 2004 at Kilwa, in south-east Katanga, about 50 km south of Dikulushi copper and silver mine, run by Anvil Mining, a mining company listed on the Toronto and Australian stock exchanges. Global Witness has not carried out first-hand research into the Kilwa incident, but several local and international NGOs, as well as investigators from the human rights divi-

sion of MONUC (the UN peacekeeping force in the DRC), documented the events in Kilwa in detail.<sup>xi</sup> The incident is mentioned again here because the issues it raised are still unresolved. The 2004 events in Kilwa highlight not only the volatile context of Katanga but the inadequacy of international instruments governing the conduct of companies operating in conflict-prone areas.

In October 2004, military from the FARDC (the national Congolese army) used vehicles belonging to Anvil Mining to suppress an uprising in Kilwa by a small rebel group calling itself the *Mouvement révolutionnaire pour la libération du Katanga* (MRLK). Soldiers from the 62<sup>nd</sup> brigade of the 6<sup>th</sup> military region dealt with the uprising brutally, killing around 100 unarmed civilians. Witnesses claimed that Anvil Mining provided the military with food and money and that Anvil's vehicles, driven by Anvil employees, were used to bury the victims' corpses.<sup>161</sup>

Several months went past before Anvil Mining publicly reacted to these allegations. Eventually, following a June 2005 television broadcast on the incident by the Australian Broadcasting Corporation (ABC) and sustained pressure from Congolese and international human rights NGOs, Anvil Mining acknowledged providing logistical support to government troops upon their request, but claimed that it "had absolutely no choice but to provide the transport required by the DRC Military and had no reason to suspect that this would involve anything other than the lawful enforcement of the laws of the DRC. Anvil had no knowledge of what was planned for the Military operations and was not involved in the Military operations in any way."<sup>162</sup>

In August 2005, the Australian Federal Police launched an investigation into Anvil's role in the Kilwa incident.<sup>163</sup> At the time of writing, the investigation has not yet been concluded.

The World Bank's Multilateral Investment Guarantee Agency (MIGA) provided a \$5 million political risk guarantee for Anvil's Dikulushi project in September 2004, a month before the Kilwa incident. In July 2005, the UK-based NGO Rights and Accountability in Development (RAID) wrote to the President of the World Bank Group, Paul Wolfowitz, alleging a number of failures in the due diligence preceding MIGA's support for this project.<sup>164</sup> Presi-

dent Wolfowitz responded by requesting the Compliance Advisor Ombudsman (CAO) to audit the MIGA's due diligence. The CAO's final report, published in November 2005, found that MIGA's analysis did not "address whether the project may either influence the dynamics of conflict or whether security provision for a project such as Dikulushi could indirectly lead to adverse impacts on the local community". It stated that "the Environmental and Social Review Procedures (ESRPs) should have flagged the potential social impacts of the risk that the presence of the mine could exacerbate local tensions or attract rebel groups with consequent increased insecurity for local people." Regarding the Voluntary Principles on Security and Human Rights, it concluded that "MIGA did not fully understand the implications for its client of implementing the principles nor assess whether its client had the capacity to do so. Neither MIGA nor Anvil recognized the critical distinction between conventional security, which deals with securing the safety and well-being of personnel and assets, and the Voluntary Principles, which recognize that conventional security provision can, in and of itself, present risks to the well-being of communities."<sup>165</sup> The CAO recommended that these and other issues be retrospectively addressed in order to limit the risk of future incidents.

## 5. The relationship between industrial and artisanal mining

As an increasing number of foreign and multinational companies are investing in industrial mining in Katanga, options for artisanal miners are diminishing fast. Some commentators have predicted that artisanal mining may have ceased to exist in its current form in Katanga within a few years. Even if these predictions turn out to be exaggerated, it is clear that the difficulties facing artisanal miners are likely to increase.

The relationship between artisanal and industrial mining in Katanga is complicated. In theory, the development of industrial mining in Katanga, bringing with it better working conditions, professional equipment and a clearer legal framework for employment, could prove beneficial for workers in some respects. But in practice, as the government has allocated more and more concessions to mining companies, artisanal miners have been pushed out and have found themselves shunted repeatedly from one mine to another. In particular, many miners have been chased out of the large Tenke Fungurume concession since the contract was signed in late 2005.

The process of ejecting artisanal miners from these concessions has been a delicate one. Tensions with the security

<sup>xi</sup> For further information on the October 2004 events in Kilwa, see information published by Rights and Accountability in Development (RAID) ([http://www.raid-uk.org/work/anvil\\_dikulushi.htm](http://www.raid-uk.org/work/anvil_dikulushi.htm)) and the following reports: joint report by RAID and Action contre l'impunité pour les droits humains (ACIDH), "Kilwa, une année après les massacres d'octobre 2004", October 2005, which includes extracts of the MONUC report on the incident; ASADHO/Katanga, 'Rapport sur les violations des droits de l'homme commises à Kilwa au mois d'octobre 2004', January 2005, and ASADHO/Katanga, 'Crimes de guerre de Kilwa: L'Asadho/Katanga et les victimes continuent à réclamer justice', December 2005.

forces, sometimes leading to clashes, have been common in this context. Some artisanal miners who were chased out of concessions have crept back in and continued working there illegally. The force with which companies have tackled this problem has varied from company to company.

Representatives of Anvil Mining told Global Witness that more than 60% of the company's security budget was spent on protecting miners, and that they were employing people to prevent digging in unsafe areas within their concession, but that this had not stopped miners entering at night.<sup>166</sup>

On 24 April 2006, at least four people – two artisanal miners and two Anvil Mining workers – died following tensions between the company and artisanal miners in Kolwezi. The incident led to the temporary closure of Anvil's Kulu mine. Tension flared up after a number of miners were chased out of Anvil Mining's concession and one miner died; some reports alleged that he was pushed into a pond by a guard and drowned, others that he had fallen into the pond as he was trying to escape from security guards.<sup>167</sup> In response to his death, a group of miners demanded a meeting with the mayor of Kolwezi, but the mayor did not receive them. The miners then went to Anvil's premises in Kolwezi and set fire to one of

Anvil's guest-houses; two staff members working for Anvil Mining died in the fire. There were reports that at least one and possibly two miners died when the Police des Mines shot at the demonstrators.<sup>168</sup> A news release issued by Anvil Mining confirmed that one of its guesthouses had been set on fire and that an Anvil staff member and a security guard employed by an external contractor had died, but did not provide further details of the circumstances of the attack.<sup>169</sup> Operations at Kulu mine resumed in early May 2006.<sup>170</sup>

As the industrial sector continues to grow in Katanga, so artisanal miners will continue to be edged out by multinational companies. The government has been encouraging the expansion of industrial mining without making any specific provision for the tens of thousands of artisanal miners and their dependents, for whom alternative sources of livelihood remain extremely limited. The economic consequences for these families could be serious. Some industrial mining companies have been willing to employ some of the artisanal miners they found on their concessions, and others may be willing to do so in the future; but the proportion of those who can be employed by these companies will always be small compared to the huge number currently mining artisanally.



