



# Mining operations : A menace for Katanga's protected areas

*The case of PHELPS DODGE CONGO in the BASSE KANDO*

**TITLE:** MINING OPERATIONS: A MENACE FOR KATANGA'S PROTECTED AREAS  
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**Covert illustration:** PDC's machine at BASSE KANDO. A piece of plastic is placed below the vehicle collected diesel oil flowing.

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PREMICONGO's "Project Mines" team.

## USEFUL ABBREVIATIONS

**AP:** Protected Area (*aire protégée*)

**CAMI:** Mining Registry (*Cadastre Minier*)

**CITES:** Convention on International Trade of Endangered Species

**CPE:** Standing Committee of Evaluation (*Comité Permanent d'Evaluation*)

**DPEM:** Direction of the Protection of the Mining Environment

**EIE:** Environmental Impact Studies (*Etudes d'Impacts Environnementales*)

**FCX:** Freeport-McMoRan Copper & Gold Inc.

**GECAMINES:** Générale des Carrières et des mines (a national Congolese mining company)

**HRIA:** Human Right Impact Assessment

**ICCN:** Congolese Institute for the Conservation of Nature

**ICMM:** International Council on Mining and Metals

**IUCN:** International Union for Conservation of Nature

**MECNET:** Minister of Environmental Conservation for Nature and Tourism

**MINPENV:** Provincial Minister of the Environment

**MUMI:** Mutanda Mining

**NGO:** Non-governmental organization

**OECD:** Organization for Economic Cooperation and Development

**PAR:** Mitigation and Rehabilitation Plan (*Plan d'Atténuation et de Réhabilitation*)

**PDC:** PHELPS DODGE CONGO SPRL

**PGEP:** Environmental Management Plan of Project

**PREMICONGO:** Protection of the Miombo Woodlands in Congo (Protection des ecoregions de Miombo au Congo)

**DRC:** Democratic Republic of Congo

**USA:** United States of America

**WWF:** World Wide Funds for Nature

## EXECUTIVE SUMMARY

Phelps Dodge Congo Sprl is a Congolese company and a subsidiary of the multinational corporation Freeport-McMoRan Copper & Gold Inc. Since 2003, Phelps Dodge has been operating in the Basse Kando region in the Katanga province. Still in the phase of research and exploration, Phelps Dodge is preparing to start their exploitation and operation phase soon. However, the installation of Phelps Dodge and other mining companies in this region has been the subject of protest from ICCN and local environmental NGOs who report that these mining concessions are situated in a Protected Area. Indeed, the Basse Kando was erected as a protected area in 1957, under the decision of the provincial governor of Katanga. Until the early 2000s, the reserve was home to multiple wildlife species protected by Congolese legislation, some of which are listed as endangered species by CITES: elephants, hippopotamuses, black antelopes, rock hyraxes, not to mention a multitude of plant species. The invasion of the reserve by mining companies has led to the disappearance of most of these species, provoking the anger of ICCN whose cries of alarm do not move the Minister of mines or its services.

Phelps Dodge Congo does not believe their concession is located in a protected area. Their concession rather partially overlaps a zone which the MECNT and ICCN claim to be legally protected, “the hunting reserve of the Basse Kando”. PDC highlights the regularity of its attempts to acquire exploration licenses with CAMI and the assurance of the Minister of mines and his services that the concession was not in a protected area. While waiting for the issue to be officially resolved, the company believes that it has undeniable rights to conduct research and eventually exploit the site.

Research by PREMICONGO has established that the weak capacity of state services to apply the prescribed state legislation and the shortcomings of this legislation explain the conflict between the Minister of mines and his services on one side; and the Minister of the environment and ICCN on the other.

The company also has its share of responsibility, having deliberately ignored Article 8, Chapter 2 of the Mining Regulation which contains a list of protected areas, of which the Basse Kando is one. PDC seems to base its

argument of the absence of the Basse Kando as a protected area on a theory of “de facto de-classification”; there was no presence of ICCN upon arrival at the site, and many other companies were already installed in the area. Yet this theory has no legal basis, for a protected area can only be de-classified (removed as a protected area) by a clear decision by a competent authority. The company has thus violated the environmental policy of its parent company (FCX) as well as the principles of ICMM of which it is member.

Due in part to the difficulty in relocating all of the mining companies currently installed in the Basse Kando reserve,

PREMICONGO recommends that the government put an end to this conflict by de-classifying the Basse Kando as no longer a protected area, while taking measures to prevent the occupation of mining companies in other protected areas around the country.

PREMICONGO also recommends that PDC and the other mining companies in the region make a substantial compensation payment to ICCN, which would allow the organization to build the human resources and infrastructure necessary to improve the management of protected areas in Katanga and across the country.



