

# BULLDOZED:

HOW A MINING COMPANY BURIED THE TRUTH ABOUT FORCED EVICTIONS IN THE DEMOCRATIC REPUBLIC OF THE CONGO

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cover picture: **Corrugated sheet metal and piles of brick and rubble lie on the ground two days after the forced eviction of hundreds of people in Kawama, Democratic Republic of Congo, 26 November 2009.**

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Bricks and rubble lie in piles on the ground where houses once stood in Kawama, DRC 26 November 2009.



© Amnesty International

The rubble has been removed, but the walls of the partially demolished structures visible in the above picture still stand in front of the Luisiwishi mine in Kawama, DRC almost five years after the demolition of hundreds of homes and structures in November 2009. This photograph was taken in September 2014.

# INTRODUCTION

“I request your high-level intervention to make the area secure”

*(Je sollicite votre haute intervention pour sécuriser les lieux)*

- Letter from the President of the Forrest Group (the owner of the mine's operating company) to the Governor of Katanga on 2 November 2009

On 24 and 25 November 2009 police in the Katanga province of the Democratic Republic of the Congo (DRC) sent bulldozers into the village of Kawama and ordered the demolition of hundreds of homes.<sup>1</sup> The people of Kawama were given no notice of the demolitions,<sup>2</sup> and there was no legal basis for them.<sup>3</sup> People were left homeless and many lost their livelihoods as a direct consequence. The demolitions constitute forced evictions, which are illegal under international human rights law.

## FORCED EVICTIONS AND HUMAN RIGHTS LAW

A forced eviction is the removal of people against their will from the homes or land they occupy without legal protections and other safeguards. It is a violation of the right to adequate housing.

Under international human rights law, evictions may only be carried out as a last resort, once all other feasible alternatives to eviction have been explored in genuine consultation with all affected people and appropriate procedural protections are in place. Such legal protections and safeguards include: adequate and reasonable notice for affected people; adequate information; compensation for losses; measures to ensure people are not made homeless or vulnerable to other human rights violations; and the provision of legal remedies.

Forced evictions can also lead to a range of other human rights violations; for example when people's livelihoods are destroyed or they lose access to essential services such as education and health care.

Kawama is located on the outskirts of Katanga's main city, Lubumbashi, and is beside the Luiswishi copper and cobalt mine.<sup>4</sup> The Kawama village has been inhabited for many decades, at least since 1950, and its permanent residents engage in subsistence farming, make charcoal and run small businesses. Many artisanal miners, known in the DRC as *creuseurs*, had moved to Kawama in the weeks before the demolitions. The police orally gave the *creuseurs* notice to leave. This notice did not mention demolitions and did not mention any action against the permanent residents.

On 24 November, police initiated an operation to clear the Kawama area of *creuseurs* who were allegedly stealing from the Luiswishi mine.<sup>5</sup> Some *creuseurs* reportedly became violent and an order was given – by a senior official of the Provincial Ministry of the Interior of Katanga – to bring in bulldozers and demolish buildings and temporary structures.<sup>6</sup> The scope of this order was unclear but the police acted on it. They demolished the temporary homes of *creuseurs* and many of the brick homes and businesses of permanent residents. The basis on which buildings were selected for demolition is not known. The police returned to Kawama on 25 November and, again without notice, carried out further demolitions and forced evictions.

The bulldozers used at Kawama were not government vehicles; they were part of the mining operations at the Luiswishi mine run by *Compagnie Minière du Sud Katanga* (CMSK). The bulldozers were operated by people working for the mining company.<sup>7</sup>

At the time of the demolitions, CMSK was owned by *Entreprise Générale Malta Forrest* (EGMF), which held 60% of the shares, and *La Générale des Carrières et des Mines* (Gécamines), a state-owned company which held the remaining 40%.<sup>8</sup> EGMF was the operating partner at the Luiswishi mine and its bulldozers were used in the demolitions.<sup>9</sup> EGMF is a fully owned subsidiary of the Belgian company *Group Forrest International* (the Forrest Group).<sup>10</sup> The security operation had been requested by the Forrest Group.<sup>11</sup>

Following the demolitions and forced evictions hundreds of people were left homeless. No alternative housing was provided, and some people were compelled to live in the open, while others found shelter with family or friends. Between 26 February and 6 March 2010, CMSK provided *creuseurs* with some limited financial “assistance” as part of an agreement under which they would leave the village.<sup>12</sup> Neither the government nor the company provided any assistance or compensation to the permanent residents of Kawama who lost their homes and livelihoods.<sup>13</sup>

An official criminal investigation into the destruction of property at Kawama was carried out by the Assistant Public Prosecutor (*Avocat Général*) of Lubumbashi, who took statements from several of the police officers, as well as the drivers of the EGMF vehicles involved in the demolition and other witnesses. Although the investigation was completed, and the investigating prosecutor found evidence of illegal destruction of property, none of the alleged perpetrators have been charged.<sup>14</sup>

The Forrest Group, when challenged by Amnesty International on the role played by EGMF in the demolitions, has stated that only temporary structures belonging to the *creuseurs* - who the company describes as having “invaded” the village and mine - were demolished, and that no homes of villagers were affected.<sup>15</sup> The company has also said that it believes these demolitions were legal.<sup>16</sup> This report shows that neither of these claims by the company is accurate.

In this report – published five years after the demolitions – Amnesty International presents new evidence exposing the scale of the 2009 demolitions at Kawama. The report demonstrates how the demolition of the temporary homes of *creuseurs* breached Congolese law and constituted a human rights violation. It also provides evidence that the homes of permanent residents of Kawama were demolished, in contravention of Congolese, regional and international law.

## THE EVIDENCE

This evidence includes satellite images obtained and analysed by the American Association for the Advancement of Science on behalf of Amnesty International.<sup>17</sup> The satellite images are from May 2009 and May 2010, six months before and after the demolitions respectively; these are the closest available images to the date of the demolitions (24 and 25 November 2009). These images expose not only the number of buildings demolished but the pattern of destruction and the proportion of total buildings destroyed, information that was not previously available. They show, for example, that in the neighbourhood of Kawama closest to the mine site, 76% of all structures were destroyed.

The report draws on a range of other evidence in addition to satellite images. Some aspects of the demolitions on 24 November 2009 were captured on video and this footage is analysed.<sup>18</sup> Amnesty International researchers visited Kawama on four occasions between 2011 and 2014 and spoke with more than 60 residents as a group. They carried out one-to-one interviews with 25 residents, including the village Chief and community activists who are campaigning for compensation for the damage done to their homes.<sup>19</sup> The report also draws on the files of the official criminal investigation into the demolitions, which are publicly available.

Kawama comprises seven *quartiers* or neighbourhoods: only three - Lukuni-Gare, Bikwano and Sampasa – were affected by the forced evictions. Amnesty International researchers were able to visit Bikwano and Sampasa on four occasions between 2011 and 2014 and individually interviewed people who were affected by the house demolitions. Lukuni-Gare is situated to the west of the CMSK concession and only accessible by a road that passes through the concession. Amnesty International researchers who attempted to visit Lukuni-Gare in September 2014 were denied access by private security guards stationed at the gate to the mining concession. This was despite the fact that the researchers had obtained authorisation from the *Administrateur de Territoire*, the official in the Provincial Ministry of Interior responsible for the area including Kawama and the Luiswishi mine. Researchers delivered a letter to the CMSK headquarters in Lubumbashi requesting access to Lukuni-Gare, and returned on the following three days but were informed that the CMSK Director was not available to authorise the requested access. Researchers were able to meet 10 residents from Lukuni-Gare who travelled to the main part of Kawama.

Researchers also met with the Lubumbashi Public Prosecutor (*Procureur Général*), the current Assistant Public Prosecutor (*Avocat Général*), and the immediate former Assistant Public Prosecutor who had investigated the Kawama case.<sup>20</sup> They met with representatives of the Forrest group of companies on three occasions.<sup>21</sup> Prior to publication Amnesty International wrote to the office of the Governor of Katanga,<sup>22</sup> the police headquarters in Lubumbashi,<sup>23</sup> the Provincial Minister of Interior,<sup>24</sup> the Forrest Group,<sup>25</sup> CMSK,<sup>26</sup> and Gécamines<sup>27</sup> requesting their response to allegations about their involvement in the demolitions. Amnesty International wrote to the Ministry of Justice<sup>28</sup> to request its explanation for the failure to prosecute those alleged to have ordered and carried out the demolitions. On 17 November 2014 Forrest Group responded. The company denied that it was responsible for the events that took place at Kawama on 24 and 25 November 2009 stating that the operation had been carried out by the authorities.<sup>29</sup> The company's full response is available as Annex I of this report.

## THE COMPANIES INVOLVED

**CMSK:** *Compagnie Minière du Sud Katanga* - the company that runs the Luiswishi mine, which at the time of the demolitions was a joint venture company.

**EGMF:** *Entreprise Générale Malta Forrest* - one of the two members of the CMSK joint venture. EGMF is a fully owned subsidiary of the Belgian company *Group Forrest International*. EGMF is incorporated in the DRC. EGMF was the operating entity within the CMSK joint venture and held 60% of CMSK until 2012 when it sold all of its shares to Gécamines. References in this report to "Forrest Group" include *Group Forrest International* and EGMF.

**Gécamines:** *La Générale des Carrières et des Mines* - the state-owned mining company and second member of the joint venture. It held 40% of CMSK until 2012 when it acquired the totality of the shares in CMSK.



A red cross flag hangs on a wall left standing in the remains of a medical centre following the demolition of hundreds of homes and structures in Kawama, DRC, 26 November 2009.

# 1/ THE DEMOLITIONS AND FORCED EVICTIONS AT KAWAMA

## BACKGROUND

The Kawama village has been inhabited for many decades, at least since 1950,<sup>30</sup> and its permanent residents (also referred to as 'villagers') engage in subsistence farming, make charcoal and run small businesses. During October and November 2009 hundreds of artisanal miners took up temporary residence in and around Kawama and began unlawfully extracting copper and cobalt from the Luiswishi mine.<sup>31</sup>

On 2 November 2009 Forrest Group contacted the Provincial Governor of Katanga to request assistance in dealing with the influx of *creuseurs* and the alleged theft of minerals and equipment.<sup>32</sup> According to Forrest Group (see box for explanation of company structure and relationships), they asked only that the authorities prevent the *creuseurs* accessing the mine site.<sup>33</sup> Between 17 and 22 November the Mine Police (a section of the State police responsible for policing mines) came to the area and told the *creuseurs* to leave. The police warned people – using megaphones – that they would remove any *creuseurs* who did not leave.<sup>34</sup> Both the company and the villagers confirm that there was no notification of any plans to evict villagers or demolish their homes.<sup>35</sup>

## THE EVENTS OF 24 NOVEMBER 2009

At dawn on 24 November 2009 the Mine Police came to Kawama to clear out the *creuseurs* who had not left. What happened next is unclear. According to the company, *creuseurs* and police clashed as the police operation began. According to members of the community and a journalist who later examined the case, the police demanded entry to people's homes to search for stolen minerals.<sup>36</sup> However the police did not have search warrants and the villagers were unwilling to have their homes searched.<sup>37</sup> Some villagers acknowledged, in interviews with Amnesty International, that unlawfully obtained minerals were hidden in some of the houses. A truck belonging to EGMF was set on fire – allegedly by the *creuseurs*. Forrest Group also reported that mine workers were attacked as they arrived for work.<sup>38</sup> The situation deteriorated and, according to some accounts, shots were fired but Amnesty International was not able to confirm this.

Police reinforcements were called and around 300 police and military personnel were sent to the site to assist the Mine Police.<sup>39</sup> They arrived at around 8am. The police then requisitioned the EGMF bulldozers and a mechanical digger and ordered the drivers of the vehicles to enter Kawama. At the point when the demolitions began - around 9 am<sup>40</sup> - a senior EGMF official, and a senior official from the Provincial Ministry of the Interior were present and observing the situation.<sup>41</sup>

According to some of those later interviewed by the Assistant Public Prosecutor – including the senior official from the mine who is identified as an EGMF employee, and the Chief of Kawama - the original order to use the EGMF vehicles and carry out demolitions was given by the senior official from the Provincial Ministry of the Interior. The police then supervised operations under the direction of a senior commander of the Mine Police.<sup>42</sup>

In his testimony to the Assistant Public Prosecutor, the senior official from the Provincial Ministry of the Interior confirmed that he had asked the *creuseurs* to leave in the days before the demolitions. Once the unrest broke out on 24 November 2009, he and senior police officials decided that they would have to remove the *creuseurs* for security reasons. It was, he said, "a political action of great necessity" (*C'est une action politique d'une très grande nécessité*) that was of "benefit to the population" (*C'est une mission salutaire pour la population*).<sup>43</sup>

Amnesty International wrote to the Provincial Ministry of Interior requesting their response to the



evidence contained in the dossier of the Assistant Public Prosecutor, including the evidence that an official of the Provincial Ministry of Interior ordered unplanned demolitions that resulted in forced evictions. At the time of printing this report, no response had been received.

Forrest Group has stated to Amnesty International that the police gave the bulldozer drivers no choice but to comply with their directions to enter Kawama and demolish structures.<sup>44</sup> The company, in a letter to Amnesty International dated 6 June 2013, claimed that the police were both nervous and angry following clashes with the *creuseurs*.<sup>45</sup> The Forrest Group stated that they wanted to "...put into context the nervousness of the police force, the violence of requisition and the impossibility of the employees to stand up to the armed police...". The company also stated that: "Neither the company nor its employees and subsidiaries were aware of the plans of the mining police. Each employee ....acted only under duress, threat and fear."<sup>46</sup>

The police – directing the drivers of the bulldozers and other requisitioned vehicles – went on to demolish hundreds of structures including both the temporary homes of *creuseurs* and the permanent homes and businesses of village residents.<sup>47</sup> As noted earlier, only three neighbourhoods in Kawama were affected. It is not clear on what basis the police limited operations to these three neighbourhoods. According to community members a representative of CMSK later told them that only the three affected neighbourhoods lie within the CMSK concession and they believe this may be why the demolitions were limited to these areas.<sup>48</sup>

Not all of the buildings in the three affected neighbourhoods were destroyed, and it is not clear how the police selected the buildings for demolition. Some villagers believe that the police ordered the demolition of houses where they thought *creuseurs* were renting rooms. However, those whose homes were demolished included people who had rented to *creuseurs* and those who said they had not been renting to anyone.<sup>49</sup> It is highly improbable that the police were in a position to apply any criteria to the demolitions as they were – by the accounts of all parties – unplanned.<sup>50</sup>

Some Kawama residents told Amnesty International that they tried to pay the police not to demolish their homes while others claim they were asked to pay bribes to police officers to prevent their houses being knocked down. One woman – a resident of Kawama who was still living in the community in 2013 – described how her home was demolished:

*"I was given 15 minutes [by the police] to pull out my stuff from my house – no further explanation. I thought they were joking – I did not believe the police and bulldozers would actually knock my house down. But when I realised they would, the police asked me to give them US\$200. They said that if I paid US\$200 they would not fully destroy the house and only partially knock it down."<sup>51</sup>*

The woman says she gave the police officers some money, but they still destroyed her house.

A man whose house was demolished said that he paid 12,000 Congolese francs (approximately USD \$14 at the time<sup>52</sup>) to the police after being asked for a bribe. The police took the money and left his house untouched. However, later in the day other police officers came and ordered that the house be demolished.<sup>53</sup> Amnesty International asked the police to comment on the allegations of soliciting bribes. However, at the time of printing this report no response had been received.

Other people whose homes were destroyed say they were not asked for bribes but that police officers ignored their pleas and demolished their homes, giving them little or no time to remove any belongings.