Ruashi mine, Katanga, November 2005.



## VII. Failure to enforce the law

The main legal instrument governing both industrial and artisanal mining in the DRC is the Mining Code, which was adopted in July 2002 and entered into force in 2003, along with its implementing regulations.<sup>171</sup>

With regard to the industrial sector, many Congolese see the Mining Code as disproportionately favouring foreign and multinational companies, as it provides greater tax advantages for them than previous legislation. They complained that the Mining Code perpetuated a situation where mining activities benefit foreign companies at the detriment of the Congolese people. A Gécamines worker described the Mining Code as a curse for the population.<sup>172</sup>

The introduction of the 2002 Mining Code has created some confusion – which in turn may have favoured irregularities – as companies can choose whether their activities are governed by this Code or by pre-existing legislation. Under the Mining Code, the exit tax for exporting companies has been replaced by a payment of 1% of the value of the goods being exported. According to the director of the inspectorate for mining exports at OFIDA in Lubumbashi, the exceptions to this rule are exports of ferrous scrap (*mitrilles*), which are still subject to the exit tax. Individual exporters (as opposed to companies) are also still required to pay an exit tax of 5% of the value for raw and concentrate and 10% for metal.<sup>173</sup>

Government officials hold up the Mining Code as evidence of their attempt to impose coherence and exercise control over mining activities, but in practice, many of its provisions are ignored. Government authorities themselves have admitted that there are gaps in the Mining Code and that it is not consistently applied.<sup>174</sup> The non-application of the Mining Code is due in part to a lack of capacity among the government departments concerned (notably the Ministry of Mines and the Ministry of Work) and in part to extensive corruption. As one civil society activist explained, “the laws and codes are there but they are not respected because the inspectors and those in charge of regulation are corrupt.”<sup>175</sup>

The Mining Code has been largely ineffective in regulating and controlling artisanal mining. For example, the designa-

tion of special zones for artisanal mining has been systematically disregarded, with miners continuing to work in whichever locations they believe to be most profitable and the authorities making no effort to prevent them from doing so. Likewise, the requirement that artisanal miners must obtain an official card from the provincial Division des Mines before they are allowed to work is often overlooked.

The export of raw minerals is another area where regulations and government directives have been ignored, resulting in significant losses for the Congolese economy. Until the early 1990s, almost all the copper and cobalt leaving the DRC was processed in the country before being exported as metal, but in the last ten years, this trend has been reversed. Since 2004, the government, both at national and provincial level, has made token attempts to regain control of the situation in order to increase the value of exported minerals; various directives have been issued at national and provincial levels requiring that minerals be processed before being exported. In theory, raw exports are only permitted with a written authorisation from the Minister of Mines. According to the Mining Code, this authorisation will only be granted if the exporter can demonstrate that there is no economically viable possibility of processing the minerals within the country and that the authorisation of the raw export would be advantageous to the DRC.<sup>176</sup> Yet in practice, most of the minerals leaving Katanga are still exported in their raw form – around 70%, according to one source in Zambia.<sup>177</sup> This is despite the fact that since 2004, some of the trading companies have set up factories to process or part-process the minerals before they leave the DRC. However, overall, the processing capacity within the DRC is still very limited. There is little incentive for companies to invest in expensive equipment and factories when they can make larger profits exporting raw products.

When Global Witness asked the Minister of Mines about the high level of exports of raw minerals, he explained that raw products could only be exported under certain conditions, and he was the only person who could authorise them. He claimed he had only ever signed two or three such authorisations, but admitted that many companies continued exporting raw materials nevertheless.<sup>178</sup>

## VIII. The “political umbrella”

### 1. The role of political actors in Kinshasa

For decades, politicians in the DRC, at the highest levels of government, have concentrated on enriching themselves from the lucrative copper and cobalt trade in Katanga instead of using these resources for the development of the country and the province. This pattern of personal appropriation of Katanga’s minerals by senior politicians has continued since the war began and throughout the transitional period, from 2003 to 2006. If anything, national level politicians’ hold on these resources has tightened in the run-up to elections in 2006: Katanga province is the heartland of the Kabila family and the home area of Laurent-Désiré Kabila, father of current president Joseph Kabila.

Numerous sources interviewed by Global Witness in Katanga affirmed that Kinshasa-based political actors close to President Joseph Kabila had a direct hand in all the mining deals in the province.<sup>179</sup> The report of the Lutundula Commission also highlighted the interference of Kinshasa-based politicians in the negotiation of some of the large mining contracts in the industrial sector. The report states, in its section on Katanga: “The political leaders at the top levels of government intervene in the shadows by using their influence and giving inappropriate orders to the negotiators or signatories of the contracts. They follow closely and interfere in the activities of the partnership.”<sup>180</sup>

Global Witness has not been able to independently confirm the role of individual political actors but considers this information to be credible, in view of the political dynamics between Katanga and Kinshasa and the entrenched patterns of political interference, corruption and plundering of natural resources by the current and previous governments.<sup>xii</sup> One of the difficulties in demonstrating links to specific individuals is the fact that these individuals usually operate in an unofficial capacity and their names rarely appear on company or other documentation relating to these deals. “All these people operate with false names,” one source told Global Witness, “all the money goes to the boss [Kabila].”<sup>181</sup>

Sources interviewed by Global Witness also frequently referred to regular, large cash payments from mining companies to President Kabila and individuals close to him, usually paid through various intermediaries.<sup>182</sup> Several said it

<sup>xii</sup> These patterns characterise not only the copper and cobalt sector, but also the exploitation of other minerals in the DRC, including diamonds, gold, coltan and cassiterite, as well as timber.