## 0. INTRODUCTION

### 0.1. CONTEXT

PREMICONGO is an environmental NGO focusing on protecting the Miombo woodlands in Katanga province, DRC. One of PREMICONGO's principle objectives is to educate and train multiple actors across different sectors in the DRC to fight against environmental degradation and work to establish a healthy equilibrium between productivity/exploitation and environmental conservation. Towards this goal, the General Assembly decided in 2010 to expand PREMICONGO'S activities to include monitoring and evaluating the conduct of mining companies in Katanga with respect to environmental norms. The new program began in 2011 following a partnership with WWF-DRC, and continued in 2012 with the support of Friends of the Earth The Netherlands/Milieudéfense within PREMICONGO's *Mining Limits* project, funded by IUCN/The Netherlands. The *Mining Limits* project was created by Friends of the Earth The Netherlands/Milieudéfense and has been implemented in the Philippines, Indonesia, and the DRC. PREMICONGO is in charge of the execution of the DRC project, which consists of reviewing the situation of environmental destruction by mining activities in Katanga province and of implementing advocacy and education programs with the goal of creating sustainable environmental management.

This year, we chose to work with Phelps Dodge Congo (PDC), a company in the mining exploration phase that would

like to develop its mining exploitation in the Basse Kando, a protected area which has been invaded by mining companies. PDC is not the only company operating in the Basse Kando; in fact, the giant company MUMI is currently in its phase of exploitation there. MUMI is a subsidiary of GLENCORE, a multinational company that is known to have a negative reputation regarding compliance with environmental laws and conduct.<sup>1</sup> It is therefore not a surprise to see MUMI and others operating in a protected area. Yet why and how are multinationals with better reputations operating in protected areas? The response to this question, and our research report, can allow us to determine whether the disappearance of Protected Areas in the DRC is due to a deliberate government policy, or an abuse of a weak government by foreign investors.

PDC is a subsidiary of Freeport-McMoRan Copper & Gold Inc., a large multinational company and one of the principle producers of metal in the world. Under FCX's environmental agreements, PDC is required to engage in their activities in a sustainable manner. The choice by PDC to operate in the Basse Kando is thus an instructive case for us. We aim to understand the causes of degradation of Katanga's protected areas, and to take stock of the ecological deficit in the Basse Kando

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<sup>1</sup> PAIN POUR LE PROCHAIN ET ACTION DE CAREME, GLENCORE en République Démocratique du Congo : le profit au détriment des droits humains et de l'environnement, 2012.

since the mining companies were first implemented.

## 0.2. METHODOLOGY

In the research and completion of this report, we used the HRIA (Human Rights Impact Assessment) method. This methodology was developed by the Canadian organization *Rights and Democracy*, and is often used in research on human rights in foreign investment. We decided to adopt this methodology for studying environmental impacts because it gives instructions for the preparation, execution, analysis, and creation of a report on foreign investments.

The research team consisted of members from PREMICONGO's Project Mines team. We took care to establish connections with members from local communities surrounding the research site, who were charged with transmitting information about the evolution of PDC's operations. Our preparation phase of research dealt with PDC itself: the nature of investment, the installation site, the phases of development and similarly projects by FCX, and the company's relations with local communities.

The second stage in our preparation was the identification of important actors. The list of people and organizations who have played a role in the issue (or who could possibly play a role) are as follows: CAMI, PDC, DPEM, ICCN, MECNT, other NGOs who have worked on this issue in the past, and the local communities in the Basse Kando. We took care to contact each of these actors.

Next we analyzed the information we received about the site of PDC's concession in relation to international conventions ratified by the DRC, other conventions that PDC must follow under its head organization, as well as Congolese environmental laws and policies.

Our conclusion establishes the responsibilities of these actors and provides recommendations for improving management of the protected areas in Katanga in the face of pressure from mining companies.

## 0.3. DIFFICULTIES ENCOUNTERED

Our research did not happen without difficulties. The principal obstacle was in accessing services by the national Minister of Mines, particularly from CAMI and DPEM. We obtained information from CAMI through informal networks, and by word-of-mouth from staff at DPEM after two visits to Kinshasa. Another difficulty was PDC's refusal to accompany PREMICONGO to visit the exploration site in the Basse Kando. The company argued that during their research activities at the site, they are unable to welcome any visitors due to a lack of appropriate and safe infrastructure. We thus resigned ourselves to visit the site without accompaniment. In addition, PDC refused to provide us with a copy of the PAR form, under the pretext that the form belonged to the DPEM and was solely their responsibility to share. However, DPEM also refused to share the document with us. Consequently, we

had no reference document from the company while examining the environmental impacts from PDC's exploration activities.