The destruction of houses was confirmed by police officers who later gave evidence to the investigation established by the Assistant Public Prosecutor. A senior police officer, described in the Assistant Public Prosecutor's dossier as an operation commander (*commandant des opérations*), gave testimony to the Assistant Public Prosecutor in which he admitted that the police had not carried out any identification of which houses were used by the *creuseurs* prior to the operation but said that was because they only had orders to remove the *creuseurs*, not to demolish houses.<sup>54</sup> The Assistant Public Prosecutor asked him why he had not taken action to prevent the destruction of the houses, given that he did not have orders to demolish them. The police officer responded

A bulldozer demolishes a house during the forced eviction of hundreds of residents at Kawama, DRC on 24 November 2009. Picture taken from a video of the events.



that his superior officer and other public law enforcement entities were also present, so it was not up to him.<sup>55</sup>

Another senior police officer, described as the Battalion Commander of the Military Police (*Commandant Bataillon Police Militaire*), in his testimony to the Assistant Public Prosecutor, stated that when he arrived at Kawama and saw that houses were being demolished he shouted at the senior official from the Provincial Ministry of the Interior that the order to demolish was “illegal and unjust, as they did not have a written order to use force from the Public Prosecutor” (*l’ordre qu’il avait donné était illégal et injuste, parce qu’il n’avait pas la réquisition du ministère public*).<sup>56</sup>

There appears to have been confusion on the day amongst police officers as to what their original orders were. Police officers from different branches of the police gave differing accounts to the Assistant Public Prosecutor about the orders they had received. A police officer described as the Deputy Inspector (*Inspecteur adjoint*) of the riot police (*GMI – Group mobile d’intervention*) had orders to provide support to the Mine Police<sup>57</sup>; the officer described as an operation commander had received instructions to remove the *creuseurs*<sup>58</sup>; and the officer described as a Battalion Commander of the Military Police (*Commandant Bataillon Police Militaire*) had gone to Kawama to investigate reports that shots had been fired.<sup>59</sup> None of those officers who gave testimony to the Prosecutor reported having orders to demolish buildings. As noted above, on 24 November this order was only given on the day as events unfolded.

The events at Kawama on 24 November 2009 were captured on video: one piece of footage available on YouTube<sup>60</sup> and another broadcast on Radio Television Wantashi<sup>61</sup> on the day of the demolitions (and later used as part of a longer programme aired in 2011).<sup>62</sup> The footage shown on Radio Television Wantashi shows brick buildings, including houses and a restaurant, as well as some wooden structures, being destroyed by bulldozers while police officers look on. Villagers are shown standing in front of piles of their belongings and there is an interview with a man, who angrily denounces the demolition and denies any wrongdoing on the villagers’ part. The man is standing in front of a structure, which appears to have been burnt down. The villagers are clearly angry and distraught.<sup>63</sup>



© Jeff Muya

The second video of the demolitions, taken by a local activist and available on YouTube, shows both brick houses and what appear to be more temporary structures being destroyed. In the video people's belongings, including electrical appliances and other furniture associated with buildings, can be seen being taken outside by police or people themselves. People are clearly in great distress and the scene is one of chaos. Armed police officers are seen lifting a child away from, and dragging a young boy out of, what appears to be the same brick house, apparently in order to demolish it. The footage of the demolitions in both the videos is short – 2.33 minutes in the news report and 2.53 minutes for the YouTube video – and therefore only provides a brief view of events. However, what is shown supports the testimony of the villagers.<sup>64</sup>

A non-governmental organisation based in Lubumbashi visited Kawama on 26 November 2009 and took photographs. These pictures, some reproduced here, show piles of rubble where buildings appear to have previously stood, partially demolished brick structures and some other buildings, which look untouched. The demolished structures do not appear to be grouped together, but are scattered throughout the village. Caterpillar track marks are visible. The photographs also show how residents whose houses have been demolished or partially demolished used plastic sheeting, corrugated sheet metal and debris from the demolition to construct temporary shelters in which to live. One of the photographs shows a partially demolished hotel, which is also listed in the file prepared by the Assistant Public Prosecutor (see next page).

The demolitions and police action at Kawama on 24 November 2009 went on for approximately eight hours, from about 9am to 5pm.<sup>65</sup>

## THE FORCED EVICTIONS AT LUKUNI-GARE ON 25 NOVEMBER

The following day, on 25 November 2009, commencing at 8am, the police carried out further demolitions of homes at Kawama – this time in the neighbourhood of Lukuni-Gare, located to the west of the mine. According to residents, the police arrived with bulldozers and immediately started



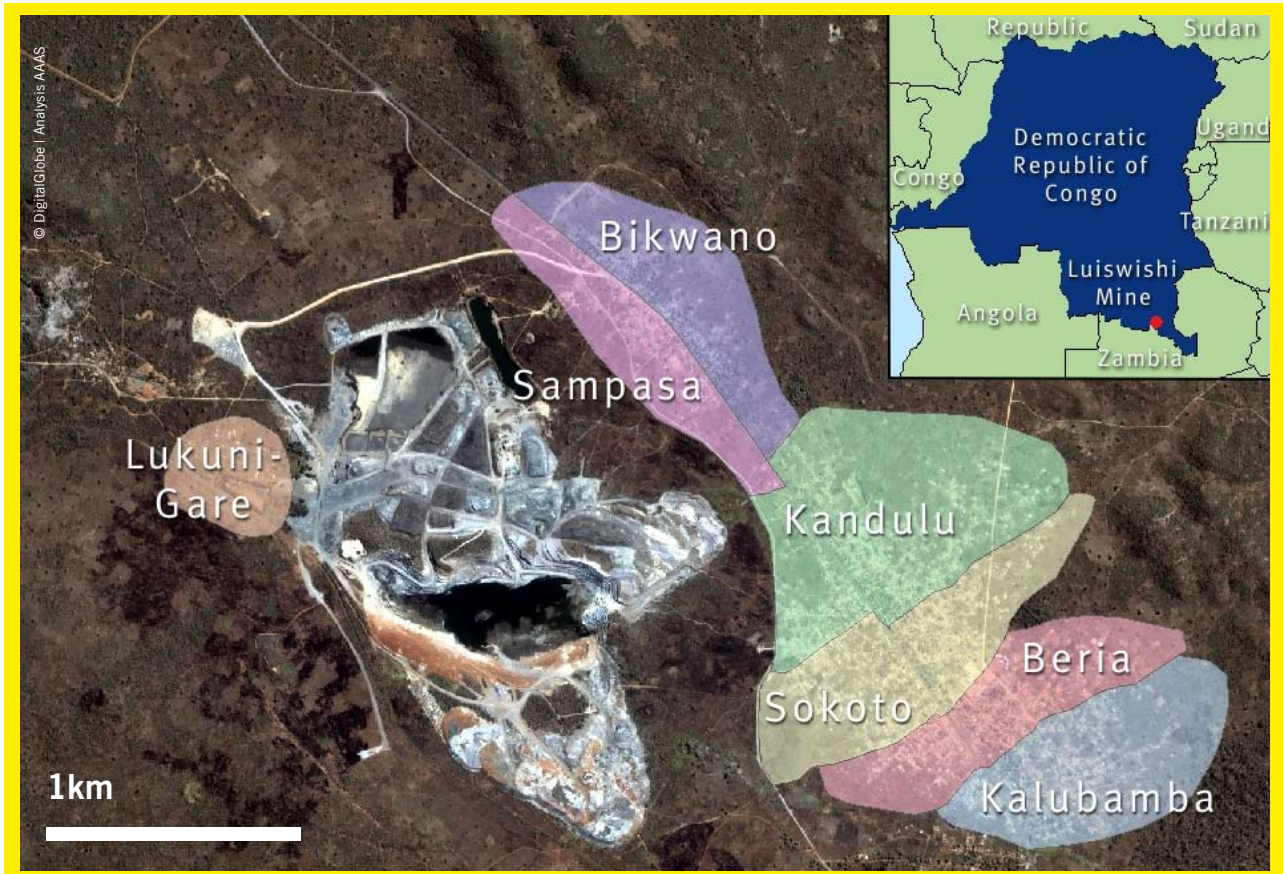
demolishing houses with no attempt made to identify specific houses.<sup>66</sup> No notice of the demolitions had been given.<sup>67</sup> Once again, the bulldozers had been requisitioned from the Luiswishi mine by the police. In his testimony to the Assistant Public Prosecutor, the senior EGMF official asserted that the police returned to the mine and again “threateningly” (*en me proférant de menaces*) demanded the use of the bulldozers, which they escorted into Lukuni-Gare to continue the demolitions.<sup>68</sup> According to eyewitness testimony given to the Assistant Public Prosecutor, a senior commander of the Mine Police was in charge of the operation.<sup>69</sup>

## EVIDENCE FROM THE SATELLITE IMAGES OF KAWAMA

Satellite imagery acquired and analysed by the American Association for the Advancement of Science (AAAS) and shown here reveals four critical facts about the events at Kawama: the number of buildings removed; the pattern of destruction; the proportion of structures removed compared to the total number of structures in the affected areas; and the number of structures rebuilt.

The satellite images are from May 2009 and May 2010, six months before and after the demolitions respectively; these are the closest available images to the date of the demolitions (24 and 25 November 2009). The images show all the structures in the area, including buildings, which were larger than 2 x 2 metres.

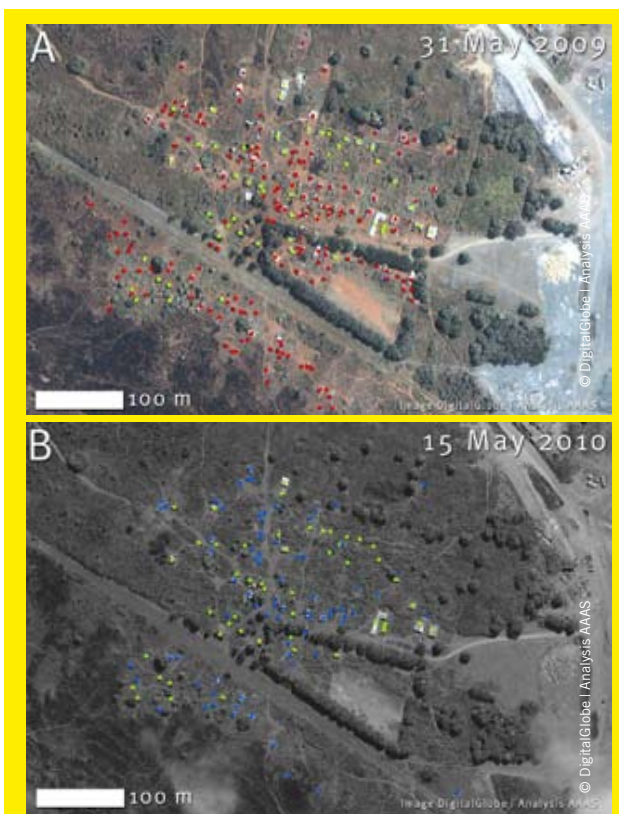
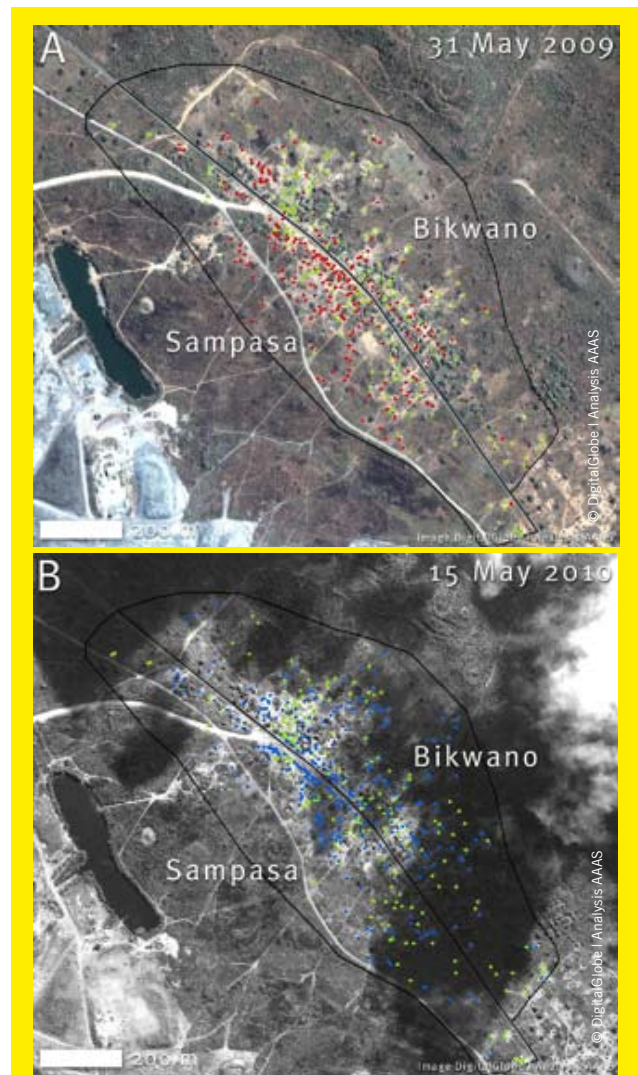
The images show that 387 structures were removed from the three affected neighbourhoods between 31 May 2009 and 15 May 2010. No other events that involved the destruction of structures at Kawama have been reported by any of the actors involved (villagers, local authorities, company) and therefore it is reasonable to conclude that the hundreds of structures which the satellite images show as ‘removed’ were demolished during the events of November 2009. The image of May 2009 shows that the 387 structures, later seen to have been removed in the May 2010 image, had been present in the village in May 2009 — prior to the arrival of a large number of *creuseurs* in Kawama.



above: The seven neighbourhoods of Kawama

right: In Bikwano and Sampasa, between 31 May 2009 (A) and 15 May 2010 (B), 152 structures were removed (red dots) and 128 structures were added (blue dots) to Sampasa. During the same time period, 73 structures were removed and 173 structures were added to Bikwano. Green dots represent structures present on both dates. Coordinates 27.445 E, 11.505 S

below: In Lukuni-Gare, between 31 May 2009 (A) and 15 May 2010 (B), 162 structures were removed (red dots) and 76 structures were added (blue dots), while 50 structures appear in both images (green dots). Coordinates 27.431 E, 11.511 S.



The 387 structures removed in the Lukuni-Gare, Bikwano and Sampasa neighbourhoods represent close to two-thirds of the 617 structures that were in these neighbourhoods in May 2009.

	Number of structures before demolitions	Structure removed	Structures added	% removed
Lukuni-Gare	212	162	76	76%
Sampasa	220	152	128	69%
Bikwano	185	73	173	40%

The satellite images provide clear evidence that not only were hundreds of structures destroyed, the structures demolished were spread all over the village. In this regard, the satellite images, obtained after Amnesty International's visits to the area in 2011, 2012 and 2013, are consistent with the testimony of the villagers given during those visits, and contradict claims made by the company (see below).

The pattern of destruction shows that the bulldozers and other vehicles had to move around the neighbourhoods of Lukuni-Gare, Bikwano and Sampasa, in between homes built close to each other. Those driving and operating the large vehicles had no forewarning that they would have to operate the vehicles in such a difficult setting; on 24 November 2009 the demolitions were by all accounts unplanned. The risk to human life and property, when bulldozers are used in such a context, is high. There were several unconfirmed reports of people injured during the demolitions, mainly due to being hit by falling bricks.<sup>70</sup>

Residents of Lukuni-Gare told researchers that on 25 November 2009 no attempt was made by the police to identify any of the houses as belonging to *creuseurs* and that the demolitions began as soon as the bulldozers arrived. The satellite images show that 76% of structures were removed from the Lukuni-Gare settlement, a higher percentage than the other two affected neighbourhoods, Sampasa and Bikwano, where 69% and 40% of structures were removed respectively.