Portrait of Laurent Kabila, village between Lubumbashi and Likasi, Katanga, November 2005.

was impossible for a company – whether big or small – to operate in Katanga without a “political umbrella”, meaning protection and support from politicians in Kinshasa.<sup>183</sup> The involvement of members of the political elite in the mining sector in Katanga occurs both in the formal industrial sector, where they are alleged to have close links to some of the big mining companies, and in the artisanal sector, where they are facilitating illicit exports by trading companies and individuals on a regular basis.

In the formal sector, one of the clearest examples can be found in the relationship between Anvil Mining and Congolese politician Katumba Mwanke. Katumba Mwanke, a former governor of Katanga (from 1998 to 2001) and adviser to President Joseph Kabila, was described as a “key power broker in mining and diplomatic deals” in the final report of the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the DRC. The report also described him as one of the chief figures in an “elite network” seeking to “maintain its grip on the main mineral resources”.<sup>184</sup> Katumba Mwanke was director of Anvil Mining Congo (the Congolese subsidiary of Anvil Mining) from 2001 to 2004<sup>185</sup> and is widely believed to have played a key role in negotiating the contract for Anvil

Mining in Katanga. In an interview with an ABC television reporter, the President and Chief Executive Office of Anvil Mining, Bill Turner, initially denied that Katumba Mwanke had any role in the company, then admitted that he had been the Congolese government’s representative on the company’s board and that Anvil Mining had paid him “director’s fees”. He also confirmed that Anvil Mining was renting a house belonging to Katumba Mwanke for the company’s headquarters in Lubumbashi at a rent of around \$3,500 or \$4,000 a month.<sup>186</sup>

Sources in Katanga have claimed that Katumba Mwanke and individuals close to him have continued to be involved in mining contracts. One example cited by several people was Dikanga Kazadi, who was the Congolese ambassador to Zambia until November 2005 and former political advisor to Katumba Mwanke when he was governor of Katanga province. He is also a member of Joseph Kabila’s political party, the PPRD (Parti du Peuple pour la Reconstruction et la Démocratie). Some sources in Lubumbashi believe that Dikanga Kazadi was and may still be closely involved in the affairs of the Compagnie Minière de Sakania (COMISA), which mines copper and cobalt at Lonshi, about 60 km from Sakania near the Zambian border, and that he may have helped negotiate its contract.<sup>187</sup> COMISA is owned by First Quantum, a Canadian mining company which also owns the Zambia-based company Bwana Mukubwa Mining.

Global Witness was told repeatedly that other individuals close to President Kabila, including members of the presidential family, have been involved in mining deals in Katanga and continued to benefit from these profits, both in the formal and the informal sector. Global Witness has not been able to verify these claims independently.

More generally, in the run-up to elections in 2006, politicians’ interests in mining profits have been intensifying, and these profits have contributed, directly or indirectly, to election campaigning and party finances. Joseph Kabila’s PPRD would be the first to benefit from the close relationships with economic operators in Katanga.

A letter dated 20 September 2005 from the president and rapporteur of the provincial office of the PPRD addressed to Vital Kamerhe, Secretary General of the PPRD in Kinshasa, refers to support for the party from several companies and individuals. The letter (reproduced in the Annex to this report) recommends to the hierarchy of the PPRD several

senior representatives of Gécamines and SNCC; these representatives, who are named in the letter, are praised for making “an efficient contribution to propagating the message of PPRD throughout Katanga.”<sup>188</sup> They include the executive director and deputy director of Gécamines at the time, Nzenga Kongolo and Assumani Sekimonyo. Following changes in the management of Gécamines in late 2005, Assumani Sekimonyo has since been appointed chairman of the board of directors of Gécamines.<sup>189</sup> The letter also mentions several representatives of companies operating in Katanga who “showed an interest in our party”; they include representatives from Société East China, Marc Rich RSA and SOMIKA. George Forrest and his company are singled out for special praise “for having supported us, step by step, in the campaign to establish the Party.” The letter’s

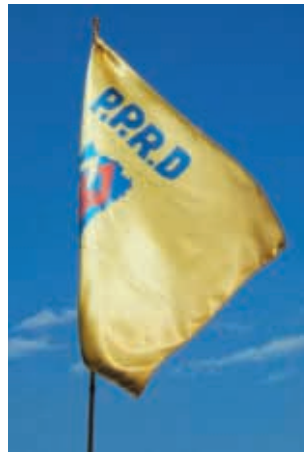
authors state that they are continuing to maintain relationships based on trust with these individuals and will sometimes require the support of the (party) hierarchy to support reciprocal interests. They recommend that the party hierarchy puts in place a policy of closer relations with the large economic operators who have recently set up in Katanga.<sup>190</sup>

In the artisanal sector, anecdotal evidence from a variety of local sources, including individuals working in the sector, indicates that trading companies and individuals exporting minerals illicitly have a direct line of communication with politicians in Kinshasa and do not hesitate to use these contacts whenever

their exports are blocked at checkpoints. Global Witness researchers were told of several occasions in 2005 when trucks were initially intercepted at the Kisanga checkpoint or at the Kasumbalesa border and prevented from proceeding because they did not have the correct documents. If the representatives of the trading companies, or individuals acting on their behalf, failed to persuade the officials at the checkpoints to let their trucks through, they would make phone-calls directly to Kinshasa, and within a short time, orders would come through to the officials at the checkpoints or the border to let the trucks pass.<sup>191</sup>

## 2. The role of politicians in Katanga province

Testimonies gathered by Global Witness indicate that politicians at the provincial and local levels in Katanga also take a cut from mining deals. However, according to local sources, most of them tend to profit through opportunism rather than through direct political influence. Provincial authorities do not usually hold the power to make or break these



PPRD flag, village between Lubumbashi and Likasi, Katanga, November 2005.

deals, least of all those relating to the big mining contracts. These decisions are made by the national-level politicians in Kinshasa, who then instruct provincial authorities to implement them. In some cases, the provincial authorities are bypassed altogether. A source in Lubumbashi told Global Witness: “Kinshasa politicians regularly visit Katanga. The provincial authorities can’t control what’s going on. Kinshasa lays down the law. Companies don’t pay taxes to the province as they belong to various powerful individuals.”<sup>192</sup> The report of the Lutundula Commission also noted that provincial officials were powerless in the face of illegal decisions taken by government officials in Kinshasa.<sup>193</sup>