The capabilities of regeneration of miombo's forest are remarkable. Above, some site were conducted exploration activities

## 1. THE COMPANY: PHELPS DODGE CONGO

The company PDC was created in 2004, as a subsidiary of the American multinational company Phelps Dodge. In 2007, PDC was bought and subsumed by FCX, keeping its original name.

### 1.1 Freeport-McMoRan Copper and Gold Inc. (FCX)

#### 1.1.1. Overview

FCX is a leading mining company that exploits and produces metals, petroleum, and gas. It is headquartered in Phoenix, Arizona (USA) and operates all around the world. In the Grasberg District in Indonesia, FCX possesses the largest asset of copper and gold in the world. In the Americas, FCX operates in the North (Morenci) as well as South (Cerro Verde and El Abra in Chile). In the DRC, FCX already operates in the Tenke Fungurume mine (TFM). FCX mines for petroleum in California, Texas, and the Gulf of Mexico. Its gas reserves are found in Haynesville, Louisiana (USA). Concerning sustainable development, FCX is a founding member of the International Council on Mining and Metals (ICMM).

#### 1.1.2. Environmental Policies

FCX has published multiple instructions concerning its environmental policies, which apply to its subsidiaries as well.<sup>2</sup> As a responsible company, FCX considers it an obligation to minimize

the negative impacts of its activities on the environment. The management strategies of environmental risks developed by the company are based on valid data and science. FCX is committed to respecting the environment of its operation site, ensuring a safe environment for its employees, and contributing to a healthy and safe environment for the local populations surrounding the operation site. The company requires regular environmental audits to be done on all operation sites and directs all subsidiaries to respect the laws of the host country. In this way, FCX commits itself to work closely with governmental agencies, local communities, and local NGOs. As a founding member of ICMM, the company has also created and advocates for international sustainable development principles, elaborated in a comparative analysis document created by ICMM in 2003 which comprises principles set forth in the Global Reporting Initiative, the directions of the OECD concerning multinational companies, the World Bank's principles, the OECD convention on the fight against corruption, the conventions of OIT (??) (Articles 98, 169, and 176), and voluntary principles on security and human rights. These ten principles set forth by ICMM were standardized in a report on the international norms, copied below. Concerning environmental issues, the 6<sup>th</sup> principle by ICMM underlines the need to constantly improve environmental performances by mining companies

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<sup>2</sup> Freeport-McMoran Copper & Gold Inc, Boards of Directory, July 31, 2007

through evaluations of environmental impacts, both direct and indirect, of new projects, in order to review, anticipate, and diminish negative impacts on the environment.

According to its published policies, FCX and all subsidiaries must:

- Comply in all material respects with all applicable environmental laws and regulations and, in jurisdictions where these are absent or inadequate, apply cost-effective management practices to advance environmental protection, and minimize environmental risks.
- Make environmental management a high corporate priority
- Review and take account of the environmental effects of each activity, whether exploration, mining, or processing.
- Certify under ISO 14001 all operations worldwide.
- Conduct regular environmental reviews, assessments, and audits, and act on the results as a means to achieve continuous improvement.
- Acknowledge that certain areas may have particular ecological, biodiversity, or cultural values as well as development potential and, in such instances, consider these values along with the economic, social, and other benefits resulting from development.
- Support biodiversity programs and sustainable development in all operational areas.

## 1.2 Phelps Dodge Congo Sprl

### 1.2.1. Overview

Phelps Dodge Congo Sprl holds research permits from the DRC government to operate and implement a phase of exploration in the Basse Kando (Research Permit N°815 for 1869 hectares at Kisanfu). PDC began its research activities in 2005 and is currently at an end. They plan to convert the research permit into a permit for operation and mining. A study to determine the feasibility and success of beginning the mining phase was planned for 2016, yet has been postponed for multiple reasons, including a further report on the profitability of the project as well as logistical issues such as access to electricity.

### 1.3 The Development of the Kisanfu Project

The Kisanfu site is located in a region almost completely empty. PDC and other companies operating in the region must independently install all needed infrastructure. PDC's concession in Kisanfu is located 55km from the town Kolwezi, and its infrastructure consists of an open-pit mine which is estimated to last between 7 and 10 years. For mineral processing, PDC can either construct a concentrator on site, or can process the metals in other factories located in Katanga. In addition, the project includes a storage unit for rock waste and rejected materials, as well as construction of connecting infrastructure.