While the order to demolish the houses at Sampasa and Bikwano appears to have been given on 24 November, the return of the police on 25 November 2009 suggests that the demolitions carried out on 25 November were premeditated.

When Amnesty International interviewed community members both in August 2013, before the organization obtained the satellite images shown here, and again in September 2014, they stated that many Kawama villagers had built new homes after the evictions. Researchers were taken to the sites of some of the new buildings in Bikwano and Sampasa and people explained where their former homes had been and showed researchers the new structures.<sup>71</sup>

The satellite image of May 2010 also shows that there was considerable rebuilding at Kawama after the demolitions. In the areas of Lukuni-Gare, Bikwano and Sampasa, where 387 structures were removed, 377 were added by 15 May 2010.<sup>72</sup>

## THE PROSECUTOR'S INVESTIGATION

The forced evictions at Kawama were serious enough to attract considerable attention. In December 2009 the Public Prosecutor (*Procureur Général*) of Lubumbashi opened a criminal investigation. Between December 2009 and February 2010 the Assistant Public Prosecutor (*Avocat Général*), carried out an investigation into the events at Kawama. He took statements from police officers, company representatives and other witnesses. As noted above, these statements include claims by police officers that the demolitions were not planned and acknowledgement that houses were destroyed.

The files, which are publicly available,<sup>73</sup> allege that an official of the Provincial Ministry of the Interior who was present during the operation on 24 November 2009 ordered the demolitions and that the senior police officers present were unwilling or unable to stop the demolitions, even though they knew they did not have authorization to demolish homes.

The investigation of the Assistant Public Prosecutor – conducted several years before Amnesty International and AAAS obtained the satellite images – established that 421 structures were demolished, the majority of which were made out of brick, and which included hotels, restaurants and a health centre. AAAS was unaware of the data in the files of the Assistant Public Prosecutor when the organization analysed the satellite images.

Whereas the Assistant Public Prosecutor identified 421 demolished structures, the satellite images identified 387 removed structures. It is significant that the Assistant Public Prosecutor's figure, arrived at within three months of the events on 24 November 2009, and the figure obtained from the satellite images of May 2010 (i.e. an independent source of data that was established after the Assistant Public Prosecutor's investigation) are very similar. The satellite images might not have identified 34 removed structures counted by the Assistant Public Prosecutor for the following reasons: cloud cover obscured some part of the area in the satellite images; the satellite images were taken six months after the demolitions and some people may have rebuilt in the exact location of their demolished homes; and the satellite images only include structures larger than 2 x 2 metres, whereas the Assistant Public Prosecutor counted all structures, including those of one room.<sup>74</sup>

In September 2014 Amnesty International spoke to the now retired Assistant Public Prosecutor who carried out the investigation. He confirmed that, as part of his investigation, he had visited the village of Kawama to establish how many buildings were destroyed. He also confirmed that the buildings destroyed included permanent buildings that were the homes and businesses of the villagers of Kawama.<sup>75</sup>

Although the file includes evidence of human rights violations, including forced evictions and violations of the right to work, the authorities took no further action and no charges were brought following the gathering of testimonies. This issue is picked up again in Chapter 3.

## FORREST GROUP CLAIMS ABOUT THE DEMOLITIONS AT KAWAMA

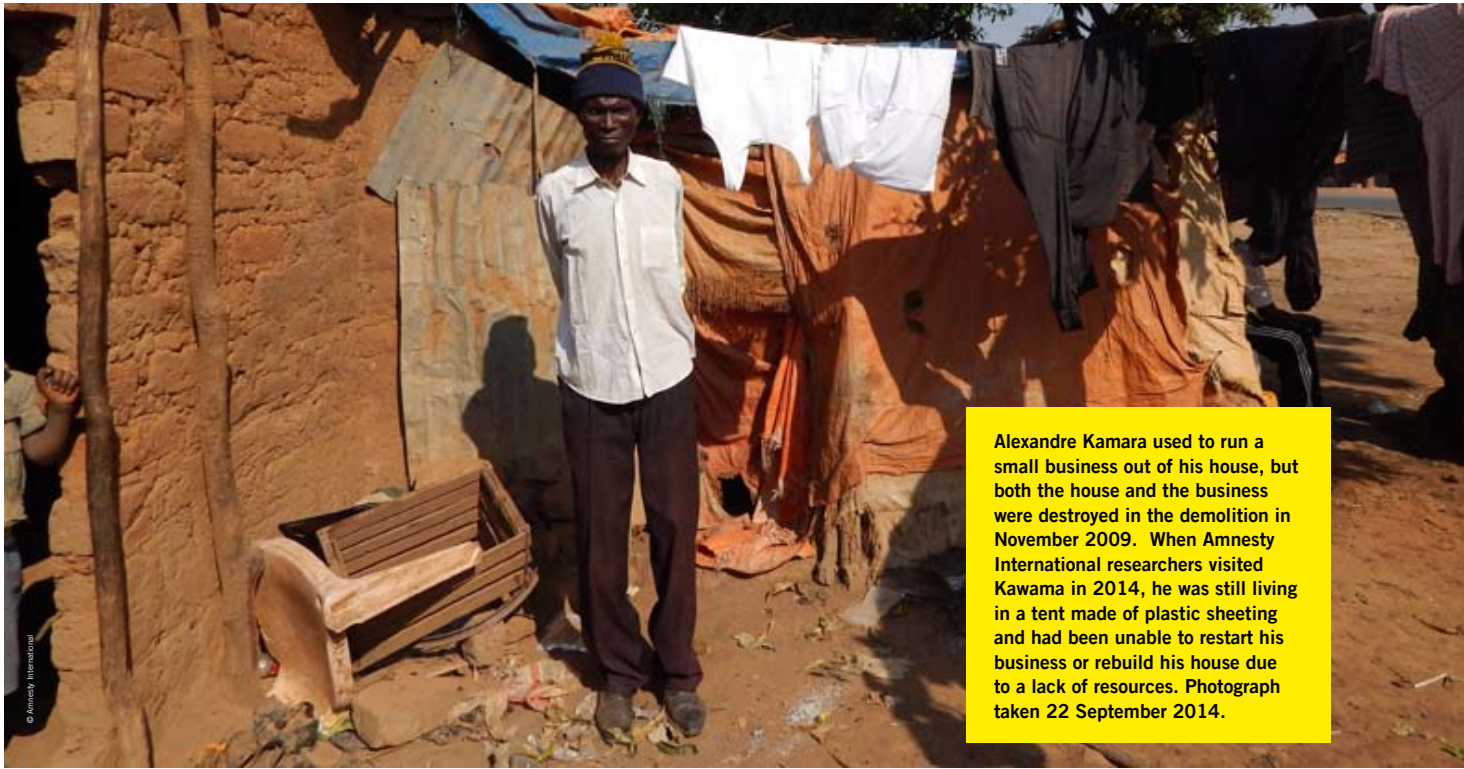
The Forrest Group has repeatedly claimed that the police only demolished “shacks” (*cabanes*) belonging to *creuseurs*.<sup>76</sup> The Director General of CMSK (at the time Forrest Group was the majority shareholder) stated that: “The public authorities ordered a completely legal demolition of the erected shacks on the mining site and its surrounding areas.” (*Les autorités ont ordonné en toute légalité la démolition des cabanes érigées sur le site minier et dans ses environs et alentours*).<sup>77</sup>

However, Amnesty International could not find any evidence of a legal basis for the demolition of the homes of the *creuseurs*.

The company has repeatedly denied that the homes of villagers were affected by the demolitions. In a letter dated 6 June 2013, they told Amnesty International: “after the evacuation of the ‘*creuseurs*’ the police proceeded to destroy their encampment. According to our sources, no villagers’ structure was touched by the operation of the mining police.”<sup>78</sup> Several different pieces of evidence contradict the claims of the company.

First, as noted earlier, police officers who gave testimony to the Assistant Public Prosecutor also confirmed the destruction of houses. Second, the Assistant Public Prosecutor visited Kawama in the weeks following the demolitions and confirmed that the homes and businesses of villagers of Kawama were demolished. Third, the satellite images show that the removed buildings were spread across the three affected neighbourhoods and not, as claimed by Forrest Group, contained in a single encampment of *creuseurs* at Lukuni-Gare and another encampment in the main part of Kawama.<sup>79</sup> Fourth, the satellite images show that 387 structures that were removed had been present in May 2009, at least four months before the date when Forrest Group considers a large number of *creuseurs* arrived. And finally, there is the video and photographic evidence presented in this report.

A full examination of Forrest Group's claims and the responsibility of the Forrest Group companies is presented in Chapter 2.



Alexandre Kamara used to run a small business out of his house, but both the house and the business were destroyed in the demolition in November 2009. When Amnesty International researchers visited Kawama in 2014, he was still living in a tent made of plastic sheeting and had been unable to restart his business or rebuild his house due to a lack of resources. Photograph taken 22 September 2014.



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above: Brigitte Mukand from Lukuni-Gare had a house and a restaurant, which she lost in the demolitions of November 2009. She has been unable to rebuild her restaurant due to the cost, but has constructed a small house. She now makes a living from farming and making charcoal. Photograph taken 25 September 2014

above right: Ernest Malanji Toundra (referred to as 'Joe Toundra') standing outside his home which was demolished on 24 November 2009. Photograph taken 22 April 2012

right: Itala Marguerite and Jeanne Mujinga stand near their homes and explain the effect of the demolition on them. Photograph taken 22 April 2012



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## THE IMPACT OF THE DEMOLITIONS: PEOPLE LEFT HOMELESS, LIVELIHOOD UNDERMINED

Those who lost their homes at Kawama made a variety of temporary living arrangements in the immediate aftermath of the demolitions. Some people moved in with neighbours or family members; others lived in the rubble of their homes and attempted to rebuild. Many people rebuilt their homes, some within months, others taking considerable time to complete the work as they could not afford the costs. When Amnesty International first visited Kawama in October 2011, researchers met a number of families living under plastic sheeting.

Amnesty International visited the area again in September 2012 and August 2013 as people continued to rebuild; many spoke of the difficulties of finishing their homes because of the cost of windows and doors. During Amnesty International's last visit in September 2014, some people were still living in tents made of plastic sheeting.

Alexandre Kamara has lived in Kawama since 1958 and moved to his current plot in the Bikwano neighbourhood in December 1989. He used to run a small business out of his house, but both the house and the business were destroyed in the November 2009 demolitions. He has been unable to restart his business or rebuild his house due to a lack of resources and lives in a tent made of plastic sheeting.<sup>80</sup> In the Assistant Public Prosecutor's file there is an evaluation of the losses suffered by Alexandre Kamara, which includes a house of four rooms, one of two rooms, two kiosks and a structure serving as a small cinema. In total, his immediate losses were valued at USD \$6,500.

For many people the loss of their home also meant the loss of their livelihood. This in turn had an impact on their ability to rebuild (as in Alexandre Kamara's case, above) or their ability to pay for other essentials.

Brigitte Mukand from Lukuni-Gare had a house and a restaurant, which the Mine Police destroyed. She is a widow and the restaurant had been her only source of income. She now makes a living from farming and making charcoal. Brigitte told researchers that finding food for her family to eat is a problem. Five of her children were attending school prior to the demolition; since the demolition, she still has not amassed the necessary resources to pay school fees and the necessary transport costs. She has been unable to rebuild her restaurant due to the cost of building a structure for this purpose, but has constructed a small house. Prior to the demolition, two of her sons and their families lived in her house; but following the demolition there was insufficient space for them and they had to move to Lubumbashi. Brigitte told researchers that she has to keep her possessions outside the house due to lack of space.<sup>81</sup>

Another woman described how, after her three-roomed house was demolished, her family lived in a tent made of plastic for three years and during this time her children were unable to go to school due to a lack of resources. She was able to construct a new house in May 2012 at the cost of 250,000 CFC (approximately USD \$262).<sup>82</sup>

## 2/ FORCED EVICTIONS – HUMAN RIGHTS VIOLATIONS

### STATE OBLIGATIONS

The DRC is a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 11 of the ICESCR guarantees the right to adequate housing. The UN Committee on Economic, Social and Cultural Rights (CESCR), the expert body that provides authoritative guidance on the implementation of the ICESCR, has clarified the obligations of States parties to respect, protect and fulfil the right to adequate housing.<sup>83</sup> Forced evictions are a violation of the right to adequate housing and other human rights.

A forced eviction is the removal of people against their will from the homes or land they occupy without legal protections and other safeguards. Under international human rights law, evictions may only be carried out as a last resort, once all other feasible alternatives to eviction have been explored in genuine consultation with all affected people and appropriate procedural protections are in place.<sup>84</sup> Such legal protections and safeguards include:

- Genuine consultation with all those affected.
- Adequate and reasonable notice for affected people prior to the eviction.
- Information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected.
- Government officials or their representatives to be present during the evictions.
- Anyone carrying out the eviction to be properly identified.
- Evictions not to take place in particularly bad weather or at night unless the affected people consent.
- Provision of legal remedies.
- Provision, where possible, of legal aid to people who are in need of it to seek redress from the courts.<sup>85</sup>

Governments must also ensure that no one is rendered homeless or vulnerable to the violation of other human rights as a consequence of eviction. Adequate alternative housing should be provided for people who cannot provide for themselves.<sup>86</sup> People must receive compensation for all losses.<sup>87</sup> The authorities must ensure adequate planning to avoid causing injury or damage. Forced evictions or house demolitions may not be carried out as a punitive measure.<sup>88</sup>

Not every eviction that is carried out by force constitutes a forced eviction – if all the legal protections and safeguards required under international law are complied with, and if the use of force is proportionate and reasonable, then the eviction would not violate the prohibition on forced evictions.

None of the safeguards required under international law were observed at Kawama: people were not given any notice; the demolitions were unplanned; people were made homeless as a result.

The DRC is also party to the African Charter on Human and Peoples' Rights. The African Commission on Human and Peoples' Rights, a body charged with overseeing the implementation of the Charter, has affirmed that forced evictions contravene the African Charter, in particular Articles 14 and 16 on the right to property and the right to health, and Article 18(1) on the state's duty to protect the family.<sup>89</sup>

Under Congolese law, a structure can only be demolished by the authorities following a court judgement that adjudges on ownership of land; and on the basis of a written order to use force from a Public Prosecutor. According to the Assistant Public Prosecutor who investigated the case, there was no basis in Congolese law for the demolitions and the police did not have written authorisation from any judicial or administrative authorities to remove any structures.<sup>90</sup>

The demolitions at Kawama constituted forced evictions – a violation of the right to adequate housing. That some homes were makeshift structures used by *creuseurs* does not diminish the fact that such evictions are unlawful under Congolese law, as well as African and international human rights law. A lawful eviction of the *creuseurs* from their temporary homes would still require that legal protections and safeguards against forced evictions were observed.<sup>91</sup> These protections apply in all cases, whether or not people have a right to occupy the land on which they reside. The authorities therefore had a legal obligation to give adequate notice of their intention to evict the *creuseurs* and demolish their structures, consult with them and the community over the issue, and take all necessary steps to avoid the use of force, and protect the people of Kawama.

The *creuseurs* were not given adequate prior notice of the evictions. They were orally informed – approximately one week before the demolitions – that they should leave the area or would be removed by the police. There was no mention of demolition of homes or evictions.<sup>92</sup> Being given information orally a week in advance does not provide affected people with adequate advance warning of the eviction. Such a short time period restricted their opportunity to make representations to the authorities, seek legal redress and was insufficient for consultations on the evictions, resettlement and compensation. To be adequate, the notice should have been in writing, addressed to specific affected individuals, specified the reasons for the eviction and its legal basis, indicated which authority would implement the eviction, and provided sufficient time to seek legal remedies and for consultations.