Some provincial officials have made efforts to try to regularise the situation in the artisanal sector. For example, in 2004, the governor of Katanga set up a provincial commission to control the exports of minerals and to coordinate the work of all the different departments involved. This commission – the *Commission de Contrôle de l’Exportation des Produits Miniers* (Commission for the Control of Exports of Mineral Products) – is chaired by the governor’s *directeur de cabinet* and its vice-chair is the governor’s advisor on mining.<sup>194</sup> However, in at least one incident in 2005, a member of this commission reportedly intervened to try to facilitate the export of a consignment of minerals, some of which had been found to exceed the legal radio-activity limit.<sup>195</sup>

In practice, most of these initiatives are ignored, in part because of the ineffectiveness of the police and agencies responsible for controls and verification and in part because they do not have the backing of national-level politicians in Kinshasa, who profit directly from the status quo and ongoing violations of the law. A number of provincial and local government officials interviewed by Global Witness complained that they had neither sufficient resources nor political room to manoeuvre to make or enforce important decisions.<sup>196</sup>

The situation could begin to change following the promulgation of a new national constitution for the DRC in February 2006. The new constitution provides for much greater political and economic decentralisation to the provinces, with provinces keeping 40% of national revenues and governors and other provincial authorities thereby acquiring control over significant financial and economic resources.<sup>197</sup>

There have been allegations that provincial officials have been involved in cases of theft. The theft of raw minerals and mineral products is a serious problem in Katanga, ranging from small-scale theft from the mines to larger-

scale, well-organised criminal operations which involve breaking into Gécamines plants or stealing copper cables used for the supply of electricity.<sup>198</sup> Some of these cases involve members of the government and the military. Members of the judiciary who have attempted to investigate or prosecute these cases have received threats and have been subjected to pressure to drop these cases.<sup>199</sup>

In at least one incident in October 2005, documented by several independent sources in Lubumbashi,<sup>200</sup> government officials were involved in covering up the attempted theft of a large consignment of products, including high-value cobalt and copper suspected to have been stolen from Gécamines, and copper cables from the national electricity company SNEL. Witnesses in Lubumbashi, some of whom had seen the impounded truck and the minerals it was carrying, indicated that officials from the provincial government may have been complicit in allowing the goods to be released after they had been intercepted. They stated that the truck was first impounded at the border and taken back to the governor’s office then to the prosecutor’s office for investigation. Subsequently, the truck, or the goods it was carrying, was substituted for a different truck or less valuable goods, and the original consignment was allowed back to the border. Inside sources disclosed that officials from the judiciary in Lubumbashi, who were responsible for investigating the reported theft, and intelligence officers of the ANR were paid off by intermediaries to drop the investigation. Some of these intermediaries, including a trader who declared he owned the items in the truck, are believed to have close links with relatives of Joseph Kabila and with Katumba Mwanke. Global Witness is not aware of evidence that relatives of the president or Katumba Mwanke were themselves implicated in this incident. However, one source reported that the governor of Katanga had indicated that pressure had come from his “hierarchy” to let the goods through.<sup>201</sup>



Stolen copper cables impounded by authorities, Kolwezi, Katanga, November 2005.

## IX. Threats and harassment of activists

A number of human rights activists and other members of civil society in Katanga have been threatened and intimidated by government authorities after denouncing corruption and abuses in the mining sector. The harassment of activists is not specific to Katanga: a pattern of violations of freedom of expression and the intimidation of human rights activists, journalists and others across the DRC has been well-documented by human rights organisations over several years.<sup>202</sup>

In Katanga, attempts to stifle freedom of expression have often targeted perceived critics of the mining industry. Many human rights organisations based in Katanga naturally focus much of their work on abuses in the mining sector, as it dominates almost every aspect of life in the province. One of the leading human rights organisations, Association africaine des droits de l'homme (ASADHO/Katanga), has been repeatedly targeted by the authorities, in particular in connection with its denunciations of abuses in the Kilwa incident in October 2004. For example, in early July 2005, after ASADHO/Katanga called on the authorities to conduct a prompt and impartial inquiry into these events and the role of Anvil Mining, the press officer of the governor of Katanga broadcast negative remarks about ASADHO/Katanga on the official radio and television station, Radio Télévision Nationale Congolaise, Station du Katanga (RTNC/Katanga). He accused the organisation of corruption and involvement in politics and claimed that its activities were harmful to the people of Katanga and likely to scare off investors. He also reportedly encouraged members of the public to react and said that ASADHO/Katanga should be treated harshly.<sup>203</sup>

In September 2005, in an incident demonstrating the close relationship between the governor of Katanga and Anvil Mining, the governor publicly denigrated ASADHO/Katanga and their work in a meeting to which he invited ASADHO/Katanga, senior representatives of Anvil Mining and the press. At the meeting, he read out a private letter which ASADHO/Katanga had sent to Anvil Mining requesting their response to a number of allegations of illegal activities. The letter had not been made public by ASADHO/Katanga, nor had they sent a copy to the governor. It is therefore reasonable to assume that Anvil Mining had provided a copy to the governor. The governor told ASADHO/Katanga that they should stop writing such

things and that their activities were harming business prospects.<sup>204</sup>

In April 2006, Jean-Claude Katende, President of ASADHO/Katanga, and Jean-Pierre Muteba, Secretary General of the trade union organisation Nouvelle Dynamique Syndicale (NDS), received death threats following a public statement and press conference by the Réseau Ressources Naturelles (RRN), a network of civil society organisations active in the natural resource sector. In its statement dated 19 April 2006, RRN had denounced corruption, unfair contracts, the use of child labour in mines, the degradation of the environment and the failure of extractive companies to respect international standards of social responsibility. It called for all individuals involved in looting the DRC's natural resources to be prosecuted and for sanctions against multinational companies benefiting from such looting.<sup>205</sup> In the following days, Jean-Claude Katende and Jean-Pierre Muteba, who had both spoken at the press conference, received anonymous phone-calls, warning them that their lives would be at risk if they continued writing such statements. Provincial officials of the PPRD and other political actors also publicly criticised the activities of civil society organisations in hostile terms, including through the media.<sup>206</sup>

Members of the anti-corruption organisation LICOF (Ligue contre la corruption et la fraude) have been victims of attacks or attempted attacks on at least three occasions. They believe these attacks were prompted by news releases issued by LICOF denouncing alleged corruption, particularly by the family of President Kabila. The most recent incident occurred during the night of 21-22 November 2005, when seven men, several of whom were armed, arrived at the house of the LICOF president. Two of them placed themselves inside the compound and two outside. A policeman guarding the house reportedly heard them say they would "act in twenty minutes". When they got their weapons out and tried to climb the fence, the policeman shot in the air and the armed men ran away. In an earlier incident in February 2004, three military vehicles carrying men in military uniforms had come to the LICOF president's house but fled after MONUC staff were alerted. In August 2005, a soldier shot at the car in which the vice-president of LICOF was travelling. The driver was wounded and died two days later.<sup>207</sup>

## X. After minerals leave the DRC: export routes



Trucks carrying copper and cobalt, queuing to leave the DRC, Kasumbalesa border, November 2005.