### 1.3.1. Environmental Impacts of the Project

Under the Environmental Plan, all environmental studies of the project are kept by a specific office, *SRK Consulting*. These studies consist of evaluating the following elements:

- Climate, air quality, and greenhouse gas effects
- Surface and underground water
- Geochemistry
- Mine closure
- Soil and soil capacity
- Aquatic and ground ecology
- Noise
- Transport
- Visual characteristics
- Socio-economic
- Archeology and cultural heritage

The preliminary studies foresee certain negative environmental impacts of the project:

- The increase of dust and of noise by mining activities and transport
- The loss of soil and agricultural earth
- The loss of flora and fauna
- Change in access to and quality of water
- Possibilities of community relocation.

The water supply for the mine and eventually the factory will be ensured by the surrounding forests and the drainage system at the mine. The excess surface water will be reversed after treatment, and a treatment factory for

used water will be constructed at the site.

Note that *SRK consulting* continues to receive remarks from different parties about the social and environmental impacts of the project. Our report can be considered another contribution.

### 1.3.2. Environmental impacts of the project

The company did not allow us to access the PAR document on their environmental impacts, and the DPEM, who regularly creates these reports, also refused to let us view it, arguing that an environmental study could not be given to third parties. Consequently, we could not, during our visits to the Kisanfu site, compare the visible impacts and company's measures of reducing negative impacts put forth in the initial studies. Our research at the Kisanfu site essentially consisted of deducing forest samples, and viewing road construction and construction at the base site. The company uses existing paths and roads whenever possible. They also limit the creation of new paths and since they have not yet started the mining operation phase, they refrain from compacting to permit the vegetation to re-grow. The company continually monitors their effect on the dust and quality of the water.

Note that the Kisanfu site is situated in the region of the Basse Kando. The Basse Kando takes part of its name from the Kando, a large river and tributary of the river Congo (Lualaba), which drains the region. The presence of mining companies like PDC in the region has created a controversy for the past couple of years. This controversy

constitutes the subject of the next section.



A PDC's drilling site to BASSE KANDO (MW06), eight months after his rehabilitation (July, 2013)

## 2. THE PROTECTED AREAS AND BIOLOGICAL CONSERVATION

### 2.1. Introduction

The impact of human activities on the environment is most often negative. These activities consist on one hand of the removal of natural resources; and on the other the disposal of waste in solid, liquid, and gas forms. Human activity is thus the principal cause of the diminishing biodiversity. As ICCN defines it, biodiversity can be understood as “the variability of living organisms of all origins, including, among others, ecosystems on land, sea, and other aquatic ecosystems and the complex ecology of which they are part; these consist of the diversity within species and between them as well as diversity between ecosystems.”<sup>3</sup>

For multiple decades, the world has been aware of the danger to the equilibrium of life on the planet that the loss of biodiversity poses. During the first World Summit (Stockholm, 1972), many countries created an agreement for a collective response to the biodiversity crisis, which succeeded in creating structures for the coordination of collective action, including the Intergovernmental group on climate change. In 1987, the Brundtland report underlined the necessity of combining

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<sup>3</sup> ICCN, Stratégie nationale de conservation de la biodiversité dans les aires protégées de la République Démocratique du Congo, inédit, page 9

development with environmental issues, which created the concept of sustainable development. The DRC has ratified many diverse international treaties and conventions that guarantee the conservation of biodiversity. The convention on biological diversity is one of these.

### 2.2. The Convention on Biological Diversity

The Convention on Biological Diversity or Convention of Rio de Janeiro (Brazil) was adopted during the World Summit in 1992. The objectives of this convention, according to the document itself, are: the conservation of biological diversity, the sustainable uses of its components and the fair and equitable sharing of benefits arising from the utilization of genetic resources, including sufficient access to genetic resources, thanks to an appropriate transfer of relevant technologies.<sup>4</sup>

In accordance with the first objective of the convention, the conservation of biodiversity, the member states are responsible for creating mechanisms for conservation, both off-site and on-site. The off-site conservation (Article 9 of the convention) consists of taking measures to conserve species outside of their natural habitat. The convention makes it clear that the signatory countries must commit to put adequate installations in place and to ensure the

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<sup>4</sup> Convention de Rio, 1992

regeneration of endangered species and their reintroduction into their natural habitat in the best conditions (e.g. botanical gardens and zoos, gene banks and aquariums).

According to the on-site conservation (Article 8 of the convention), member states are responsible for:

- a) Establishing a system of protected zones; or zones where special measures must be taken to conserve biological diversity;
- b) Regulating or managing those biological resources which are important for biological diversity, both within and outside of protected zones, in order to ensure their conservation and their sustainable usage;
- c) Encouraging the protection of ecosystems and natural habitats, as well as maintaining viable species populations in their natural habitats;
- d) Promoting sustainable and ecologically rational development and activity in zones that are near protected areas, in order to reinforce the protection of these specific areas;
- e) Restoring degraded ecosystems;
- f) Promoting the reconstitution of endangered species by, among others, the elaboration and application of management plans and strategies;
- g) Preventing the introduction, controlling, and/or eradicating exotic species who pose a menace to the ecosystems, habitats, or species.