The manner in which the demolitions were ordered on 24 November, after reported conflict between *creuseurs* and the security forces, raises serious questions about whether they were carried out as a punitive measure, in violation of international law.

In addition to the forced eviction the authorities did not take due regard for the safety of those living at Kawama. The police – without any prior planning or notice – took large vehicles into a village and proceeded to destroy hundreds of houses. Any eviction that involved sending police and heavy machinery into a populated area would require careful planning and consultation to minimise the use of force, give people the opportunity to retrieve their belongings and building materials, and prevent injury to persons.

## THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS:

### FORREST GROUP'S ROLE

Companies have a responsibility to respect human rights. The scope and meaning of this responsibility has been clarified in the UN Guiding Principles on Business and Human Rights (UNGPs).<sup>93</sup>

According to the UNGPs:

*“The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.”<sup>94</sup>*

The responsibility to respect human rights requires that companies:

*“Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur”<sup>95</sup>*

In order to meet this responsibility, companies should put in place:

*“A human rights due diligence process to identify, prevent, mitigate and account for how they have addressed their impacts on human rights” and;*

*“Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.”<sup>96</sup>*

These responsibilities are also clearly laid down in the OECD Guidelines for Multinational Enterprises<sup>97</sup> (OECD Guidelines) endorsed by all members of the Organisation for Economic Co-operation and Development (OECD). The OECD Guidelines require companies to act with due diligence to prevent their operations from causing or contributing to human rights abuses and to address adverse human rights impacts with which they are involved.

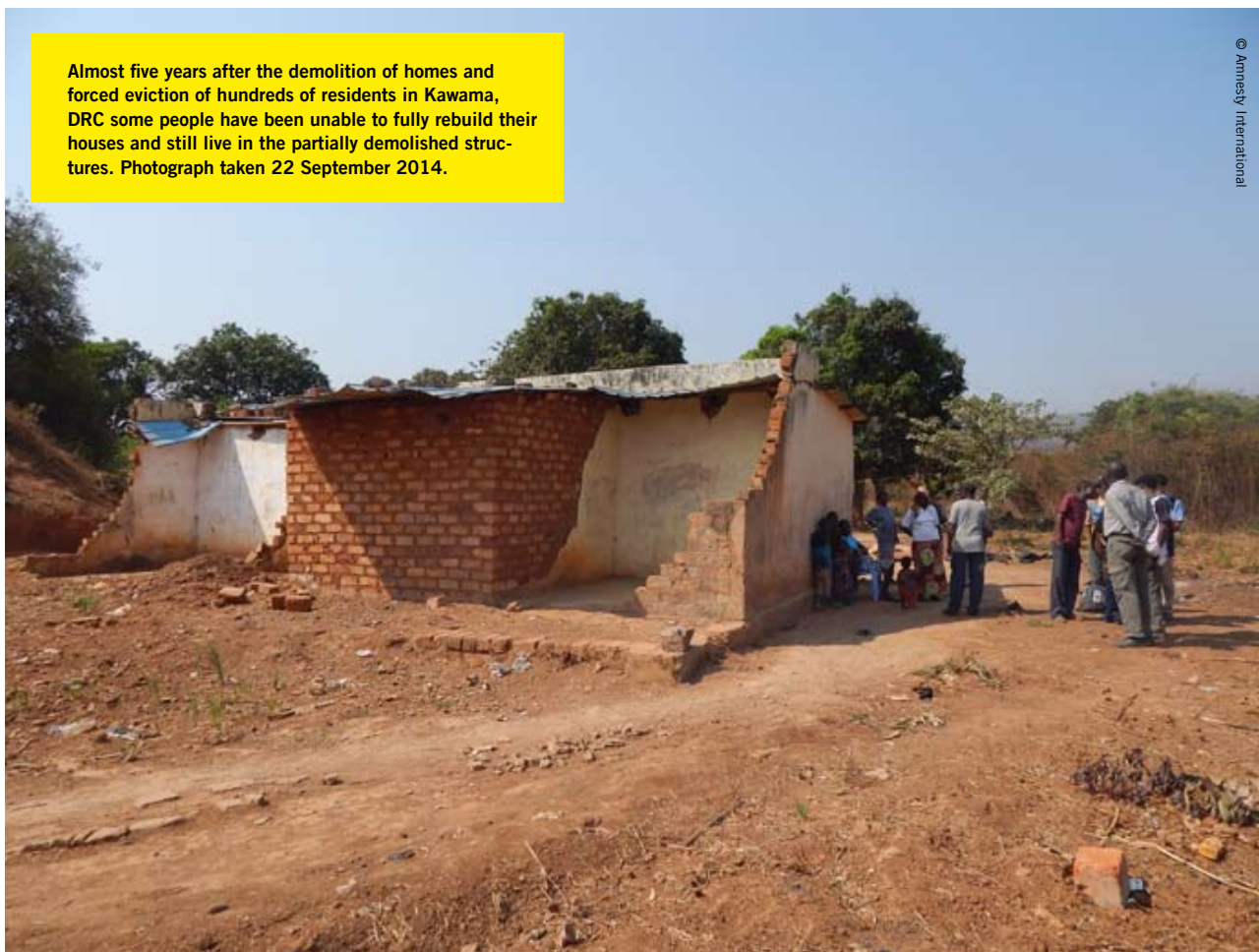
In addition to the UNGPs and the OECD Guidelines, the Voluntary Principles on Security and Human Rights are a well-known international due diligence framework for extractive companies (oil, gas and mining) that engage with public and private security providers. The Voluntary Principles state:

*“The ability to assess accurately risks present in a Company’s operating environment is critical to the security of personnel, local communities and assets; the success of the Company’s short and long-term operations; and to the promotion and protection of human rights.”<sup>98</sup>*

The Forrest Group’s website states that Forrest Group companies “encourage and respect, in their spheres of influence, the protection of the rights of man proclaimed in the United Nation’s Universal Declaration of Human Rights ...”<sup>99</sup>

The Forrest Group has repeatedly stated that it bears no responsibility for the demolitions at Kawama. The company has also stated that no villagers’ homes were demolished, that its bulldozers were requisitioned and that the drivers of those vehicles were acting under duress.<sup>100</sup> Amnesty International examined the company’s claims in light of the UNGPs, the OECD Guidelines and the Voluntary Principles on Security and Human Rights.

The events of 24 and 25 November 2009 were preceded by an influx of *creuseurs* and allegations of theft from the mine site. In order to address the problem the company requested the intervention of



the authorities at Kawama.<sup>101</sup> EGMF has been active in Katanga since 1922.<sup>102</sup> The Forrest Group is therefore well aware of the mining context in the region. This context includes clashes between *creuseurs* and Mine Police and other security agents over access to mine sites. In requesting a police action at Kawama, existing standards on business and human rights require Forrest Group to assess the risks to human rights. The Voluntary Principles on Security and Human Rights state that risk assessment should consider the potential for violence and also the available human rights record of the public security forces. Amnesty International asked Forrest Group what action was taken, in light of the history of violent clashes between *creuseurs* and Mine Police, to ensure the operation planned for Kawama was carried out in a manner consistent with human rights. The company did not respond on this point.

A review of the events raises a number of questions about the company's actions during the two-day operation, as well as subsequently.

On 24 November 2009 it is clear from all accounts that clashes between the police and the *creuseurs* (and possibly other people) began early in the morning. At this point a senior EGMF official was at the mine.<sup>103</sup> This official was aware of the rapidly deteriorating situation, occurring in the context of a policing action which the company had requested and with which it was involved.

All available evidence points to the demolitions going on for most of the day and continuing for a second day on 25 November 2009. It is reasonable to assume that senior officials of a company whose employees were being made - under fear and duress - to take large bulldozers into a village and demolish homes would be actively and urgently trying to stop such action. Yet there is no record of an attempt by the senior EGMF official who was on site on 24 November 2009, or any other employee of EGMF, CMSK or the Forrest Group to do this over the course of the two-day operation.<sup>104</sup>

In order to carry out the demolition of homes the police required bulldozers and other vehicles. In responding to Amnesty International's queries about why the company sent its bulldozers into the village, Forrest Group stated that its employees had no choice but to allow the police to use the equipment. The senior EGMF official who had been on site on 24 November 2009 told the Assistant Public Prosecutor that on both 24 and 25 November 2009, the police threatened him and this is why he gave them the bulldozers.<sup>105</sup>

The testimony of some of the bulldozer drivers to the Assistant Public Prosecutor raises questions about how Forrest Group has portrayed the requisition of the vehicles. As noted earlier, Forrest Group described "the violence of requisition and the impossibility of the employees to stand up to the armed police..." and stated that "Each employee ...acted only under duress, threat and fear."<sup>106</sup> However, one driver testified to the Assistant Public Prosecutor that he was at work when the senior EGMF official ordered him to go to Kawama, where the police would tell him what he had to do.<sup>107</sup> He obeyed the EGMF official. A second driver told the Assistant Public Prosecutor that the senior EGMF official told him to go to Kawama with the police officers for an operation that was unfinished.<sup>108</sup> Both drivers were away from the immediate area and have testified that it was the senior EGMF official that ordered them to go to the site. A third driver testified that his operations manager (chef d'exploitation) gave him the order to go to Kawama to replace his colleague.<sup>109</sup> None of the drivers mentions being forced by police to go to the village. Amnesty International has asked Forrest Group to explain the discrepancy in the description of the events, and why EGMF managers sent drivers to assist the police. The company did not respond on this point.

Even if, as Forrest Group has stated, the company employees had no choice but to comply with police demands - a version of events which is not entirely consistent with the accounts given to the Assistant Public Prosecutor - the company itself had a responsibility to avoid contributing to adverse human rights impacts. The company should have complained to the authorities after the event about the police's coercive use of its staff and equipment in the commission of human rights violations. The Voluntary Principles on Security and Human Rights advise that companies should record and report any abuses by public security that occur in their area of operation, actively monitor the status of investigations and press for their proper resolution. There is no evidence that EGMF, CMSK or Forrest Group took any of these actions. Amnesty International has asked Forrest Group to explain why it did not take action during either of the days of 24 or 25 November 2009 or subsequently to

strongly protest the misuse of its equipment and alleged coercion of its personnel. Responding to Amnesty International's queries on this issue Forrest Group stated that the return of the police was "unforeseeable" and that following the requisition of the bulldozers on the second day, "on 25 November, the company contacted the provincial authorities to try to calm the situation down".<sup>110</sup> This action, as described by the Forrest Group, falls far short of what would be expected under international standards.

As noted earlier, Forrest Group companies have acknowledged that the temporary homes of *creuseurs* were demolished. However, the company has made seemingly contradictory statements about this:

■ In a letter, dated 15 December 2009, from CMSK responding to the organization *Action contre l'impunité pour les droits humains*, the company stated that: "In order to put an end to the illegal occupation of the perimeter, the public authorities ordered a *completely legal* demolition of the erected structures on the mining site and its surrounding areas." (emphasis added) (*c'est pour mettre un terme à l'occupation illégale et infractionnelle du périmètre susdit que les autorités ont ordonné en toute légalité la démolition des cabanes érigées sur le site minier et dans ses environs et alentours*)

■ In a letter to Amnesty International, dated 6 June 2013, Forrest Group claimed that there was "never a question of asking for an evacuation" of the village and went on to describe how the situation deteriorated, the police became angry and the company equipment was forcibly requisitioned, on the spot.

Amnesty International has asked Forrest Group to explain why CMSK stated in 2009 that the demolitions were "completely legal", and how this claim is consistent with the facts and its later admission that the situation had been violent and demolitions unplanned. Forrest Group did not address this issue in its letter to Amnesty International.

Turning to the question of which homes were demolished, Forrest Group has repeatedly attempted to defend the action at Kawama by claiming that only temporary homes of *creuseurs* were destroyed. As noted above, the fact that the shelters of *creuseurs* were temporary does not mean that the demolitions were lawful. In this case they constituted forced evictions.

However, the community has consistently maintained that the homes of permanent residents were also destroyed. There is substantial evidence to support the community's claims. Firstly, it is clear that brick buildings were demolished. This was evident in the video footage referred to earlier and in the photographs taken by a local NGO on 26 November 2009. Community members have repeatedly pointed out that the *creuseurs* who came from outside the area would not and did not build brick houses and the brick houses demolished belonged to local villagers. When pressed on the issue of brick buildings, Forrest Group officials, interviewed by Amnesty International in August 2013, agreed that brick structures were destroyed but still maintained that these were homes of *creuseurs*. However, Forrest Group itself has stated that the *creuseurs* arrived in Kawama in October and November 2009, just months and weeks before the demolitions; it is not credible that people who arrived so recently would have had time to build brick homes.

*"According to our sources, no villagers' structure was touched by the operation of the mining police."*

Letter from Forrest Group to Amnesty International, 6 June 2013.

There is further evidence that the homes of villagers were demolished. This includes:

- The testimony given to the Assistant Public Prosecutor by various witnesses, cited earlier.
- The confirmation of the Assistant Public Prosecutor himself in an interview with Amnesty International.
- Amnesty International interviews with three different and un-related actors who visited Kawama in the immediate aftermath of the demolitions. All of these actors confirm that brick houses belonging to residents were destroyed in addition to structures used by some *creuseurs*.<sup>111</sup>
- The photographs taken by a local NGO and reproduced in this report.
- The video footage of the events of 24 November 2009.