### 1. Zambia

The only viable export route out of Katanga is via Zambia, so all the copper and cobalt produced in the DRC exits south across the border into Zambia. Some of it transits straight through Zambia and on to South Africa. However, a significant proportion of the ore is processed at numerous smelters located along the Zambian Copperbelt.

According to the Zambian Ministry of Mines, if a company based in Zambia purchases copper or cobalt ore from the DRC for the purpose of processing it, it is then considered part of that company's production.<sup>208</sup> Zambian government statistics do not differentiate between domestic production and that which is produced in the DRC but processed in Zambia. Much of the ore purchased by companies in Zambia has been smuggled out of the DRC, but these illicit Congolese imports can no longer be distinguished from Zambian minerals once they reach the processing plants in Zambia.

Exporters from Katanga often pay a standard US\$ 3,000 per over-loaded truck to Congolese border officials, irrespective of the quality and quantity of ore on that truck. Several transport company representatives in Zambia explained how exporting legally from the DRC, with all the permits required, would take months. Instead, "this US\$ 3,000 per truck is the quick way. It's hard to compete if you do things

the legal way."<sup>209</sup> The result is that the Zambian market is being flooded by illegally exported ore from the DRC.

There are numerous clearing agents in Zambia who are employed by individuals and companies to 'clear' the transit of goods from the DRC through Zambia. One clearing agent interviewed by Global Witness reported that his company worked mainly for Chinese individuals who were buying copper and cobalt in Katanga.<sup>210</sup>

The trucks arriving in Zambia from the DRC are almost always over-loaded, in order to cut down on export costs when leaving the DRC; according to one clearing agent in Zambia, each truck typically carries an average of 80 to 100 tonnes of ore.<sup>211</sup> Under Zambian regulations, a truck is only permitted to carry 34 tonnes. In theory, those found to have exceeded this limit are fined and made to split their load between two or even three trucks before being allowed to continue their journey south through the country. However, research carried out by Global Witness in Zambia revealed that even though regulations are enforced more stringently in Zambia than in the DRC, and fines are sometimes imposed for overloaded vehicles, Zambian officials manning weighbridges or checkpoints are still susceptible to corruption too.<sup>212</sup>

Global Witness saw little evidence of the Zambian authorities, or the purchasing companies and clearing agents in

Zambia, attempting to prevent this illegal trade across their border, despite the fact that everyone interviewed was aware of the high levels of fraud. The Zambian Revenue Authority in the capital Lusaka told Global Witness that it had no contact with its counterparts at OFIDA.<sup>213</sup> However, in May 2006, Zambia and the DRC signed a memorandum of understanding (MOU) in an attempt to improve cooperation in customs collection at the Kasumbalesa border post and promote trade between the two countries. The objectives of the MOU include an improved exchange of information between the two customs authorities and the imposition of strict border controls against fraud.<sup>214</sup> This could be an important first step towards clamping down on cross-border smuggling.

According to the Zambian Ministry of Mines, some of the material from the DRC is only imported in what is known as a 'toll treatment arrangement', meaning that it comes to Zambia for processing and the final product is re-exported back to its owner in the DRC.<sup>215</sup> A Technical and Economic Cooperation in the fields of Geology, Mining, Metallurgy and Environment signed by the governments of Zambia and DRC on 20 December 2005 is aimed at promoting toll treatment arrangements, which, according to the Zambian Ministry of Mines, will "ensure that benefits achieved from the mechanism are accrued accordingly".<sup>216</sup> Global Witness heard of no incidences of copper or cobalt being physically re-exported back to the DRC from Zambia and official Zambian export statistics reveal that Zambia exported only \$8,872 worth of copper and cobalt products to the DRC in 2005. However, the owners of the ore in the DRC may be commissioning companies in Zambia to process the ore, then selling it directly to the buyer without sending it back to the DRC.

The level of demand for Congolese ore by companies based in Zambia depends upon local smelter use. Smelter capacity in Zambia has been increasing, with a number of new smelters being built on the Zambian Copperbelt and the expansion of large plants, such as Mopani Mining's operation in Kitwe. Around Ndola, an increasing number of Chinese companies have set themselves up to process ore to copper blister (92 – 93% copper). Many of these companies have chosen to establish themselves on the Zambian side of the Copperbelt because the operating environment is perceived as less risky than the DRC. In order to encourage processing in Zambia, concentrates can be imported into the country duty free. The Zambian government can then benefit from the export duties on the finished products – 15% for copper and 5% for cobalt.

Companies based in Zambia that reportedly buy copper and cobalt ore from the DRC include Coppa Mining Service, Sable

Zinc, Hetro, Konkola Copper Mines, Mopani Copper Mines, Nonferrous Metals Corporation, Jianxing, Metalco Industries and Chambishi Metals (this is not an exhaustive list).<sup>217</sup>

Many transport companies and traders reported that the main problem of operating in Zambia was widespread theft in the country, with copper and cobalt ores regularly stolen from trains and trucks, often in collusion with truck drivers. Some companies had resorted to employing security guards to travel on each truck passing through the country.

The copper and cobalt originating in the DRC leaves Zambia through four exit points in the country: Chirundu (to South Africa via Zimbabwe), Livingstone (to South Africa via Botswana), Nakonde (to Dar es Salaam in Tanzania) and Chanida (to Beira Port in Mozambique). Transit goods have five days in which to pass through Zambia; transport companies which exceed this time limit face hefty fines.

## 2. South Africa

The majority of the copper and cobalt exported from the DRC is leaving the African continent via Durban port in South Africa. Most of it enters South Africa by road (the cheapest option) from Botswana and Zimbabwe; some enters by rail. As South Africa has the tightest systems and controls in southern Africa, the government could certainly be taking more stringent measures to prevent the imports or transit of ore smuggled out of the DRC. However, because the majority of the ores are simply transiting through South Africa rather than arriving as imports, the South Africa Revenue Service (SARS) has expressed little interest in addressing these problems; its main concern is the loss of revenues from Value Added Tax (VAT) from imports and exports.<sup>218</sup> A SARS official confirmed that they had intervened in at least one case where an importer was bringing under-declared ores into the country and explained that the case was settled out of court.<sup>219</sup> Greater commitment on the part of SARS to clamping down on minerals smuggled from the DRC into South Africa would be a vital step towards deterring traders from under-declaring their goods.