In summary, the conservation in situ places further emphasis and value on the important role of Protected Areas for biological conservation.

### 2.3. The Environmental Policies of the Congolese Government

Since the colonial era, the DRC has developed an important network of protected areas. A Protected Area is: a *geographical zone designated, defined, regulated, and managed with the goal of reaching specific conservational objectives*.<sup>5</sup> Many different types of protected areas exist in the DRC, including national parks, hunting reserves, animal reserves (specifically for the okapi), marine parks, etc.

The national parks are complete protected areas. There are seven total national parks in the DRC: Virunga, Garamba, Kahuzi-Biega, North Salonga, South Salonga, Upemba, and Kundelungu. These last two are situated in Katanga.

The **animal reserves** are protected areas *created for the conservation, domain, and reproduction of the life of wild animals as well as for the protection and arrangement of their habitat; in which hunting, slaughter, and capture of animals are forbidden except by the reserve authorities or those under their control; and where all human activity, including habitation, is forbidden*. The animal reserve for the okapi (situated in Mambassa in the Oriental province) is one such example.

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<sup>5</sup> ICCN, op.cit., page 9

A **hunting domain** is an area set up by a competent Minister for hunting purposes and in which the management falls within the state.<sup>6</sup> There are 57 hunting reserves in the DRC, 15 of which are located in Katanga, including the Basse Kando. Five protected areas in the DRC are among the World Heritage sites that have been in peril for 10 years. They are: the national parks Virunga, Garamba, Kahuzi-Biega and Salonga, as well as the Okapi Reserve in Mambassa and the Marine Park of Mangroves in the Bas Congo province.

The protected areas make up 12% of the national territory. The government plans to increase this area by passing 15% of national territory in the future.

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<sup>6</sup> The First Article of the Law N°82-002 of May 28 1982.

### 3. THE BASSE KANDO INVADED BY MINING OPERATIONS

#### 3.1. The Basse Kando: A Protected Area

The Basse Kando was created as a protected area on 27 March 1957 by a decree by the Governor of Katanga (see Appendix). According to ICCN, the region was introduced as a **total hunting reserve** due to its rich biodiversity. Many animal species in the Basse Kando are protected by this national legislation, some of which are classified as endangered species according to CITES. These species include elephants, hippopotamuses, jackals, different races of serpents and monkeys; as well as innumerable plant species. Until the beginning of the years 2000, this sanctuary remained more or less intact, because in spite of poaching and the weakness of ICCN's capabilities, the status of the protected area was never contested.

After 1998 (the end of President Mobutu's regime), state structures in the DRC quickly deteriorated. From this time onward, there was a lack of coordination between state services, notably between the Minister of Mines and and Minister of the Environment within the central government. Before the promulgation of the new Mining Code in 2002, all the protected areas in the state, including the Basse Kando, were invaded by mining activity, particularly by artisanal mining. After the promulgation of the Mining Code came the industrial mining companies into the protected areas in a true rush.

In reaction, ICCN corresponded with the political administrative authorities around the concerned areas (see Appendix for the mayor of Kolwezi). The installation of mining companies provoked a deterioration of the habitat in the site: deforestation and digging out to install open sky mines, open roads and engine and explosion noise, liquid waste dumped in the river Kando. The biodiversity diminished outright. In reaction, the national Minister of the Environment signed a decree to revise the first decree from 27 March 1957. This decree, signed in December 2006, confirmed the status of the Basse Kando as a protected hunting reserve. The Minister of Mines and their services, however, continued to operate as if nothing had happened and continued to give out concessions in the site, leading to the de facto disappearance of the Basse Kando as a protected area.

#### 3.2. The Point of View of Phelps Dodge Congo

For Phelps Dodge Congo, their research permit 815 given by CAMI in 2003 is completely in compliance with DRC law. At no time during this period, they remarked, did the Minister of Mines, the Minister of the Environment, or ICCN ever note that a part of their concession would overlap a protected area which prohibits mining activities. PDC affirms that they received a letter from CAMI dated from 2007 which confirms that the permit 815 is not situated in a protected area, a letter which denounces

the sudden “harassment” that the company has suffered in this regard.

