

Extract from response provided by a representative of Mr Eric Monga, Kipay Investments.

Global Witness has redacted parts of Mr Monga's response due to risk that they are defamatory to other individuals.

Communication # 1

This letter seeks clarification from Kipay regarding its hydropower plant construction project at Sombwe, on the edge of the Upemba National Park in the Democratic Republic of Congo.

We would first like to know the source of your information supporting the version of events that you set out. In our humble opinion, this information is completely biased.

Your source would appear identical to the one advising the European Union. Your information does not tally with ours. If its source is [REDACTED]

[REDACTED] an NGO called Forgotten Parks Foundation, through which funding for the Upemba National Park is channelled, we would ask you to treat it with scepticism. This NGO has also applied to build a hydropower plant for industrial purposes on the same site as ours. This is why you have been approached, an attempt to exclude our project from the running using you.

We dispute the [EU-commissioned analysis] document, the data it provides, on which you have based your remarks, but also the manner in which they have been collected and articulated within the European Union, not having had sight of them beforehand, because this document is the focus of the review to which the European Union refers.

Do you realise that the terms of reference for the purported Environmental and Social Impact Study ("ESIS") review, which began in 2016, were only issued on 9 October 2018. The terms of reference for this review were issued by the European Union in response to a letter from the ICCN dated 3 November 2018, more than a month later. Yet, the final draft of the review was submitted on 30 October 2018. You will now clearly understand that there is a trust and dependability issue.

Please be informed that the Kipay Environmental Study which should form the real basis for your remarks, was submitted to the Congolese Environment Agency in 2019. Its Environmental Certificate was issued in March of that year. The European Union review was based on a document dating back to 2017. For example:

- a review of a "draft copysic" completed in October 2018 and yet, our study was submitted in February 2019...
- your position is based on what has already been exposed as a fake and misrepresentative document, clearly proving that this is a scam to mislead objective individuals with false information, such as the surface area of the National Park to be flooded, which has progressed from 40 % to 48 000 ha, while you refer to a figure of 4 800 ha.

Could you please provide us with a copy of this study so that our client may give you the most relevant answers, prompting the most unbiased judgment possible? This is also why we are seeking a deferral to present our arguments more effectively and to offer you a much more realistic view of the project.

To all intents and purposes, here are a few answers:

1. with reference to correspondence between Kipay and the European Union (“EU”), the following provide clarification of a few points raised in your letter:
 - a) The DRC has one of the greatest power-generating potentials in the world but its energy access rate is only 9%, 1% in rural areas, for a population estimated at more than 80 million.

Felix Antoine Tshisekedi, President of the DRC, has made this a point of honour, urging private sector electricity companies to increase energy access to 30 % by 2030.

In DRC, the energy deficit is more than 3 900 MW, hence the drive to raise national awareness of the need for project development in the Congo. The Sombwe project was initiated by a Congolese businessman in an area with major security issues, formerly known as the ‘triangle of death.’ The project has brought greater safety, access to water, an improvement in living conditions and healthcare assistance....

- legal approval for an electricity project in the DRC is provided by Law No. 14/011 of 17 June 2014 governing the electricity industry, which offers interested parties the opportunity to undertake and to be involved in the various activities in this sector;
 - this energy statute was published in June 2014; it sets out the procedure to follow for this type of project;
 - Kipay’s concession agreement was properly and lawfully entered into with the Democratic Republic of Congo, which provides potential sites for various activities in this sector according to the procedures defined by the statute (Letter 2213/CAB/MIN/EDD/CNB/RL/1/2021);
 - concerning UNDP funding, the Energy Minister published an inventory and atlas for the types of renewable energy to be developed as part of the energy sector liberalisation process. The Sombwe site, in its former configuration, was included in this public disclosure.
2. The EU queried the legality issue with the Government, through the Energy Minister. The answer was clear: the Kipay concession is lawful; the EU was asked to address other related questions to the Ministry. (Letter CAB/MIN/RHE/JMA/124/FMN/21).
 3. Based on these data, the EU recommended Kipay to accept another site, which in its eyes was more financially viable. This site already belonging to a Belgian firm. Tactics involved the Congolese concern dispossessing the Belgian firm of its rights. The same tactics are being used by Forgotten Parks, which has applied to be allocated the same site as Kipay. This may be fine for one party but not for the other not. Yet, this is the current prevailing logic.