Some of the Congolese copper and cobalt ore is being processed in South Africa. The remainder of the ore is transiting straight through South Africa en route to China and elsewhere in the Far East. There are a number of different South African companies involved in this trade, including transport companies (who transport copper and cobalt from the DRC to South Africa), trading companies (who buy the minerals and sell them onto larger companies elsewhere) and processing companies (who buy the minerals to process them in furnaces in and around Johannesburg).

There are also several South African companies who have recently entered into deals with Gécamines for exploration and exploitation in Katanga. One example is Metorex, a South African company registered on the Johannesburg stock exchange, which owns 68% of the large Ruashi copper and cobalt mine, 10 km outside Lubumbashi, along with its junior partner Sentinelle Global Investments, and Gécamines.

South African transporters involved in the trade include Africa Cargo Management and F&T Trucking, who transport the minerals by truck from the DRC to South Africa.<sup>220</sup> According to transporters, the journey from Kasumbalesa to Johannesburg takes four days, but it takes an additional three or four days to get the trucks cleared at the DRC/Zambia border.<sup>221</sup> Huge quantities of ore are coming down to South Africa from the DRC. One company reported that there were 200 trucks per month running for Groupe Bazano alone, amounting to about 14,500 tonnes of ore per month.<sup>222</sup> Transport companies reported that up until the end of 2005, 99% of the exports from the DRC were in the form of ore. However, an increase in the number of furnaces in Katanga has meant that transporters have started bringing blister copper and some processed cobalt down to South Africa.<sup>223</sup>

In Johannesburg, the material is off-loaded, resampled and packed into containers before being transported to Durban port for shipping to China and elsewhere. The resampling is generally performed by analysis companies Alfred Knight or Alex Stewart in South Africa, as analysis carried out inside the DRC is rarely accepted for international trade purposes due to the lack of reliable controls and fraud and corruption in the country.<sup>224</sup>

At the end of 2005, new congestion charges had been imposed at Durban port in an attempt to reduce overcrowding caused by an increase of both imports and exports. Deterred by these charges, some companies are now choosing to use the port of Dar es Salaam in Tanzania to export copper and cobalt. Global Witness has not carried out on the ground research in Tanzania and is therefore unable to comment on exports leaving via Dar es Salaam.

### 3. China

As mentioned in section IV above, China is the largest importer of copper and cobalt from the DRC. According to the Chinese embassy in Kinshasa, China imported a total of US \$172 million worth of copper and cobalt from the DRC in 2005.<sup>225</sup>

Demand for copper and cobalt in China has increased dramatically since 1997, fuelled by the country's development and industrialisation process. As well as large quantities of copper and cobalt leaving the DRC and ending up on the Chinese market, there are increasing numbers of Chinese traders on the ground in Katanga buying ore directly from the négociants. These buyers range from individuals who fly into the country, usually without revealing who they are or for whom they are buying the minerals, to small companies based in the province. The number of Chinese individuals purchasing ore in Katanga has increased dramatically since 2004, with the SNCC (the national railway company) in Kolwezi noting a marked increase in individuals from China using their service during 2005.<sup>226</sup> However, a representative of the Chinese Embassy in Kinshasa stated that the Chinese individuals operating in Katanga were "not numerous". He said that they were "completely independent" and that they were "private individuals, only dealing with a small amount of minerals."<sup>227</sup> He also claimed that people tended to exaggerate the importance of Chinese investment in the DRC and that insecurity in the DRC was still a factor discouraging investment.<sup>228</sup>

One larger predominantly Chinese company, Feza Mining, has recently commenced operations with a newly-built factory and processing plant just outside Likasi. It began building the factory in March 2004 and completed the work in February 2005. Feza Mining is a joint venture between the Chinese company Wambao Resources Corporation and some Congolese businessmen.<sup>229</sup> Several sources alleged that Feza Mining had close links with the family of President Kabila.<sup>230</sup> Global Witness was unable to verify these allegations independently. When Global Witness researchers visited the Feza headquarters outside Likasi, staff there refused to answer questions on any aspect of the company's operations and did not respond to subsequent correspondence from Global Witness. A representative of the Chinese embassy in Kinshasa could not provide Global Witness with any information about Feza Mining's operations either.<sup>231</sup>

The majority of the copper and cobalt being produced by China is coming from feed supplied by the DRC. Sources in South Africa claimed that the Chinese were not interested in buying finished products and that they preferred to look for ore to which they could add value themselves.<sup>232</sup> China has imposed an import duty on finished products but not on ore.<sup>233</sup> One South African transporter stated: "There is a huge backlog of orders [of copper and cobalt] from China waiting to be filled. This business will run and run."<sup>234</sup> It is anticipated that Chinese involvement in the trade will further increase after the 2006 elections in the DRC.



## XI. Statistics

This section provides a brief overview of export statistics for copper and cobalt ores supplied to Global Witness by OFIDA in November 2005 and compares these with the import statistics of some of the main importing countries. Improvements in OFIDA's information gathering in 2005 mean that their export statistics are more comprehensive than those they provided to Global Witness in Katanga in 2004. However, there are a number of aspects of the trade, noted below, which make it difficult to evaluate exactly how accurate OFIDA's statistics are.

**Table 1: Summary of export statistics (January to October 2005) provided by OFIDA (Lubumbashi) in November 2005**

<i>Month</i>	<i>Weight (in tonnes)</i>	<i>Total value of product (in US \$)</i>
January 2005	23,907	32,068,118
February 2005	24,866	33,119,301
March 2005	28,896	29,275,284
April 2005	29,256	28,859,279
May 2005	29,533	27,289,546
June 2005	441,217	38,516,802
July 2005	24,687	21,148,020
August 2005	628,530	43,904,826
September 2005	28,301	24,104,271
October 2005	46,726	43,280,975
<b>Total: 2005 (until end October)</b>	<b>1,305,919</b>	<b>321,566,422</b>

Global Witness was unable to obtain export statistics for the months of November and December 2005. However, if one assumes that a similar quantity of ore was exported in those two months, the total value of the DRC's recorded exports for 2005 would amount to around **US \$390,000,000**.