Additionally, Phelps Dodge believes that the Basse Kando reserve was created by the decree in December 2006, and that before this date, the Basse Kando was not a protected area. While admitting that there is a dispute about the status of the Basse Kando, the company claims its rights to proceed with research and its mining operations in the site.

Finally, PDC concluded by expressing willingness to cooperate with national, provincial, and territorial authorities in the development of appropriate measures for the protection of wildlife in the evaluation of EIE of the Kisanfu project, which is in accordance with all laws and regulations, as well as the principles of ICMM.

### 3.3. The Point of View of ICCN

Naturally, ICCN does not share the same point of view with Phelps Dodge. A protected area is established by a classification decree, which can only be de-classified through a de-classification decree. Can the employees at CAMI, at PDC, and at other implicated companies show a decree which de-classifies the Basse Kando as a protected area? ICCN recognizes that there is a cruel lack of means to ensure effective management of the protected areas. However, in 2004 a director was given the position of managing the Basse Kando, one Mr. Longoma. He was replaced by Mrs. Léonie Kandolo who wrote multiple reports published by ICCN about the intrusion of mining companies in the protected reserve. ICCN believes that the

Minister of Mines is the foremost responsible actor in this mess, due to the lack of respect for DRC regulations. Article 455 of the Mining Regulations provides that the granting of an operating license must be approved by the Standing Committee of Evaluation (CPE), which comprises the services of the Minister of Mines, the Minister of the Environment, and specialized state services including ICCN. Yet, ICCN has never been associated with any decisions to grant operating licenses in the Basse Kando.

Worse still, ICCN believes that the installation of PDC and other mining companies in the Basse Kando is a deliberate violation of DRC legislation, given that the Basse Kando was clearly reinstated on the list of protected areas (Mining Regulation, Chapter 2, Article 8). The second decree by the national Minister of the Environment in December 2006 was a reminder to the Minister of Mines and his services of the limits of their attribution power.

### 3.4. The Point of View of the Minister of Mines

Did the Minister of mines and his services overstep their rights? We met with two of their provincial services, CAMI and DPEM. CAMI did not exist at the provincial level when the mining concessions in the Basse Kando were given (2003 and 2004). For their part, DPEM holds to the principle that, as the law says, ICCN officials were headquartered at CPE during the granting of concessions. It is true that the provincial services of the Minister of

mines were not responsible for these decisions, so we went to Kinshasa to meet with the real decision-makers. CAMI, however, did not meet with us. Yet DPEM responded to our questions in a vague manner and avoided focusing on the specific case of PDC in the Basse Kando. DPEM does not deny that there are cases of encroachment by mining concessions in protected areas. Yet for this problem they blame ICCN, accusing ICCN of not transmitting to the Minister of mines the exact coordinates of the boundaries of the protected areas. As for the situation in the Basse Kando, which has been invaded by mining companies although it was already reinstated as a protected area in the Mining Regulation, the officials at DPEM had no comment to make.

## 4. CONCLUSIONS & RECOMMENDATIONS

### CONCLUSIONS

The presence of PDC and other mining companies in the Basse Kando reserve is, above all, a symptom of the dysfunction of Congolese state services. In legal terms, the Basse Kando remains to this day a protected area, due to an absence of a measure of de-classification. The theory of de-classification, some of which PDC seems to support, needs to be done through legislation if it is to be effective. In other words, a protected area is not automatically de-classified if ICCN is no longer in a position to ensure daily effective management.

The invasion of the Basse Kando reserve is a catastrophe for its ecology. It has brought about the disappearance and reduction of multiple species for which the legislation is supposed to protect. ICCN, along with local communities and inhabitants, have confirmed the presence of these species during the arrival of the mining companies:

- The black antelope
- The "lechwe" antelope
- The aquatic civette
- The rock hyrax
- Hippopotamus (the population was over 400 in 2003, and has decreased to around 50 at this time)
- Some endemic plant species have also been progressively disappearing, due to mining activity
- And more.

The state services, the Minister of mines, and its services have the responsibility to apply and enforce the Mining Code. In the case of the Basse Kando, respecting the requirements of Article 8 of the Mining Code and actually convening in a meeting of the CPE would have prevented this mess.

PDC and the other mining companies also have responsibilities, and they do not install in a site without first studying the effective legislation. Given that the Basse Kando was reinstated on the list of protected areas in the Mining Regulations, we conclude that PDC deliberately chose to ignore this DRC law, in violation of FCX's environmental policy and of the 6<sup>th</sup> principle of ICMM.