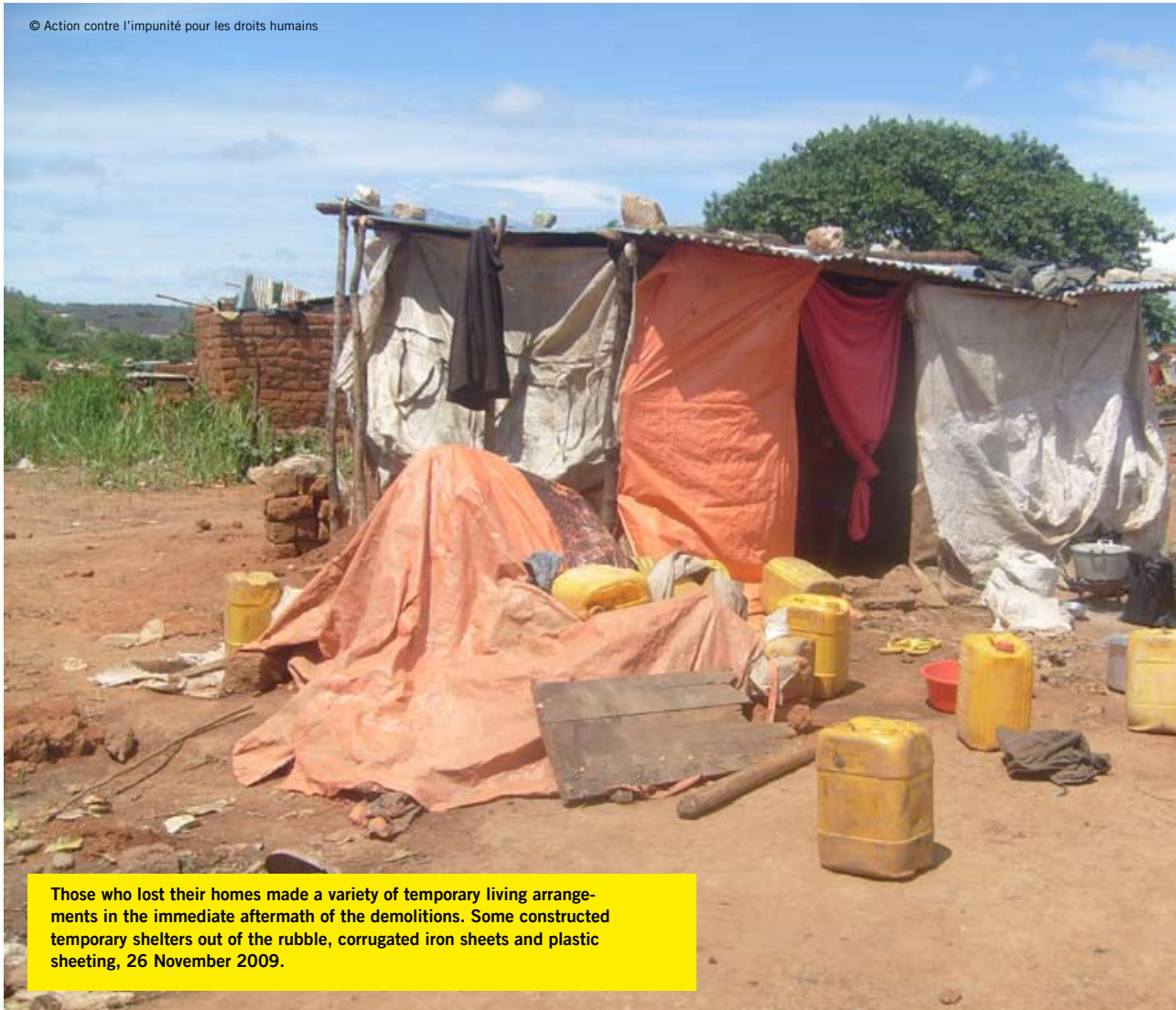
Finally, the satellite images also reveal important data: the satellite image from May 2009 provides a view of Kawama months before a large number of *creuseurs* arrived in the village. In the Lukuni-Gare area of Kawama, 76% of all structures present in May 2009 were removed; in the northeast (Bikwano and Sampasa neighbourhoods) between 40% and 69% of all structures were removed. If all of these were the temporary homes of *creuseurs* then it would mean that in one area more than two-thirds of all homes were temporary shelters of *creuseurs* and in another part of Kawama more than half of all homes were temporary shelters – and that this was the case months before a large influx of *creuseurs*. The people of Kawama have repeatedly clarified that this was not the case and there is no evidence that such a situation existed at Kawama.

Forrest Group has also stated that the *creuseur*'s "shacks" (*cabanes*) were grouped together in an encampment or encampments. However, the satellite images show this was not the case: the structures demolished were scattered throughout the three neighbourhoods of Lukuni-Gare, Bikwano and Sampasa and not in one 'encampment' or even in several encampments. The fact that the structures demolished were not in a clearly identifiable encampment is relevant to the company's claim that the homes of villagers were not affected,<sup>112</sup> as it is not plausible that the police and drivers could, without any prior planning, ensure that only homes of *creuseurs* were affected in a context where the homes of both *creuseurs* and villagers were intermingled. The company has also stated that the village Chief of Kawama helped the police to identify which structures should be demolished, preventing any damage to the homes of villagers.<sup>113</sup> The village Chief has consistently denied this.<sup>114</sup> In both interviews with Amnesty International and his testimony to the Assistant Public Prosecutor,<sup>115</sup> he confirmed that the homes of villagers were destroyed.

Moreover, even if it had, somehow, been possible to identify the homes of *creuseurs* as distinct from the homes of villagers, the unplanned deployment of bulldozers in a village would pose a very serious risk of injury to persons and damage to property. Yet Forrest Group claims that the operation managed to avoid, not just the demolition of villagers' homes, but any damage to the homes of villagers. Amnesty International put this point to Forrest Group, and asked the company to explain,



Bricks and rubble and partially demolished structures lie where homes once stood in Kawama, DRC. Some residents constructed temporary shelters out of the rubble and plastic sheeting, 26 November 2009



Those who lost their homes made a variety of temporary living arrangements in the immediate aftermath of the demolitions. Some constructed temporary shelters out of the rubble, corrugated iron sheets and plastic sheeting, 26 November 2009.





in light of the evidence, how it can conclude that only temporary dwellings of *creuseurs* who came to the area in 2009 were demolished. The company did not address this issue in its letter of response to Amnesty International.

The rebuilding shown in the satellite images is also not consistent with claims that the structures demolished were temporary; 377 new structures were built. This is consistent with the accounts of villagers who said they rebuilt their homes. There is no evidence of *creuseurs* putting up new structures on a large scale in Kawama following the forced evictions.

The demolitions carried out by police at Kawama violate the human rights obligations of the Congolese authorities. Forrest Group also bears responsibility for its failure to prevent or mitigate the human rights abuses that occurred in the context of a police operation linked to its mine site. The UNGPs and the OECD Guidelines both make clear that the responsibility of companies to respect human rights requires companies to act with due diligence to prevent abuse and to take remedial action after harm is caused. Forrest Group and its subsidiary EGMF did not act with due diligence to prevent or stop the demolitions or to remediate the harm caused to those affected, and the companies have since maintained a version of events for which there is no credible evidence. This has compounded the human rights abuses experienced by the people of Kawama, as discussed below.

## GÉCAMINES'S ROLE

Gécamines owned 40% shares in CMSK at the time of the demolitions. However, even as a minority shareholder Gécamines had a responsibility to do everything in its power to ensure human rights were respected in the context of a police operation linked to the joint venture's mine. There is no evidence that any Gécamines staff were present at the site at the time of the events of November 2009. However, regardless of whether the company was present or not, or whether it was aware of the serious events that were unfolding at the mine site during 24 and 25 November, it could have taken measures to help remedy the harm caused by the demolitions. There is no evidence that Gécamines took any action to pursue inquiries or remedial action in this case. Amnesty International wrote to Gécamines on 4 November 2014 but at the time of printing the report had not received a response.

Gécamines bears responsibility for its own failures to take steps to ensure that CMSK prevented, mitigated or adequately addressed the abuses that occurred in the context of police operations at its mine site. In 2012 Gécamines became the sole owner of CMSK. As such, it bears full responsibility for ensuring CMSK operations do not cause or contribute to further human rights abuses.

## 3/ A REMEDY FOR THE PEOPLE OF KAWAMA

When human rights violations occur, international law requires that the perpetrator is held accountable and the victim receives an effective remedy. This right to an effective remedy lies at the very core of international human rights law. The right to an effective remedy encompasses the victim's right to:

- equal and effective access to justice;
- adequate, effective and prompt reparation for harm suffered; and
- access to relevant information concerning violations and reparation mechanisms.<sup>116</sup>

Reparations – or measures to repair the harm caused to victims of human rights violations – can take many forms. There are five recognized forms of reparation, which include a broad range of measures aimed at repairing the harm caused to survivors and victims: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>117</sup> The actual reparation that should be provided in each case will depend on the nature of the right violated, the harm suffered and the wishes of those affected. The touchstone of reparation, however, is that it must seek to remove the consequences of the violation and, as far as possible, restore those who have been affected to the situation they would have been in had the violation not occurred.<sup>118</sup>

The permanent residents of Kawama lost their belongings and homes in the forced eviction. They are entitled to a remedy. Whilst the *creuseurs* received a payment from the company, five years after the demolitions, the residents have received nothing and no charges have been brought against those involved in carrying out the forced eviction. A prosecution within the DRC as well as a complaint against the Forrest Group to the Belgian government's contact point on the application of the OECD Guidelines on Multinational Enterprises have both failed to secure effective remedy for those whose homes were demolished.

### INACTION ON THE PROSECUTOR'S INVESTIGATION

In December 2009 the Public Prosecutor (*Procureur Général*) of Lubumbashi opened a criminal investigation. He appointed the Assistant Public Prosecutor (*Avocat Général*), Augustin Nzey, as president of an investigation commission that comprised representatives from the police, the army and the Civil Guard. Augustin Nzey took statements from police officers, company representatives and other witnesses. Although the Assistant Public Prosecutor's file includes evidence of human rights violations and raises serious questions about command and control of the police operation at Kawama, the authorities took no further action and no charges were brought following the gathering of testimonies. Augustin Nzey informed Amnesty International that he had been prepared to institute a prosecution under Article 110 of the DRC's Penal Code. This provision specifies that a person who destroys or damages a building belonging to another person shall be punished by a prison term and/or a fine.<sup>119</sup>

In 2012, when researchers met with the Assistant Public Prosecutor, he informed them that his investigation was complete and that he intended to fix a date to bring charges. He indicated that there were political pressures associated with the investigation. No action was taken on the case and Augustin Nzey retired in June 2013. When Amnesty International spoke to him in September 2014 – to find out why the prosecution had not moved forward - he said that he had been ready to bring charges of malicious destruction (*déstruction méchante*) of buildings under Article 110 of the Penal Code against those who had ordered the demolitions, including the senior official in the Provincial Ministry of Interior and the senior commander of the Mine Police as well as drivers of the EGMF vehicles, but that he had been instructed by officials in Kinshasa and in the Provincial Government not to do so. He was told the case had political implications, and that the Governor would ensure that compensation would be provided to the villagers whose losses he had tallied in his files.

Augustin Nzey told researchers that his retirement was announced publicly in June 2013 and took

immediate effect – he had not been informed of it in advance. According to Augustin Nzey, an official in Kinshasa, whom he did not name, told him that his retirement was a result of his investigation into the demolitions at Kawama, which had been too thorough and had put pressure on the authorities.

Amnesty International also met with the Public Prosecutor in September 2014 to inquire about the lack of progress on the Kawama case. The Public Prosecutor could not explain why no action had been taken on the files between 2012 and 2014, or why the current Assistant Public Prosecutor, who had replaced Augustin Nzey, had not reviewed the files in the 14 months since taking up the post. He stated that the case would now move forward.

When asked about the circumstances surrounding Augustin Nzey's retirement, the Public Prosecutor told researchers that it was in accordance with the Magistrates' Statute. According to this Statute, magistrates must retire either when they reach 65 years of age or have 35 years of continuous service.<sup>120</sup> The Public Prosecutor said that no exceptions are made to the application of these rules.

Augustin Nzey refuted the Public Prosecutor's claims. He explained that he did not meet the criteria for mandatory retirement; he was only 62 at the time of his enforced retirement<sup>121</sup> and, although he had been appointed as a magistrate 35 years prior to his retirement, he had neither 35 years continuous or cumulative service as he, along with more than 300 other magistrates, had been dismissed by the former President Laurent-Désiré Kabila under Presidential Decree 144 of 6 November 1998. He did not work again until November 2003 when the current President, Joseph Kabila, nullified the decree.<sup>122</sup> Other magistrates whose careers had been interrupted by the Presidential Decree had not, according to Augustin Nzey, been required to retire after 35 years of service. Amnesty International wrote to the Minister of Justice and the Public Prosecutor, and asked them to comment on the allegations made by Augustin Nzey. At the time of printing, no response had been received.

## COMPENSATION NEGOTIATIONS

During his investigations into the Kawama demolitions, the Assistant Public Prosecutor carried out an assessment of the damage to each household resulting from the demolitions.

Amnesty International spoke to community members, including the committee members of the community group, *Association de Défense des Intérêts de Kawama* (ADIK), about the compensation negotiations. They informed researchers that the Office of the Provincial Governor had sought to achieve a settlement with the villagers and that they had met with the Governor's Chief of Staff



A bulldozer demolishes a brick structure during the forced eviction of hundreds of residents at Kawama, DRC on 24 November 2009. Picture taken from a video of events

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(*Directeur de cabinet*) on three occasions in 2011. The villagers were told that the Governor's office had considered the assessment of damages by Augustin Nzey, but had felt it necessary to simplify the process by clustering the victims into four categories on the basis of the quality and size of their housing and whether they operated businesses (see table below). The villagers were only orally informed of this proposal by the Governor's office and were not provided with a copy.<sup>123</sup>

According to members of ADIK, several weeks after their last meeting with the Chief of Staff, residents of Kawama were asked to meet with his secretary. She told them that the province could not pay the amount originally calculated as it was considered too high and she showed them a reduced set of figures which reduced the number of categories to three. She told the villagers that their acceptance would trigger payment and asked them to verify a list of victims. The residents, feeling they had no other option, accepted the reduced amounts on the same day that these had been proposed to them. However, since then, there has been no follow-up. Their requests for further meetings were not accepted, even though they staged a demonstration outside the Governor's official residence later in 2011. The members of ADIK did not know and could only speculate on the reasons why the compensation discussed was not paid.<sup>124</sup> Amnesty International sought a meeting with the Governor's office in September 2014 but was not granted one and subsequently wrote on 4 November 2014 to the Governor's office to obtain its version of events. At the time of printing the report, it had not received a response.

PROPOSED COMPENSATION FIGURES		
All figures in US\$	Original proposal	Reduced proposal
Category 1: Large houses and businesses	20,000	6,000
Category 2: Large durable brick houses	15,000	3,000
Category 3: Small brick houses	10,000	1500 (for categories 3 and 4)
Category 4: Basic housing, including one bedroom houses and non-brick housing)	6,000	

## ACTIONS BY FORREST GROUP

Following the demolitions the Forrest Group stated that it took action aimed at "a fair and sustainable solution for the *creuseurs* and the company".<sup>125</sup> According to the company "a census of *creuseurs* by the authorities took place in January and February 2010. Subsequent to this census some 1,981 individuals were given an 'aide' of US\$300 each to leave the village of Kawama and move elsewhere.<sup>126</sup> Amnesty International was not able to establish if this amount represented adequate compensation for the losses of the *creuseurs*, who were victims of forced evictions on 24 and 25 November.

The Forrest Group did not offer any compensation to the villagers and the company has, as noted earlier, consistently denied that the homes of villagers were demolished during the operation of 24 and 25 November 2009.

In a letter dated 17 November 2014 Forrest Group, responding to Amnesty International's evidence of human rights violations at Kawama in 2009, did not repeat its denial that villagers' homes were demolished. However, the company stated that it was not responsible for any damage done and that responsibility lay with the Congolese authorities. The full letter is reproduced in Annex 1.

## ACTION IN BELGIUM, FORREST GROUP'S HOME STATE<sup>127</sup>

In April 2012 human rights groups, *Action contre l'impunité pour les droits humains* (ACIDH), Rights and Accountability in Development (RAID), *La Fédération internationale des ligues des droits de l'homme* (FIDH), *Ligue des droits de l'homme*, *Ligue des Electeurs* and *Groupe Lotus* filed a com-

plaint with a Belgian agency – the National Contact Point (NCP) – against the Forrest Group under the OECD Guidelines referenced above.<sup>128</sup> The NCP is a complaint mechanism which each State that adheres to the OECD Guidelines must establish to, among other things, receive and examine complaints of alleged breaches of the Guidelines by companies domiciled or headquartered in their territory. The NCP is an institution usually housed within or linked to a government department; in Belgium it is linked to the Ministry of Economic Affairs.