4. The Sombwe project is completely unaware of this ‘famed’ and wrongly attributed environmental study, which is only binding on the authors who sent it to you (see correspondence DG-EMM/312/12-20 du 29/12/2020 ...). Nevertheless, the legal procedure is set out below:
 - preliminary site observation;
 - based on this preliminary site observation, an application for terms of reference (“TORs”) is sent to the Congolese Environment Agency (“ACE”) which, post survey, issues the TORs;
 - the law requires studies to be conducted by a DRC-accredited environmental surveys organisation (Article 21 of Decree 14/019 of 2 August 2014 laying down the operating rules of the environmental protection procedural mechanisms);
 - the ACE will double check studies and issue an opinion, provided the survey meets its TORs.
5. Kipay was given its TORs in 2016. Its environmental studies were completed and submitted to the ACE in February 2019. Its Environmental Certificate was issued in March of that year.
6. In its pre-August 2018 draft, the review indicated that 40 % of the Upemba National Park would be under water. Afterwards, this became 48 000 ha. You refer to a figure of 4 800 ha. There is clearly a problem.

The surface area of the Upemba National Park is 1 773 000 ha. The boundary of its eastern portion is marked by the Lufira River. The river’s course is shown on the attached map (Simplified Mokabe Map). It flows at an altitude of 725 metres, in a deep gorge, surrounded on either side by mountain ranges: on the left bank, the Musanga mountains (which are inside the park), with an average height of 1400 metres and, on the right bank, the Kalambo range (a hunting area), with an average height of 1750 metres. The dam, actually a small infill in the valley, is located upstream outside the park and has a surface area of less than 2000 ha, including the riverbed (separating the park from the Lubudi-Sampwe hunting area) which, in itself, occupies nearly 1000 ha.

7. All calculations considered, 40% of the park will not be flooded and none of the other suggested figures or predicted disasters are correct. Furthermore, the studies already provide for mitigating measures to protect the savanna grasslands (miombo), which include measure to promote biodiversity, which will be increased.
8. In accordance with Congolese legal requirements, Kipay issued a call for tenders to recruit a national environmental surveys agency. This resulted in the appointment of OEMS, a duly and lawfully incorporated research consultancy, accredited by the ACE, which we combined with an international research consultancy.
9. You have been taken in by the authors of the fake study. Similarly, in the initial stages, the ICCN got carried away by false information regarding the siting of the barrage, the

Sombwe geodetic marker, a source of confusion on the Kipay website because it used the name Sombwe when referring to a geodetic survey point.

10. After lengthy meetings and site visits, the ICCN realised that the site was located at the edge (boundary) of the National Park and agreed to assist Kipay to build the structure.
11. In accordance with its ethics and values, our client did not wish to dwell on value judgments about individuals for adopting positions that did not flatter the egos of others. We are currently working with the ICCN. Its Managing Director is taking an active role with daily involvement, as required by law and according to his recognised prerogatives. The ICCN will be paid royalties and other dues.

Allegations of corruption have been made against EGAL because of its association with Mr. Katumba Mwanke, now deceased, who worked with EGAL:

- from August 2013 to October 2014, our client was the Managing Director of EGAL before his resignation (for purely personal reasons);
- the purpose of creating this company was, and still is, to supply fresh foodstuffs, mainly fish, to the Congolese people, especially the population of Kinshasa, at realistic and affordable prices;
- after a World Bank funded enquiry, of which we are sure you are aware, the ‘triangular trade’ in the fish, commonly referred to as Mpiodi in the DRC, earned well-known businesses a great deal of money to the detriment of the population; these businesses were broadly criticised in various reports, especially the Menna Report;
- EGAL’s strategy was to fish directly in the warm Benguela current close towards the Namibian coast (a country with which there were already bilateral agreements), to ship the catches directly to the Congo and to sell them at a very good price;
- this required official fish quotas; they could only be allocated to a duly and lawfully incorporated Namibian company (Samaki) in possession of all the necessary permits and clearances, able to access the fish out to sea, directly from factory vessels;
- the fish was shipped without stopovers, directly to the DRC by a vessel flying the Congolese flag. This business model provided the opportunity to lower fish prices by more than 100 % compared to competitors like Congo Futur;
- the price of category “P 18” fish fell from \$ 125 /30 kg in 2012 to \$ 60 / 30 kg in January 2014. You are well documented and we are sure you have the prices charged by various institutions and consumer markets in Kinshasa;
- proven by official statistics and banking licences, it would be difficult to assert that there were no fish imports during this period. It is easy enough to verify. During our client’s term of office, EGAL must have imported more than 20 000 tonnes of fish - this is public knowledge;
- our client resigned from EGAL in 2014, automatically terminating his office with Samaki. He has no knowledge of the allegations concerning animals. You refer to circumstances that existed in 2017. He had no connection with EGAL at this time.