The paralysis of the government on this subject, its inability to decide one way or another (to de-classify the reserve or to relocate the companies who had been installed) is more than embarrassing: it indicates utter incoherence in the application of the government's environmental policy. How can the government expect to expand all protected areas to more than 15% of the national territory if ICCN is not permitted to effectively manage the existing ones? Another proof of the absence of coherence in the application of the government's environmental policy is the invasion of the buffer zones of two national parks in Katanga by mining companies. These buffer zones (50 km around the parks) are necessary because, as the provincial director of ICCN explained with humor, the animals

do not know the limits of the park. The buffer zones allow for the preservation of a necessary wildlife niche and thus contribute to the preservation of biodiversity. These mining concessions in the buffer zones are a threat to the protected areas. The letter from the provincial director of ICCN to CAMI is an illustration (see Appendix).

## RECOMMENDATIONS

Multiple mining companies are installed in the Basse Kando reserve and many are already in the phase of exploitation and mining operations. In terms of biodiversity, the degree of decay is such that it is no longer possible to envision a rehabilitation of this protected area. It thus seems unrealistic to ask for the relocation of these mining companies, which is why PREMICONGO recommends that the government issues a decree of de-classification for this reserve, removing the Basse Kando from the list of protected areas. This measure will be enough to put a stop to the controversy. Simultaneously, however, certain arrangements must be put in place to prevent the despoilment and plundering of other protected areas in Katanga and in the rest of the DRC.

We recommend that:

- The proposal by civil society to prohibit all mining exploitation in protected areas is adopted into law, particularly by deleting Article 279, Item J of the Mining Code which permits mining operations in national parks “if the competent authority gives its accord.”

- The environmental studies of mining companies’ concessions (PAR, EIE, PGEP, audits) are ordered to be published (and not only for consultations) during the entire life cycle of the mining projects, and are published, for example, on the websites of the company and the Minister of mines.
- The national Minister of mines henceforth collaborates with ICCN in all meetings of the CPE, in strict accordance with the effective legislation.
- CAMI cancels and removes all concessions granted to mining companies in the buffer zones around the National Parks in Katanga.
- PDC and the other companies installed in the Basse Kando make a significant compensation payment to ICCN. This money would be used exclusively to improve management in other protected areas in the country, particularly to re-instate guards and a minimum infrastructure in each protected area.
- ICCN henceforth shows more firmness in preventing the occupation of protected areas, including buffer zones of national parks, by mining companies.

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## APPENDIX

### **Arrêté N° 52/48 Chasse du 27 mars 1957 créant une réserve totale de chasse en Territoires de Kolwezi et de Lubudi.**

*Prolongé par arrêté N° 702/2/73 du 6/3/1973*

Le Gouverneur de la Province du Katanga  
J PAKLINCK

Vu la loi sur le Gouvernement du Congo Belge ;  
Vu l'arrêté du Régent du 1<sup>er</sup> juillet 1947 sur l'organisation administrative de la colonie ;  
Vu le Décret du 21 avril 1937 sur la chasse et pêche spécialement en son article 7.

#### **ARRETE :**

**Article 1 :** Il est créé une réserve totale de chasse en Territoires de Kolwezi et de Lubudi, Réserve totale de la Basse - Kando.

**Article 2 :** les limites en sont fixées comme suite :

**Au Nord :** la route Kolwezi- Tenke - Likasi, depuis le pont sur le fleuve Congo jusqu'à la **bifurcation** de chemins d'accès menant à la gare de Kisanfu ; de ce point, le chemin d'accès jusqu'à la gare Kisanfu.

**A l'Est :** de la gare de Kisanfu, le chemin allant à la **station de pompage** sur la rivière Kisanfu. Depuis la station de pompage, la rivière Kisanfu, vers l'aval, jusqu'à son **embouchure dans la rivière Kando** ;  
De ce point, la rivière Kando, vers l'aval, jusqu'à sa rencontre avec son affluent de gauche la rivière Kabungo ( alias Kavungo) de gauche, le ruisseau Tshinkosa ( alias Tshinkosa) ; ensuite, de ce ruisseau jusqu'à sa source.

**Au Sud :** une droite allant de la tête de la source du ruisseau Tshinkosa jusqu'à la **source du ruisseau Kiatete** affluent de droite de la rivière Nyundweulu, ensuite de ce ruisseau jusqu'à son embouchure dans la rivière Nyundweulu. De ce point la rivière Nyundweulu jusqu'à son embouchure dans le fleuve Congo.