The OFIDA statistics do not provide an explanation as to why the figures for June and August 2005 were so much higher than those of other months, nor why the increase in weight was not matched by a similar increase in value for these two months. These figures may be due to an administrative error in OFIDA's process of recording the figures.

Global Witness contacted the customs authorities of some of the main importing countries to find out the value of copper and cobalt ores that they imported from the DRC in 2005. The following table shows the total imports from a number of these countries, gathered from a range of sources, as indicated.

**Table 2: Summary of imports of copper and cobalt from the DRC in 2005**

	<i>Import value (US \$)</i>		<i>Total</i>
	<i>Cobalt and cobalt ores</i>	<i>Copper and copper ores</i>	
Belgium <sup>235</sup>	219,000	9,753,000	9,972,000
China <sup>236</sup>	146,630,000	13,559,000	160,189,000
Finland <sup>237</sup>	93,349,000		93,349,000
Germany <sup>238</sup>		6,536,000	6,536,000
Japan <sup>239</sup>	2,472,000	154,000	2,626,000
South Korea <sup>240</sup>			30,000
Netherlands <sup>241</sup>	647,000		647,000
South Africa <sup>242</sup>			787,513
Sweden <sup>243</sup>	239,000		239,000
USA <sup>244</sup>	689,000		689,000
Zambia <sup>245</sup>	6,737,791	22,595,785	29,333,576

The statistics available for South Korea and South Africa do not differentiate between cobalt and copper.

Some countries' statistics include imports of copper and cobalt from the Republic of Congo (RoC). Given that the RoC is not known to be an exporter of copper and cobalt, it can be assumed that imports recorded as coming from the RoC were actually from the DRC and were misrecorded by the importer country. These figures are therefore presented below.

**Table 3: Summary of imports of copper and cobalt from the RoC in 2005**

	<i>Import value (US \$)</i>		<i>Total</i>
	<i>Cobalt and cobalt ores</i>	<i>Copper and copper ores</i>	
China <sup>246</sup>	70,398,000	3,107,000	73,505,000
Germany <sup>247</sup>		6,546,000	6,546,000
Japan <sup>248</sup>	583,000		583,000
Netherlands <sup>249</sup>	1,781,000		1,781,000
UK <sup>250</sup>	2,224,000		2,224,000
USA <sup>251</sup>	92,000		92,000

**Total copper and cobalt imports of all these countries from the DRC and the RoC in 2005: US \$389,129,089.**

Several countries also imported significant quantities of copper and cobalt from Zambia, Tanzania, Zimbabwe and South Africa. Given that the DRC's exports transit through these countries en route to their final destination, it is possible that significant quantities of their exports have originated in the DRC. However, as there is no precise way to determine the percentage of their exports that have originated in the DRC (available statistics do not differentiate the origins of the products), it is not possible to establish how accurate OFIDA's exports statistics are.

As described in this report, Global Witness received numerous testimonies from people working in the mining sector in Katanga, as well as local government authorities, alleging that large amounts of copper and cobalt were still leaving the country either completely unrecorded or significantly under-valued. From the available evidence, it has not proved possible to generate a reliable estimate of the quantity of copper and cobalt ores that may be leaving the country unrecorded.

## XII. Conclusion

The transitional government of the DRC has dramatically failed to ensure that Katanga's huge natural wealth is used for the benefit of the Congolese population and for the development of the country. During 2005, patterns of illicit exports and corruption, as well as interference by senior political figures in mining deals, have become ever more entrenched. With the rapid expansion of the industrial mining sector, the stakes have continued rising. The growing interest of multinational companies in Katanga's resources has presented yet more opportunities for the political elite in Kinshasa to enrich itself.

Meanwhile, ordinary residents of the province continue suffering from extreme poverty and are risking their lives daily in order to earn a meagre living digging for minerals. The situation of tens of thousands of artisanal miners is critical. Neither the government nor the companies buying the minerals are taking responsibility for their health and safety or minimum standards of welfare. The expansion of the industrial mining sector is not only increasing economic pressure on artisanal miners but heightening their insecurity: in addition to the significant risks presented by unsafe working conditions, artisanal miners are now also facing forcible eviction from mining concessions recently allocated to companies, with the attendant risk of violence.