The NGOs claimed that EGMF and the parent company, Forrest Group, breached the OECD Guidelines because they failed to act appropriately to prevent the demolitions and were – according to the NGOs – involved in the destruction.<sup>129</sup> According to the NGOs, the complaint was filed only after it became clear that the Congolese authorities were blocking an inquiry by the Assistant Public Prosecutor into the forced evictions and when all attempts to have a constructive dialogue with the company in the DRC and Belgium had been rebuffed.<sup>130</sup>

At the initial stages, the Belgian NCP offered mediation and insisted that it would not assess whether the guidelines had been breached.<sup>131</sup> Forrest Group has stated that the NCP carried out a thorough examination of the dossier and was unable to make a determination of responsibility in that matter.<sup>132</sup> However, responding to Amnesty International's queries on the case, the NCP stated that it "had not enough information to state who was responsible for these acts. The NCP has no examination capacity and we put the emphasis on problem solving."<sup>133</sup>

In September 2012, just before mediation under the Guidelines was due to start, the Forrest Group announced that it had sold its shares in CMSK to Gécamines. The NCP decided that on the basis of the information available to it from the NGOs and from the Belgian diplomatic service, it would not make a decision on responsibility in the matter.<sup>134</sup> At the request of the NCP, the Forrest Group offered to carry out work through its charitable foundation to benefit the residents of Kawama including rehabilitating a water access point, improving maternal health provision and constructing a dispensary or pharmacy.<sup>135</sup> This offer was rejected by the victims as being insufficient in comparison to their losses.<sup>136</sup> The NCP stated that it regretted that the mediation had not been successful and recommended that Forrest Group carry out the actions it had proposed.<sup>137</sup> The NGOs who had taken the complaint publicly stated that there was nothing to stop the Forrest Group from carrying out philanthropic works to benefit the population of Kawama but the proposed actions did not mitigate the impacts of the demolitions on the affected families.<sup>138</sup>

According to Forrest Group in a letter to Amnesty International, the Consul-General of Belgium carried out enquiries on the site in the summer of 2012.<sup>139</sup> The NCP's press release setting out its final decision indicates that the Belgian diplomatic service had provided it with information regarding the matter.<sup>140</sup> However, the Belgian NCP told Amnesty International that the information was confidential and could not be shared.<sup>141</sup>

## HOME STATE RESPONSIBILITY

Home State governments, such as Belgium, have an obligation, grounded in international law, to regulate companies domiciled or headquartered in their territory to ensure they do not infringe on human rights when operating abroad, including through subsidiaries.<sup>142</sup>

The responsibility of the home State, or a State other than the one in which human rights abuses occur, does not diminish the legal responsibility of the host State. In a statement specifically addressing home State obligations, the UN Committee on Economic, Social and Cultural Rights, the body charged with overseeing the International Covenant on Economic, Social and Cultural Rights says that States in whose jurisdiction companies have their main seat should take measures to prevent human rights abuses abroad "without ... diminishing the obligations of the host States under the Covenant."<sup>143</sup> A home State's obligations – or the obligations of States other than the host State – are parallel and complementary to those of the host State and respond to different rationales. Whereas the obligations of a host State correspond to its ability to exercise effective control over its territory, the obligations of other States are based on, and will be shaped by, other factors, such as their ability to take action to protect rights, in both legal and practical terms, under the circumstances.

## THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS AND BELGIUM'S NATIONAL ACTION PLAN

Belgium does not at present have a national legislative or policy framework that requires its companies to respect human rights extraterritorially. In order to implement the UN Guiding Principles on Business and Human Rights, several governments are developing National Action Plans (NAPs). Belgium is currently in the process of drafting its NAP. This offers the Belgian government the opportunity to institute a range of legal and policy reforms to ensure that Belgian companies act with due diligence in their operations outside Belgium and that, where human rights abuses occur, Belgium will hold companies to account and ensure that victims can access remedial mechanisms inside Belgium if they need and wish to do so.

### CURRENT THREATS TO LUKUNI-GARE

On the 30 May 2014 a delegation led by the Provincial Minister of Interior and the Provincial Minister of Mines, and including CMSK, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), the media and a number of NGOs, visited the Luiswishi mine. The visit was organised in response to NGO concerns about reports by villagers and the media that state security forces attempting to control the activities of *creuseurs* in the area had used excessive force resulting in deaths and injuries to both *creuseurs* and villagers.<sup>144</sup> During this visit the government officials reportedly stated that the Lukuni-Gare neighbourhood would be demolished due to the presence of tents which, according to government officials, indicated the presence of *creuseurs*. According to residents of Lukuni-Gare, the government officials did not propose alternative housing or mention compensation.<sup>145</sup>

On 26 June another delegation – this time comprising the Provincial Minister of Interior, the District Police Commissioner (*Commissaire de district*), Territorial Administrator, the secretary of the District du haut Katanga, and a police colonel, who is the head of the territorial detachment – visited Lukuni-Gare and informed residents that they had to ensure the removal of all tents from Lukuni-Gare, otherwise they would return on 17 July to demolish the village.<sup>146</sup> The residents of Lukuni-Gare have never received an official relocation or demolition notice,<sup>147</sup> nor has the village Chief.<sup>148</sup> The tents were removed and the government did not take any action. According to the villagers, tents in Lukuni-Gare, numbering 20-30 in July, belonged to *creuseurs*, who had been authorised by villagers to erect tents within their plots, and to permanent residents who had not been able to rebuild their homes following the 2009 demolitions.<sup>149</sup> One of the Lukuni-Gare villagers interviewed by Amnesty International – whose house had been demolished in 2009 – indicated that since 2009, he had been operating a business under a tent, and that he had had to take down this tent in July 2014 as a result of the current threats and was now operating it under a tree.<sup>150</sup>

On 24 September 2014 Amnesty International researchers spoke to the Territorial Administrator about the situation at Lukuni-Gare and the threatened demolitions. He stated that CMSK had complained about the *creuseurs'* activities and he confirmed that the Provincial Government had threatened to demolish the village unless the residents of Lukuni-Gare dissociated themselves from the *creuseurs*. He also confirmed that the demolitions had not proceeded on 17 July as the tents had been removed. The Territorial Administrator told researchers that there were no plans to relocate the villagers. But he also stated that he believed it was up to them to ensure *creuseurs* did not take up residence in the village and that if the people of Lukuni-Gare did not do this, their homes were at risk of demolition.

The position outlined by the Territorial Administrator is completely inconsistent with international human rights law. It is a threat of collective punishment against the people of Lukuni-Gare. It is also a wholly illegitimate means of law enforcement, threatening people's homes and livelihoods unless they carry out tasks that are the responsibility of law enforcement. The Congolese police are responsible for addressing criminal acts such as theft but they must do so in a manner that is consistent with human rights law and standards on the use of force and firearms.

## 4/ CONCLUSIONS AND RECOMMENDATIONS

Five years after the demolition of their homes in Kawama, the affected villagers have received no remedy. Those at Lukuni-Gare are living with the threat of further forced evictions. The DRC government has not ensured provision of any compensation to them, despite the evidence that they were subjected to forced evictions. The *creuseurs* who had moved into the area in the months before the demolitions were given financial assistance by the company to relocate.

No action has been taken on an investigation by the Assistant Public Prosecutor. The authorities have neither apologised for the forced evictions nor guaranteed that they will not be repeated. Despite evidence of illegal action by several actors, no charges have been brought, the investigation files have been ignored and the investigating prosecutor has been side-lined. The manner in which the demolitions were ordered on 24 November raises serious questions about whether the demolitions and forced evictions were carried out as a punitive measure. There is evidence of political interference in the criminal investigation. The failure of the DRC authorities to provide remedy or to ensure accountability for the forced evictions is a breach of the country's international legal obligations.

The Forest Group, a joint venture majority owned by EGMF, requested the intervention of the authorities in spite of the real risk that human rights abuses would occur. The forced evictions were carried out using mine vehicles, operated by mine staff who were directed by company officials to go to Kawama.

Forrest Group's public version of the events of 24 and 25 November 2009 is not consistent with the facts. Forrest Group has made false statements which have significantly undermined the right to remedy of the people of Kawama. The company did not act with due diligence to prevent or address human rights violations linked to its operations. The Forrest Group bears responsibility for aiding forced evictions. Its ongoing denial that the company has any responsibility to provide a remedy to the victims of the Kawama forced evictions is contrary to international standards on business and human rights.

In this case both the state and the companies involved have a responsibility to ensure an effective remedy, and should cooperate to this end. However, neither the state nor companies should use each other's failures as a justification for failing to take the action clearly required by international law and standards.

In spite of the foreseeable risk of human rights abuses, CMSK, now owned solely by Gécamines, continues to ask the government to remove *creuseurs* from areas near the Luiswishi mine. CMSK was present when government authorities threatened to demolish the homes of villagers in Lukuni-Gare in July 2014 in order to address the company's concerns about the activities of artisanal miners. It has not taken any public steps to protest against these threats.

Belgium, as a home State for the Forrest Group, has not taken any action to hold the Forrest Group to account for its failure to respect human rights in Kawama. The NCP process did not deliver any reparation for those affected.

### RECOMMENDATIONS TO THE DRC AUTHORITIES

- Ensure that all victims of the forced evictions in Kawama on 24 and 25 November 2009 are provided an effective remedy, including adequate compensation.
- Take all steps necessary to ensure the prosecution, in accordance with international standards for fair trial, of all individuals for whom there is credible evidence implicating them in ordering, carrying out and providing material support to the commission of criminal offences and serious human rights violations as part of the forced evictions in Kawama.
- Refrain from any demolitions, or threats of demolitions, of homes as a means of controlling activities of *creuseurs*.

- Refrain from carrying out further forced evictions and ensure that the legal and procedural safeguards required by international law are put in place prior to carrying out any evictions.

### RECOMMENDATIONS TO FORREST GROUP

- Acknowledge the human rights abuses that occurred as a result of the demolition of homes on 24 and 25 November 2009 and its responsibility for contributing to these human rights abuses.
- As the majority shareholder and operating company of CMSK at the time of the forced evictions, take action to ensure the villagers of Kawama receive adequate reparation, including full compensation for all losses caused by the demolitions.
- Put in place adequate human rights due diligence systems to ensure the company does not commit or contribute to human rights abuses wherever it operates, and publicly disclose the actions taken to this end.

### RECOMMENDATIONS TO GÉCAMINES

- Publicly oppose any demolitions, or threats to demolish homes, as a means of controlling activities of *creuseurs*, and when requesting interventions by public security forces engage with the authorities to ensure that these interventions are carried out in conformity with human rights standards, including those on the use of force and on evictions.
- As the sole owner of CMSK at present, ensure CMSK takes action to ensure the villagers of Kawama receive adequate reparation, including full compensation for all losses caused by the demolitions.
- Publicly commit to respect human rights throughout the company's operations and put in place adequate systems to ensure it does not commit or contribute to the commission of human rights abuses, and publicly disclose the actions taken in this regard.

### RECOMMENDATIONS TO BELGIUM

- Immediately engage with Forrest Group and call on it to ensure a remedy for the human rights abuses caused by the demolitions in Kawama in 2009.
- Engage with the DRC authorities to urge them to investigate and act upon human rights abuses that occurred at Kawama and to put in place adequate systems to protect the rights of mine-affected communities. Provide the government of the DRC with technical support to improve conditions in Katanga's mining areas in this regard.
- Institute legal and policy reforms to require companies domiciled or headquartered in Belgium to carry out adequate human rights due diligence throughout their global operations and to put in place safeguard measures to ensure that any Belgian state support, including through export credits, insurance support or diplomatic support, is made conditional upon the company carrying out adequate human rights due diligence in relation to its operations.



# ENDNOTES

- 1 Amnesty International interviews with: eyewitnesses from Kawama, August 2013 in Kawama, Katanga, DRC; representatives of the companies, *Entreprise Générale Malta Forrest* (EGMF) and its parent company *Groupe Forrest International*, August, 2013 in Lubumbashi, Katanga, DRC. The demolitions are also recorded in the official investigation files of the *Parquet Général de Lubumbashi*, in files date stamped 29 January 2011. These files are publicly available. Amnesty International received portions of an official copy of these files from the Forrest Group. It also saw an official copy of these files, obtained through an access to information request by the NGO *Action Contre l'impunité pour les droits humains* (ACIDH).
- 2 Testimony of the Chief of Kawama, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011.
- 3 Amnesty International interview with the former Assistant Public Prosecutor, 25 September 2014 in Lubumbashi, DRC.
- 4 The village comprises 7 quartiers or neighbourhoods: Lukuni-Gare Gare, Bikwano, Sampasa, Kandulu, Beria, Sokoto and Kalubamba. According to the Chief of Kawama, only Lukuni-Gare Gare, Bikwano and Sampasa were affected by the demolitions, Amnesty International interview with the Chief of Kawama, 25 September 2014.
- 5 Testimony of a senior official from the Provincial Ministry of the Interior of Katanga and a police officer, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011. EGMF and eyewitnesses from Kawama also confirmed in interviews with Amnesty International in August 2013 that the police operation was to clear out *creuseurs* who were allegedly illegally mining in on the CMSK concession.
- 6 Testimonies of a senior *Entreprise Générale Malta Forrest* (EGMF) official, ADG of EGMF, senior official from the Provincial Ministry of the Interior of Katanga and the Battalion Commander of the Military Police and bulldozer drivers, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011.
- 7 Testimony of a senior EGMF official and bulldozer drivers, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011. Letter from *Groupe Forrest International* to Amnesty International dated 6 June 2013.
- 8 Gécamines. See website: <http://gecamines.cd/>
- 9 Testimony of senior *Entreprise Générale Malta Forrest* (EGMF) official and bulldozer drivers, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011.
- 10 *Groupe Forrest International* (GFI S.A.) is a limited company, under Belgian law, based at Wavre in Belgium. GFI S.A. has a holding structure, which encompasses a range of companies with a common shareholder, the Forrest family. The companies comprising the holding are active in the Democratic Republic of the Congo, Kenya, Nigeria, Central African Republic and in Belgium. *Entreprise Générale Malta Forrest* (EGMF) is a Congolese limited company based at Lubumbashi, in the Democratic Republic of the Congo. See website: <http://www.forrestgroup.com/en/gfi.html>.
- 11 Letter from *Groupe Forrest International* to the Governor of Katanga, 2 November 2009. Forrest Group provided a copy of this letter to Amnesty International.
- 12 Letter from *Groupe Forrest International* to Amnesty International dated 6 June 2013.
- 13 Amnesty International interviews with members of the Kawama community, 22 April 2012 and 22 September 2014.
- 14 Amnesty International interview with the former Assistant Public Prosecutor, 25 September 2014 in Lubumbashi, DRC.
- 15 Letter from *Groupe Forrest International* to Amnesty International dated 6 June 2013.
- 16 Letter from CMSK responding to the organization *Action contre l'Impunité pour les Droits Humains* (ACIDH), 15 December 2009.
- 17 [www.aaas.org/geotech/AAAS-DRC-112014](http://www.aaas.org/geotech/AAAS-DRC-112014)
- 18 See: YouTube, <http://www.youtube.com/watch?v=AZ8hYOPA1MM>; *Affaire Kawama*, Director Jeff Mbiya. Wantashi 2011
- 19 Amnesty International researchers attended a meeting of about 60 community members in April 2012. Amnesty International researchers interviewed members of the Association de Défense des Intérêts de Kawama (ADIK) on 8 August 2013 and 22 September 2014 at Kawama, Katanga, DRC.
- 20 Amnesty International interview with the former Assistant Public Prosecutor, 23 April 2012 and on 23 and 25 September 2014, in Lubumbashi, DRC
- 21 Meetings with the Head of Communication for Forrest Group, in London on 31 May 2013 and 12 November 2014, meeting in August 2013 in Lubumbashi, DRC with the Head of Communication for Forrest Group and Edmond Twite Kabamba, who was the Director General of CMSK at the time of the demolitions in Kawama.
- 22 Amnesty International letter to the Governor of Katanga, 4 November 2014, TG AFR 62/2014.024.
- 23 Amnesty International letter to the Head of Police in Lubumbashi, 4 November 2014, TG AFR 62/2014.025.
- 24 Amnesty International letter to the Provincial Minister of the Interior, 4 November 2014, TG AFR 62/2014.026.
- 25 Amnesty International letter to *Groupe Forrest International*, 28 October 2014, TC AFR 62/2014.001.
- 26 Amnesty International letter to CMSK, 4 November 2014, TC AFR 62/2014.002.
- 27 Amnesty International letter to Gécamines, 4 November 2014, TC AFR 62/2014.003.
- 28 Amnesty International letter to the Ministry of Justice, 4 November 2014, TG AFR 62/2014.027.