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**A l'Ouest :** de ce point, la rive droite du fleuve Congo jusqu'au **pont** de la route Kolwezi-Tenke-Likasi

**Article 3 :** Le présent Arrêté entre en vigueur à la date de son affichage.

Elisabethville, le 27 mars 1957

(sé) J. PAKLINCK



MINISTRE DE L'ENVIRONNEMENT,  
CONSERVATION DE LA NATURE,  
EAUX ET FORETS  
Le Ministre

**ARRETE MINISTERIEL N° 055/CAB/MIN/ECN-EF/2006**  
**DU 07 DEC 2006 PORTANT REVISION DE L'ARRETE 052/48 DU 27 MARS 1957**  
**CREANT UNE RESERVE TOTALE DE CHASSE DANS LES TERRITOIRES DE**  
**KOLWEZI ET DE LUBUDI, DISTRICT DE LUALABA.**

**LE MINISTRE DE L'ENVIRONNEMENT,**  
**CONSERVATION DE LA NATURE, EAUX ET FORETS,**

Vu la Constitution de la République Démocratique du Congo spécialement en son article 222 alinéa 1 ;

Vu l'Ordonnance-Loi n° 69-041 du 22 Août 1969 relative à la Conservation de la Nature ;

Vu la Loi n° 011/2002 du 28 mai 2002 portant Code Forestier spécialement en ses articles 10,11,12,13,14,15 et 16 ;

Vu la Loi n° 75-023 du 22 juillet 1975 portant création de l'Institut Congolais pour la Conservation de la Nature « ICCN », Entreprise Publique de l'Etat ;

Vu la Loi n° 82-022 du 28 mai 1982 portant réglementation de la chasse ;

Vu l'Ordonnance n° 78-190 du 05 mai 1978 portant Statuts de l'Institut Congolais pour la Conservation de la Nature « ICCN » ;

Vu le Décret n° 003/027 du 16 Septembre 2003 fixant les attributions des Ministères ;

Vu le Décret n° 05/003 du 17 février 2005 modifiant et complétant le Décret n° 05/001 du 13 janvier 2005 portant nomination des Ministres et Vice-Ministres du Gouvernement de Transition ;

Revu l'Arrêté n° 52/48 du 27 mars 1957 créant une réserve totale de chasse en Territoire de Kolwezi et Lubudi, spécialement dans son article

Vu la nécessité et l'urgence ;

**ARRETE :**

**Article 1<sup>er</sup>** : Est créée, dans la Province du Katanga, Territoire de Kolwezi et de Lubudi un Domaine de Chasse dénommé Domaine de Chasse de la BASSE KANDO.

**Article 2** : Toutes les dispositions antérieures contraires au présent Arrêté sont abrogées.

**Article 3** : Le Secrétaire Général de l'Environnement, Conservation de la Nature, Eaux et Forêts et l'Administrateur-Délégué Général de l'Institut Congolais pour la Conservation de la Nature (ICCN) sont, chacun en ce qui le concerne, chargés de l'exécution du présent arrêté qui entre en vigueur à la date de sa signature.

Fait à Kinshasa, le

DEC 2008

**Eté** NOLINGULA HOBIGERA MALWINDI



REPUBLIQUE DEMOCRATIQUE DU CONGO

**Province du Katanga**

INSTITUT CONGOLAIS POUR  
LA CONSERVATION DE LA NATURE  
I.C.C.N  
DIRECTION PROVINCIALE  
LUBUMBASHI

Lubumbashi, le 18 Juin 2013

N° 0003/ICCN/DP/KAT/2013

Transmis copie pour information à :

Son Excellence Monsieur le Gouverneur de la  
Province du Katanga  
Excellence Monsieur le Ministre Provincial des  
Mines et Environnement  
(TOUS à Lubumbashi).  
Excellence Monsieur le Dr Directeur Général de  
L'ICCN  
Monsieur le Directeur Technique et Scientifique de  
De L'ICCN  
(TOUS à Kinshasa)  
A Monsieur le Chef de Site du Parc National de  
Kundelungu.  
A Monsieur le Chef de Secteur Nord du Parc National  
De L'Upemba  
A Monsieur le chef de Secteur Sud du Parc National  
De L'Upemba.

Objet : Permis de Recherches et  
D'Exploitation .

A Monsieur le Directeur Provincial des Cadastre  
Minier

Monsieur,

J'ai l'honneur de solliciter votre intervention pour  
Délocaliser tous les Permis de Recherches et D'Exploitation contigu aux Parc National de L'Upemba et  
le Parc National des Kundelungu octroyés par le Cadastre Minier . (Voir Carte de retombe minière) .

Cette situation constitue un danger pour les  
Aires Protégées qui doivent être protégée par une zone tampon et que le Cadastre Minier devrait en  
Tenir compte.

Veillez agréer Monsieur le Directeur, l'expression

de mes sentiments patriotiques.

LE DIRECTEUR PROVINCIAL/ICCN-KATANGA

FELIX MBAYO LUKASU WA KABULO