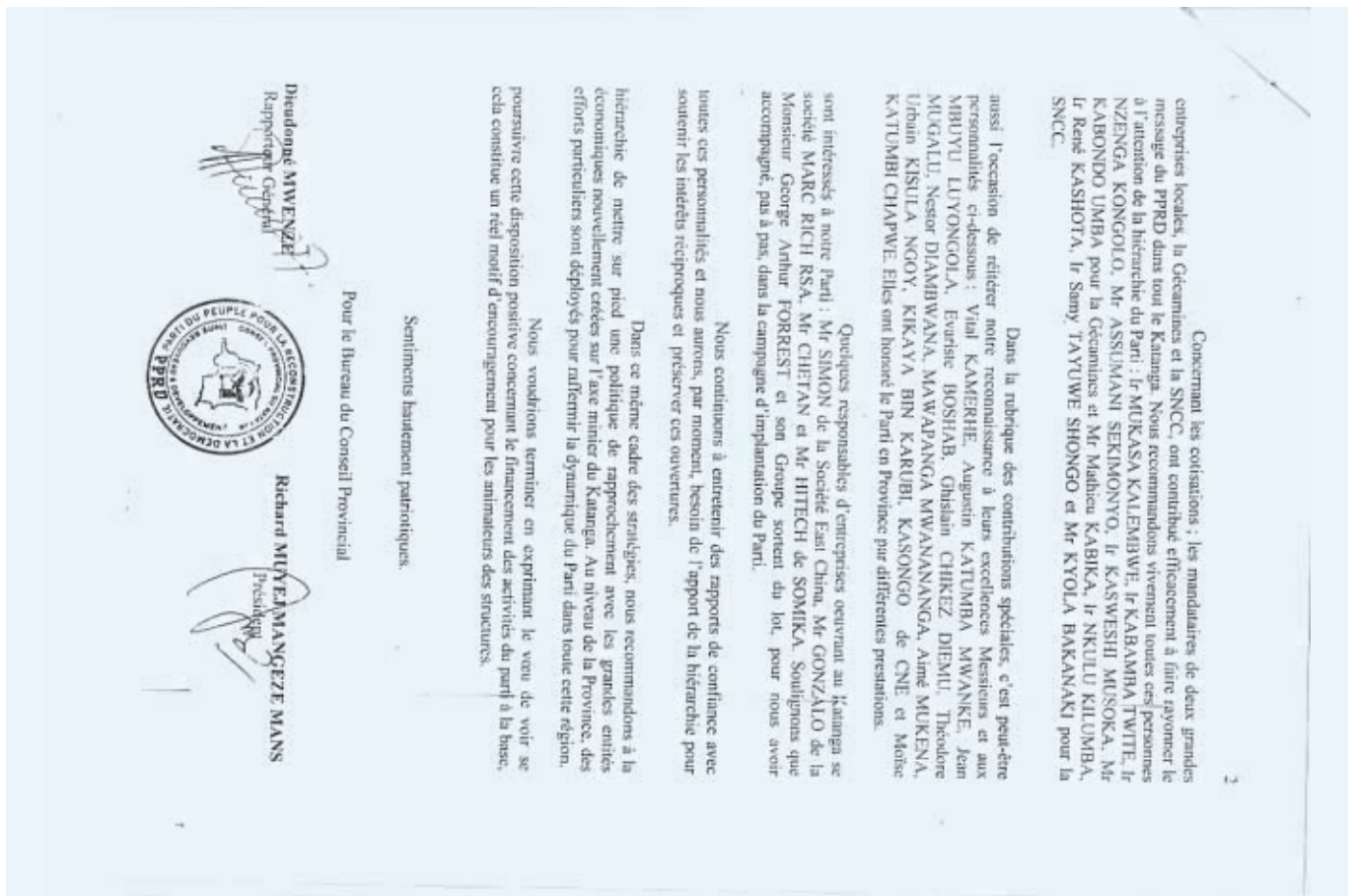
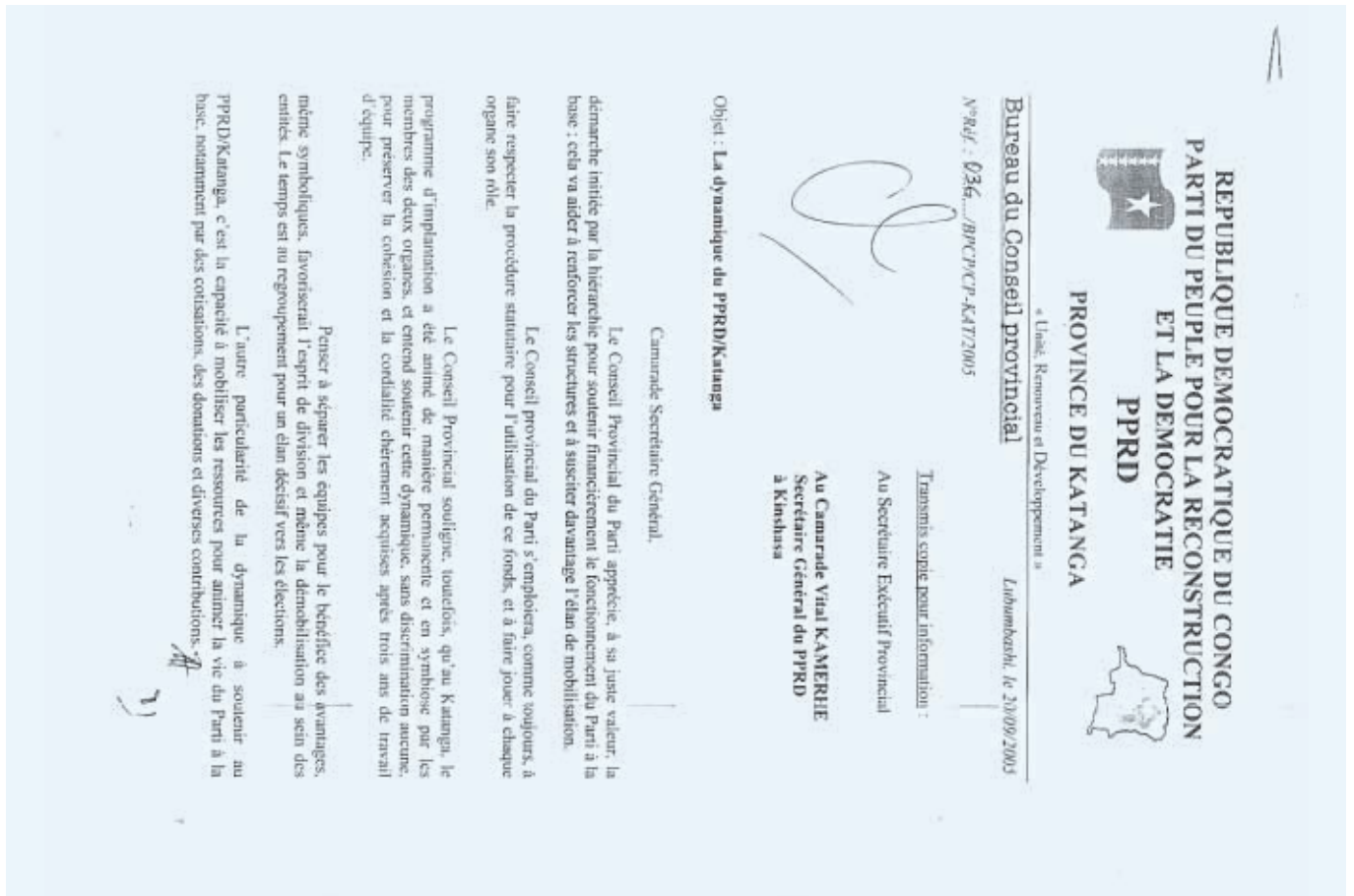
The 2006 elections provide a unique opportunity to turn the page on this persistent mismanagement of the mining sector and the exploitation of artisanal miners. By implementing the recommendations contained in this report, the new government of the DRC would ensure that the country enters a new era of transparency, respect for the law, improved conditions of labour and more equitable distribution of resources. Visible progress in implementing these reforms would also go a long way towards alleviating the rising resentment and tension among the population of Katanga.

Companies operating and investing in Katanga also have a responsibility to ensure that their presence in the region is not accentuating the problems which have characterised the mining sector for the last several years. By taking a clear stand against corruption and illegality, by instituting best practices in their own operations and by refusing to buy products mined in unsafe conditions, they can make a significant contribution towards changing the way natural resources are managed in the DRC and, critically, creating a positive environment for the development of successful business in the country.



Young men carrying sacks of minerals, Ruashi mine, Katanga, November 2005.

Annex: Letter from the office of the provincial council of the PPRD addressed to the Secretary General of the PPRD in Kinshasa



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