- 29 Letter from *Groupe Forrest International* to Amnesty International dated 17 November 2014
- 30 Testimony of a victim of the forced eviction, from the files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011. Amnesty International interview with resident, 22 April 2012.
- 31 The arrival of the *creuseurs* was reported by the community, the company and the local authorities in interviews conducted in 2011 and 2013. A letter from Forrest Group to ACIDH, Rights and Accountability in Development (RAID) and *La Fédération internationale des ligues des droits de l'Homme* (FIDH) dated 20 December 2011 states that *creuseurs* arrived in October and November 2009. Forrest Group also makes this assertion in a Forrest Group press conference statement of 4 April 2012 which it provided to Amnesty International.
- 32 Letter from *Groupe Forrest International* to Amnesty International dated 6 June 2013 and letter from the President of the Forrest Group to the Governor of Katanga, 2 November 2009.
- 33 Letter from *Groupe Forrest International* to Amnesty International dated 6 June 2013.
- 34 Interviews with members of the Kawama community, 8 August 2013 and letter from Groupe Forest International to Amnesty International dated 6 June 2013.
- 35 Letter from *Groupe Forrest International* to Amnesty International dated 6 June 2013; Amnesty International interviews with members of the Kawama community, 22 April 2012, 8 August 2013 and 25 September 2014.
- 36 Amnesty International interviews with members of the Kawama community, 8 August 2013 and with journalist [name withheld], 5 August 2013 in Katanga, DRC.
- 37 Amnesty International interviews with members of the Kawama community, 8 August 2013 in Kawama, Katanga, DRC
- 38 Testimony of ADG of EGMF and an EGMF industrial guard, files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011.
- 39 Testimony of the EGMF industrial guard, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011.
- 40 Testimony of the senior EGMF official, a victim and an eyewitness, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011.
- 41 Amnesty International interviews with residents of Kawama, 8 August 2013 in Kawama, Katanga, DRC. In their testimony, the senior EGMF official and senior official Provincial Ministry of the Interior confirmed their presence, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011.
- 42 Testimony of the Senior EGMF official, testimony of the Chief of Kawama, testimony of Battalion Commander of the Military Police, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011.
- 43 Testimony of senior official Provincial Ministry of the Interior to the Assistant Public Prosecutor, in the investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011.
- 44 Letter from *Groupe Forrest International* to Amnesty International dated 6 June 2013.
- 45 Letter from *Groupe Forrest International* to Amnesty International dated 6 June 2013.
- 46 Letter from *Groupe Forrest International* to Amnesty International dated 6 June 2013.
- 47 According to the investigation by the Assistant Public Prosecutor, 421 houses were destroyed (from the files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011). Satellite images and analysis in this document show at least 387 removed structures. Amnesty International also interviewed a journalist and the representative of an international agency (who asked not to be named) who visited Kawama in the aftermath of the events – both confirm that hundreds of structures were destroyed including brick houses belonging to residents of Kawama.
- 48 Amnesty International interview with residents of Kawama 24 September 2014 in Kawama, Katanga, DRC
- 49 Amnesty International interviews with people from Kawama, 8 August 2013, in Kawama, Katanga, DRC
- 50 This is confirmed in the following documents: Testimony of the senior official from the Provincial Ministry of the Interior and police officers, investigation files from the *Parquet Général de Lubumbashi*, date stamped 29 January 2011; Letter from *Groupe Forrest International* to Amnesty International dated 6 June 2013; interviews conducted by Amnesty International with residents of Kawama on 22 April 2012 and 22, 23 and 24 September 2014, in Kawama, Katanga, DRC
- 51 Amnesty International interview, 8 August 2013, at Kawama, Katanga, DRC.
- 52 All figures in US\$ use the conversion rate of the relevant event, rather than current rates; <http://www.oanda.com/currency/historical-rates/> accessed 16 October 2014
- 53 Amnesty International interview, 8 August 2013, at Kawama, Katanga, DRC.
- 54 Testimony of police officer, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011.
- 55 Testimony of police officer, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011.
- 56 Testimony of Deputy Inspector GMI, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011.
- 57 Testimony of Deputy Inspector GMI, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011.
- 58 Testimony of police officer, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011.
- 59 Testimony of a Battalion Commander in the Military Police, investigation files of the *Parquet Général de Lubum-*

*bashi*, date stamped 29 January 2011.

60 See: YouTube, <http://www.youtube.com/watch?v=AZ8hYOPA1MM>.

61 *Affaire Kawama*, Director Jeff Mbiya. Wantashi 2011.

62 Both pieces of video footage have been verified by NGOs in Lubumbashi who visited the site two days after the demolition

63 *Affaire Kawama*, Director, Jeff Mbiya. Wantashi 2011.

64 See: YouTube, <http://www.youtube.com/watch?v=AZ8hYOPA1MM>.

65 Testimony of the senior EGMF official to the Assistant Public Prosecutor, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011 and by Kawama residents during interviews with Amnesty International, August 2013 in Kawama, Katanga, DRC.

66 Amnesty International interview with residents of Lukuni-Gare, 25 September 2014 in Kawama, Katanga, DRC.

67 Amnesty International interview with residents of Lukuni-Gare, 25 September 2014 in Kawama, Katanga, DRC.

68 Testimony of the senior EGMF official to the Assistant Public Prosecutor, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011.

69 Testimony of a victim of the forced eviction, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011.

70 Amnesty International interviews with residents of Kawama, 25 September 2014, Kawama, DRC; Testimony of victims, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011.

71 In the list of victims and evaluation of the losses suffered in the Assistant Public Prosecutor's file, residents reported losing structures such as hotels, restaurants, kiosks and it was common for residents to own multiple structures with different functions. In their visit to Kawama in September 2014, Amnesty International researchers observed multi-room hotels, restaurants and kiosks and met with community members who owned multiple structures, some of which served as small businesses.

72 In the other four neighbourhoods of Kawama, 120 structures were removed between 31 May 2009 and 15 May 2010 and 556 added. It appears that these changes in structures are not related to the demolition. In September 2014, community members were asked to show Amnesty International the boundaries of the areas in which demolitions occurred. Community members told Amnesty International that demolitions did not occur outside of Lukuni-Gare, Bikwano and Sampasa. They told Amnesty International that these new structures did not belong to people whose houses had been destroyed in November 2009, but that people from outside the village had moved to the southern neighbourhoods of Kawama closest to Lubumbashi and built houses there, as housing there is more affordable than in Lubumbashi itself.

73 Amnesty International received portions of an official copy of these files from the Forrest Group. It also saw an official copy of these files, obtained through an access to information request by the NGO *Action contre l'impunité pour les droits humains* (ACIDH).

74 When Amnesty International researchers visited Kawama in September 2014, they observed a number of structures that were smaller than 2 by 2 metres, which served as shops.

75 Amnesty International interview with the former Assistant Public Prosecutor, 23 April 2012 in Lubumbashi, Katanga, DRC.

76 Letter from *Groupe Forrest International* to ACIDH, RAID and FIDH dated 20 December 2011; Forrest Group press conference statement of 4 April 2012 which it provided to Amnesty International.

77 Letter from CMSK responding to the organization *Action contre l'impunité pour les droits humains*, 15 December 2009,

78 Letter from *Groupe Forrest International* to Amnesty International dated 6 June 2013.

79 Letter from *Groupe Forrest International* to Amnesty International dated 6 June 2013.

80 Amnesty International interview with Alexandre Kamara, 22 September 2014 in Kawama, Katanga, DRC.

81 Amnesty International interview with Brigitte Mukand, 25 September 2014 in Kawama, Katanga, DRC,

82 Amnesty International interview with resident of Lukuni-Gare (name withheld), 25 September 2014 in Kawama, Katanga, DRC.

83 Committee on Economic, Social and Cultural Rights, 'General Comment 4: The right to adequate housing (Art. 11 (1) of the Covenant)' (13 December 1991) UN Doc E/1992/23, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en); Committee on Economic, Social and Cultural Rights, 'General Comment 7: The right to adequate housing (art. 11.1 of the Covenant): forced evictions' (20 May 1997) UN Doc E/1998/22, annex IV, available at: [http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/1\\_Global/INT\\_CESCR\\_GEC\\_6430\\_E.doc](http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/1_Global/INT_CESCR_GEC_6430_E.doc)

84 Based on General Comment 7, particularly paras 3 and 11-16.

85 Based on General Comment 7, particularly paras 3 and 11-16.

86 General Comment 7, para 16.

87 General Comment 7, para 13.

88 General Comment 7, para 12.

- 89** In that case, the African Commission stressed that “although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, cited under Article 16, the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health, and family life are adversely affected. It is thus noted that the combined effect of Articles 14, 16 and 18(1) reads into the [African] Charter a right to shelter or housing.” Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, Communication No. 155/96, paragraph 60.
- 90** Amnesty International interview with the former Assistant Public Prosecutor, 25 September 2014 in Lubumbashi, Katanga, DRC.
- 91** Based on General Comment 7, paras 13-16
- 92** Amnesty International interviews with community members of Kawama, 8 August 2013 in Kawama, Katanga, DRC, and letter from *Groupe Forrest International* to Amnesty International dated 6 June 2013.
- 93** UN Office of the High Commissioner for Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (2011) UN Doc HR/PUB/11/04, available at: [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) (UN Guiding Principles).
- 94** UN Guiding Principles, Principle 11.
- 95** UN Guiding Principles, Principle 13 (a).
- 96** UN Guiding Principles, Principle 15.
- 97** These were issued in 2011 and are available at: <http://www.oecd.org/dataoecd/43/29/48004323.pdf>
- 98** Available at: [www.voluntaryprinciples.org](http://www.voluntaryprinciples.org)
- 99** <http://www.forrestgroup.com/en/ethics-responsability.html>
- 100** Letter from *Groupe Forrest International* to Amnesty International dated 6 June 2013.
- 101** Letter from *Groupe Forrest International* to Amnesty International dated 6 June 2013.
- 102** Letter from *Groupe Forrest International* to Amnesty International dated 6 June 2013.
- 103** Testimony of the senior EGMF official, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011. This senior EGMF official was one of the people interviewed and he confirms his presence. Several residents of Kawama, interviewed on 8 August 2013, in Kawama, Katanga, DRC, also named this individual and confirmed his presence.
- 104** The senior EGMF official stated in his testimony to the Assistant Public Prosecutor that he did not go to Lukuni-Gare on 25 November 2009, but followed the operations from the Luiswishi mine, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011.
- 105** Testimony of the senior EGMF official, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011.
- 106** Letter from *Groupe Forrest International* to Amnesty International dated 6 June 2013.
- 107** Testimony of bulldozer driver, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011.
- 108** Testimony of bulldozer driver, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011.
- 109** Testimony of bulldozer driver, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011.
- 110** Letter from *Groupe Forrest International* to Amnesty International dated 17 November 2014
- 111** Amnesty International interviews with a local NGO, staff of an international agency and a journalist (names withheld at request of interviewees).
- 112** Letter from *Groupe Forrest International* to ACIDH, RAID and FIDH dated 20 December 2011; Forrest Group press conference statement of 4 April 2012 which it provided to Amnesty International.
- 113** Letter from *Groupe Forrest International* to Amnesty International dated 6 June 2013.
- 114** Amnesty International interviews with the village Chief of Kawama, 8 August 2013 and 25 September 2014 in Kawama, Katanga, DRC.
- 115** Testimony of the village Chief of Kawama, investigation files of the *Parquet Général de Lubumbashi*, date stamped 29 January 2011.
- 116** UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. A/RES/60/147, 21 March 2006.
- 117** UN Human Rights Committee, General Comment 31: Nature of the general legal obligation imposed on states parties to the covenant, UN Doc CCPR/C/21/Rev.1/Add.13, 26 May 2004, para 16; UN Committee on Economic, Social and Cultural Rights, General Comment 14: The right to the highest attainable standard of health (Article 12), UN Doc E/C.12/2000/4, 11 August 2000, para 59; Principle 18, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, 21 March 2006.
- 118** Chorzow Factory (Germany v. Poland), 1928 P.C.I.J. (ser. A) No. 17, para 125.

- 119 Congolese Penal Code (consolidated as of November 30, 2004), Official Journal of the Democratic Republic of Congo, Office of the President, <http://www.wipo.int/wipolex/en/details.jsp?id=7510> (accessed 19 October 2014).
- 120 *Loi organique no. 06/020 du 10 octobre 2006 portant statut des magistrats, Chapitre III, article 70* (<http://www.leganet.cd/Legislation/JO/2006/JO.25.10.2006.pdf>, accessed 1 October 2014)
- 121 Confirmed by Amnesty International researchers who saw his passport.
- 122 The decree was the subject of a complaint to the UN Human Rights Committee (HRC) in 2000, see Adrien Mundy Busyo et al. v. Democratic Republic of the Congo, Communication No. 933/2000, UN Doc CCPR/C/78/D/933/2000 (2003), Merits, 31 July 2003 (<http://www1.umn.edu/humanrts/undocs/933-2000.html>, accessed 14 October 2014). Less than four months after the HRC's decision to uphold the complaint, the dismissed officials were reinstated.
- 123 Amnesty International interview with members of the Association de Défense des Intérêts de Kawama (ADIK), 22 September 2014 in Kawama, Katanga, DRC and follow-up phone calls to two committee members on 27 and 28 October 2014.
- 124 Amnesty International interview with members of ADIK, 22 September 2014, in Kawama, Katanga, DRC, and follow-up phone calls to two committee members on 27 and 28 October 2014.
- 125 Letter from *Groupe Forrest International* to Amnesty International dated 6 June 2013.
- 126 Letter from *Groupe Forrest International* to Amnesty International dated 6 June 2013.
- 127 A home state is the state where a multinational company's parent company is domiciled or headquartered.
- 128 [http://economie.fgov.be/fr/binaries/Forrest\\_Kawama\\_Katanga\\_RDCongo\\_20130212\\_fr\\_tcm326-213492.pdf](http://economie.fgov.be/fr/binaries/Forrest_Kawama_Katanga_RDCongo_20130212_fr_tcm326-213492.pdf)
- 129 A description of the complaint is available at [http://www.osisa.org/sites/default/files/summary\\_george\\_forrest\\_case.pdf](http://www.osisa.org/sites/default/files/summary_george_forrest_case.pdf)
- 130 Ibid.
- 131 Letter by RAID and FIDH to the Belgian National Contact Point for Belgium, 3 December 2012. This is confirmed in a letter from the Belgian NCP responding to Amnesty International's queries dated 17 November 2014.
- 132 Letter from *Groupe Forrest International* to Amnesty International dated 17 November 2014.
- 133 Letter from the Belgian NCP to Amnesty International dated 17 November 2014.
- 134 Press release, Belgian National Contact Point (NCP) responsible for monitoring the OECD guidelines for multinational enterprises, 12 February 2013, [http://economie.fgov.be/fr/binaries/Forrest\\_Kawama\\_Katanga\\_RDCongo\\_20130212\\_fr\\_tcm326-213492.pdf](http://economie.fgov.be/fr/binaries/Forrest_Kawama_Katanga_RDCongo_20130212_fr_tcm326-213492.pdf)
- 135 Belgian National Contact Point (NCP) Press Release, 12 February 2013.
- 136 Belgian National Contact Point (NCP) Press Release, 12 February 2013.
- 137 Belgian National Contact Point (NCP) Press Release, 12 February 2013.
- 138 ACIDH, RAID and FIDH Press Release, Illegal Demolitions in DRC - Group Forrest International Refuses Compensation for Dispossessed Villagers, say NGOs. Belgian OECD National Contact Point fails the victims of alleged corporate abuse, 5 February 2013.
- 139 Letter from *Groupe Forrest International* to Amnesty International dated 6 June 2013.
- 140 Belgian National Contact Point (NCP) Press Release, 12 February 2013.
- 141 Letter from the Belgian NCP to Amnesty International, dated 17 November 2014.
- 142 See UN Committee on Economic, Social and Cultural Rights, General Comment 14: The right to the highest attainable standard of health (Article 12), UN Doc E/C.12/2000/4, 11 August 2000, para 39, General Comment 15: The right to water (Articles 11 and 12), UN Doc E/C.12/2002/11, 20 January 2003, para 33, General Comment 19: The right to social security (Article 9), UN Doc E/C.12/GC/19, 4 February 2008, para 54, UN Committee on the Rights of the Child, General comment 16 on State obligations regarding the impact of the business sector on children's rights, UN Doc CRC/C/GC/16, 7 February 2013, para 43. Further guidance by independent legal experts is provided in the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Principle 25, <http://www.lse.ac.uk/humanRights/documents/2012/HRQMaastricht.pdf>
- 143 UN Committee on Economic, Social and Cultural Rights, Statement on the obligations of States Parties regarding the corporate sector and economic, social and cultural rights, UN Doc E/C.12/2011/1, 20 May 2011.
- 144 Amnesty International interview with an NGO that was present on that visit, 25 September 2014 in Lubumbashi, Katanga, DRC.
- 145 Letter from Lukuni-Gare residents to the Provincial Governor dated 4 July 2014 and Amnesty International interview with Lukuni-Gare residents, 25 September 2014 in Kawama, Katanga, DRC.
- 146 Letter from the Lukuni-Gare Gare residents to the Provincial Governor dated 4 July 2014 and Amnesty International interview with Lukuni-Gare residents 25 September 2014 in Kawama, Katanga, DRC
- 147 Amnesty International interview with Lukuni-Gare residents 25 September 2014 in Kawama, Katanga, DRC.
- 148 Amnesty International interview with the village Chief 25 September 2014 in Kawama, Katanga, DRC.
- 149 Amnesty International interview with a resident of Lukuni-Gare, 25 September 2014, in Kawama, Katanga, DRC.
- 150 Amnesty International interview with a resident of Lukuni-Gare, 25 September 2014, in Kawama, Katanga, DRC.