Nevertheless, he cannot see how cash could have been moved around in today's world, particularly when there were three banks making systematic, daily collections of funds for EGAL;

- our client sees only a dangerous blanket prejudice in all these allegations, fuelled by a stubborn intention to find something to cause him harm or, more broadly, to prove that the Congolese cannot be trusted to do business in a sector "reserved for whites" (sic). In our opinion, this is outdated way of thinking that predates 1960;
- our client is a Congolese businessman from a family that has been well-known in business circles for decades. He followed a normal career path and built his businesses in complete transparency. The deceased Mr. Augustin Katumba whom he knew at school (may he rest in peace) passed away in 2012. It would be malicious to blame things on someone who is no longer alive. You would be advised to avoid blanket prejudice and to recognise Congolese economic emancipation without looking for reasons to vindicate the failed condescension of those who would give you twisted information, intending to cause harm;

[REDACTED]

[REDACTED]

[REDACTED]

- what difference is there between the EU-funded power plants being built in the Virunga National Park and the hydro plant being developed by a Congolese businessman on the fringes of Upemba? (see article https://twitter.com/7sur7_cd/status/1451227177190576132?t=MFjltwh5R5tzKbb28-d4LA&s=08)

Communication # 2

1. Up to this day, our client, KIPAY, has not stopped asking for the alleged ESIA wrongly attributed to it on which the European Union analysis is based. The EU did not meet our client's request by any means. As the real KIPAY ESIA has been completed and filed since 2019, it belongs to the Congolese State. However the ESIA that the EU has analysed, KIPAY does not know.

The KIPAY Company also believes that this critical review [by the EU] was distributed on purpose to several other Non-Governmental Organizations (NGOs), and what constitutes a source of disinformation (based 100% on a false intellectual).

As KIPAY is not aware of the ESIA in question, it is understandable that it was a document written by unknown individuals for intentional purposes and which may have taken up some of the ideas [of the person that wrote it].

2. For our client, the report the EU has sent can only be a false intellectual. For example :

- In the review, the statement “the author does not recognize the zone of intervention at all... Sic” [i.e. the project area]. This confirms that the expert has never set foot on the construction site of the Sombwe hydroelectric power station and is relying on imaginations. That is why all the claims in the review are biased.

- Studies on the hydrology of the Lufira watershed have shown that the Lufira river has a torrential regime, that is to say that it has too large amplitudes of variation. Such a hydrological regime requires special attention. For that, affirm that the filling of the reservoir of the Sombwe dam will take six (6) years, which is impossible. Yet according to the feasibility study of the Sombwe project, the reservoir will only take 19 days to fill.

- The expert states: "In 2016, the Upemba and Kundelungu national parks were combined into a complex encompassing the Tshangalele partial reserve and the Lubudi-Sampwe hunting area ...". In reality, no Congolese law confirms the unification of its two Parks, meaning that this Upemba - Kundelungu complex does not exist.

- The expert seems to say that the residents do not know about the Sombwe project while KIPAY has a large social plan.

- The expert shows a photo claiming that it is on the Sombwe site, unfortunately we do not know these places.

Communication # 3

1. Summarizing a project of such a scale in four pages seems to us to be very simplistic [Global Witness had sent the first few pages of the ESIA to Kipay asking if it appeared to be a genuine document]. We cannot attest to the authenticity or the data of an ESIA [analysed by EU consultants] which, obviously contain erroneous information. And this is done by the EU on purpose to mislead you knowing that you will never have time to go down on the ground for any cross-checking. This is designed to get you, at all costs, to condemn the promotor of the project [Eric Monga]. Moreover, in the EU's report they speak of a "draft" [ESIA], can we trust such a document? Would you like to send us this famous study so that we can answer you correctly.

2. We draw your attention to the recommendations of the ACE [Congolese Environment Agency] stressing that environmental studies, especially in this area which has been little studied for decades, should be dynamic with regular reviews.

In addition, the area under study was in the midst of military operations against the so-called "Mai Mai" rebels and given this security situation, authorization from ACE officials was required after receipt of the preliminary studies, before continuing to produce the final version of the environmental impact assessment. In particular the local populations were very affected.

However, our client considers that your approach visibly tends to defend or protect EU officials who engage in reprehensible practices against a project initiated and promoted by a Congolese. In our opinion, you should also investigate them because it is up to them to justify the difference between the studies and especially that they do not use you to steal a site from a Congolese for their private account.

[REDACTED]

The fact that our client does not respond to European whites should not justify any blocking of the project to tear it away even less than the color of the skin should justify the condemnation of the latter...

[REDACTED]

...The EU is developing dams in VIRUNGA and GARAMBA parks, have you checked this? Are you going to condemn them as well? What do you think of Green Alliance projects belonging to Forgotten Parks which also wants to generate energy in the parks? (Read their monthly reports)

We will be very happy to hear from you on our concerns and incorporate them into your analyses otherwise it would be unfair.