# APPENDIX 1

## GROUPE FORREST INTERNATIONAL'S RESPONSE

Audrey Gaughran  
Director of Global Issues  
Amnesty International, International Secretariat  
Peter Beneson House, 1 Easton Street  
London WC1X 0DW  
United Kingdom

Lubumbashi, 17 November 2014

Your ref: TC AFR 62/2014.001  
Our ref: CEO/MDF/oal/171114

Dear Director,

It is with interest that we read your letter ref: TC AFR62/2014.001 dated 28 October 2014.

We believe that this letter shows a clear error of assessment with regard to the facts which are mentioned in it, firstly with regard to those that you designate as being responsible for them and secondly with regard to their legal characterisation.

Given the respect that Groupe Forrest has for organisations whose purpose is to defend human rights, quite naturally this is a concern for us.

After having read your letter carefully and following the visit by one of my colleagues on 12 November 2014 to your premises in London, and in order to reply to your questions, it is necessary first to recall the facts and certain essential points.

In 2009, "diggers" ('creuseurs') acting illegally at the copper and cobalt mine of Luiswishi in Katanga Province, in the Democratic Republic of the Congo, built makeshift constructions adjoining the said mine in complete violation of the mining rights and of the concession granted to the Mining Company of South Katanga (CMSK), a joint-venture enterprise between EGMF (60%) and Gécamines, a Congolese State-owned company holding a 40% stake. Here, the first element which must be taken into account is the violation of the law, a violation which must be added to others.

Therefore, taking into consideration your letter, it may be considered that you have made clear errors of assessment to which I will come back.

At the meeting of 12 November, you mentioned negotiations going on between the provincial authorities and the populations of the villages. In this case this involves, on the part of officials, an act consisting of admitting, since there have been negotiations,

even if they have not yet reached a successful conclusion, that the province of Katanga accepts its share of responsibility.

Dear Director,

On 13 June 2014, a 29-year-old man was shot dead in cold blood at Kawama. The Entreprise Générale Malta Forrest (EGMF) formerly a partner in the Mining Company of South Katanga joint venture (CMSK) alongside Gécamines, no longer operated the copper and cobalt mine of Luiswishi. The unfortunate victim was a digger, i.e. one of those people who illegally dig ore to sell at miserable prices to an organised informal supply chain and one that is completely illegal with regard to the laws and regulations of the country. In addition to this person who died, two other diggers were reported missing.

Of all these tragic events of June just as those, equally tragic, which took place a few months earlier, causing several people to receive bullet wounds, there is no trace and not even a word on the web sites of organisations dedicated to defending human rights or on those of their Congolese branches or correspondents.

One can but regard this deafening silence with astonishment.

And yet, a few of these selectively voiceless organisations, have shown, without interruption, throughout these past five years, a huge interest in the incidents that occurred in November 2009 in the same locality of Kawama but this time, and very fortunately, with no deaths and no reports of people going missing.

At the time of the events of 2009, the Luiswishi mine was operated by CMSK, a joint-venture in which EGMF, a subsidiary of the Groupe Forrest held 60% alongside the 40% stake of Gécamines, a company belonging to the Congolese State.

At the time of the tragic events of June 2014, in order to avoid any confusion and misinterpretation, we wish to emphasise the fact that EGMF was no longer involved in the management of CMSK or in the operation of the mine.

It is this return to the past which is the focus of Amnesty International's enquiry in its letter Ref: TC AFR 62/2014.001 dated 28 October 2014.

And if just one word were needed to sum up the enquiry, the approach and the procedure, a single word would impose itself: HOUNDING.

Yes, it is very much a question of unwarranted hounding, because, in our humble view, the noble and laudable activity of defending human rights, is first and foremost a process rooted in justice and fairness. Moreover, we have always believed, and still believe, firmly that in this field, to be fair and equitable, it is imperative to have a 360° perspective and avoid contenting oneself with a piecemeal view which, because partial, will inevitably be biased. Moreover, we firmly believe that different standards cannot apply to the defence of human rights.

In the light of our long experience in this strategic sector both at the national and international levels, our belief today is that it should be analysed using a very wide focus. In addition, it seems to us imperative and urgent to organise a calm and inclusive consultation involving all the players of the chain to ensure better support for the respect of human rights which, it should be remembered, are not only those of the diggers. It is in this way, we believe, that by working all together, we can engage a momentum aimed at putting an end to the disorder and chaos skilfully maintained by mafias who, not content simply to constantly endanger the lives of poor diggers, are also real obstacles to private initiative and the gravediggers of the economy of our country. These mafias who exploit the poverty of the diggers are not even mentioned in your letter. One can but regard this astonishment too.

In our role as an investor operating within the law because we are concerned to respect the laws and regulations of our country, we have always denounced these supporters of the least effort for the most profit who are those who are really responsible for all forms of violence around the mines as well as so many human lives sacrificed for their exclusive profit. It is therefore a responsible dialogue between all the parties that will help to pacify and to better organise this space so that the mine ceases to be a living hell for some and becomes an opportunity for all. It is this quality governance which will help the operating companies comply better with the guiding principles of the Human Rights Commission of the UN and Corporate Social Responsibility



Dear Director,

The events of Kawama in November 2009 are regrettable, but especially unacceptable. None of the managers or workers of our Group had any responsibility in the planning and conduct of these events. The Group (managers and workers) was deeply shocked by the violence of these acts that we cannot condemn strongly enough.

We deeply regret the confusion and mixing of facts made by certain international human rights organisations that we respect and appreciate for their safeguarding role, laying the responsibility for acts that we did not commit at our door and that besides, because they are contrary to our ethics, would in no way or form stem from us.

In my letter of 6 June 2013, I mentioned the role of a British NGO and its Congolese branch which are behind the media coverage of this case and the refusal to enter into any dialogue. We have the physical evidence that this NGO wishes to provoke trouble with the companies and the person of George Forrest. The questions you ask us are therefore all tainted by this basic element.

Dear Director,

I observe that your letter does not mention any questioning of the company CMSK, the holder of the mining permits and operating rights for the Luiswishi mine, nor any action against those responsible for the violence, namely the units of the Congolese police and their superiors. I see no serious ground in this selectivity in the attacks. The desire to harm our company only stands out more strongly.

The tone of your letter of 28 October is inquisitorial and suspicious. I cannot accept this, having always demonstrated my willingness to dialogue with your organisation as with other NGOS which have contacted me. And as a reminder:

1.

I was not at the head of the company at the time of the events of 2009.

I could not therefore have had the slightest desire to knowingly hide this or that fact. Therefore, I did not act as you say.

2.

The destruction of constructions was unilaterally decided by the Congolese police and authorities. This emerges very clearly from all hearings before the public prosecutor. We confirm this once again today.

The first day of searches at Lukuni Station, 23 November 2009, indeed took place peacefully, without incidents and without destruction. You do not mention this day in your letter, which we find surprising.

On 24 November, the first searches at Kawama went badly: an EGMF truck was set on fire, the company's employees harassed, violent actions by the diggers... Followed by the arrival of police reinforcements, the requisitioning of vehicles by the police and the destruction of the diggers' constructions at Kawama by the police.

On 25 November, the police returned. They took some vehicles and destroyed a series of constructions at Lukuni-Station. This intervention surprised everyone and was not foreseeable. Following this new requisition, on 25 November, the company contacted the provincial authorities in order to try to calm the situation down.

3.

Our company was forced to hand over two vehicles to the police under their coercion. Amnesty knows that because it has the hearing report of Mr Nawezi Lusambo to the General Prosecutor of Lubumbashi: *"At a given moment, the political Adviser arrived escorted by police officers. He told me in a threatening voice to make the machines available to the police officers for a job at Kawama, that it was a political decision and that there was no time to lose. The threats were such that I was unable to resist and I was forced to hand over the machines. (...) In a word, (they) got the vehicles under duress. Our consent was tainted firstly by the presence of forty armed policemen and secondly the adviser who was making threats against me"* (excerpt from the hearing of Nawezi Lusambo, in charge of the mine on that day, to the General Prosecutor of Lubumbashi, 12 February 2010). And this manager added that he let the vehicles go under threat because *"I didn't want to risk my life and be humiliated in front of my subordinates"*. In the same hearing, he justified his subsequent presence near the vehicles in order to ensure that he could recover them. At no time is therefore any question of there being a "cordial relationship" as Amnesty states in its letter. Nor is there any question of "complicity".

4.

The investigation carried out by the Congolese judicial authorities has not led to any questioning of the role played by CMSK or its employees.

In addition to this investigation for which a series of reports exist and circulate, other players have also been questioned on the ground: the Monusco, human rights' NGOs... None of these structures and/or organisations has questioned the role played by the company or its employees; the only exception comes from a British NGO and its Congolese branch.

Discussions took place between the office of the governor and the villagers after the events. CMSK and its employees were not included in them. These discussions focused on potential compensation following the incidents of 24 and 25 November 2009. The very fact that these discussions were held under the aegis of the governorate is proof that abuses by the police have been taken into account. It is the superiors of these police officers who initiated discussions with the villagers. If there had been the slightest doubt as to any co-responsibility of CMSK, its sub-contractors or its employees, they would have been included in these discussions. This was not the case.

5.

Your letter refers to an interpretation of satellite images of Kawama reportedly taken six months before and six months after the events. We regret your refusal to send us the original images which would have allowed us to make a more detailed analysis in a climate of transparency.

6.

Your letter asks us whether we are refuting the destruction of bricks and mortar constructions. Our answer is simple: We are not refuting anything. But it is of no importance whether we refute or recognise that there was any destruction. Having no direct or indirect responsibility in it, it is not our role to seek out such elements.

The fact that the company has no responsibility in the matter was highlighted by the Congolese judicial investigation, by the national contact point for the OECD in Belgium to which the case had been presented, by a series of Congolese NGOs active in Kawama and in Katanga and by the various witnesses of the events.

7.

With a concern for pacifying the situation, the Forrest group, supported by human rights NGOs, took the initiative to encourage the diggers to leave the perimeters of the mines. A sum of \$300 was paid to each digger. 1981 beneficiaries were identified by the human rights and civil society NGOs reaching a total of more than half a million dollars. This operation was led in collaboration with the office of the Governor of Katanga. At the same time, the company was continuing its social projects in the village of Kawama: access to water, a maternity hospital, a clinic..

Dear Director,

The events at Kawama of November 2009 are serious.

Our company and its employees have no responsibility in the planning and conduct of these events.

The financial and human resources which have already been devoted to this matter are huge (NCP, satellite images, expert investigators, "aid" to the diggers, site visits, etc. ).

The repeated allegations against our company and its employees are inaccurate and we have already demonstrated this to be the case on several occasions. Recognised human rights activists share our conviction and they do not hesitate to point out the real guilty parties.

The Belgian National Point of Contact of the OECD was asked to pass judgment on the responsibility of the Groupe Forrest in relation to a violation of the OECD guidelines. The NCP had an investigation carried out on the spot by the Consul General of Belgium. He also benefited from an investigation conducted by partners of the FGTB (socialist trade union of Belgium). The NCP conducted a careful review of the case and concluded that he did not have any elements to meet the responsibility request.

The battle to defend the interests of the inhabitants of Kawama must be made in another direction to obtain results.

We therefore call on Amnesty not to publish its report or, at the very least, to remove any reference to the Groupe Forrest International, its subsidiaries or its employees. If this request cannot be met, we would like the entire contents of this letter to be enclosed with the report.

I remain at your disposal for any additional information that you would like to obtain.

Yours sincerely,

Malta David Forrest,  
CEO and Vice-President  
Groupe Forrest International

Annexes:  
Letter of 6 June 2013 and its 10 annexes

## **BULLDOZED: HOW A MINING COMPANY BURIED THE TRUTH ABOUT FORCED EVICTIONS IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

On 24 and 25 November 2009 police in the Katanga province of the Democratic Republic of the Congo ordered the demolition of hundreds of homes and businesses in the village of Kawama, next to the Luiswishi mine. The demolitions occurred during a police operation to clear the area of small-scale miners who were allegedly stealing from the mine. There was no notice of the demolitions and no legal basis for them. People were left homeless and many lost their livelihoods. The demolitions constitute forced evictions which are a serious violation of human rights. The demolitions also breached Congolese law.

Following the forced evictions, Groupe Forrest International, whose subsidiary was the mine operator at the time, denied that homes and businesses of permanent residents of Kawama had been affected. This report presents new evidence, including satellite imagery, exposing the scale of the demolitions and demonstrating that the company lied about the scale and impact of what happened at Kawama. Amnesty International presented this evidence to the company but it denied any responsibility for the events at Kawama. The report also documents how an official investigation into the events at Kawama was shelved, apparently following political intervention.

The report calls on the Congolese authorities and Groupe Forrest International to ensure adequate reparation for the people of Kawama. The authorities must bring charges against those responsible for illegal acts that resulted in human rights violations.

The report also calls for Belgium, the home state of Groupe Forrest International, to review its legal and policy framework to ensure it can properly regulate Belgian multinationals – at home and abroad.

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