

Chinese Mining Operations in Katanga Democratic Republic Of The Congo

Executive Summary
September 2009



Chinese Coke factory in Zimbabwe which supplied Chinese mining companies in Katanga



Field research in Katanga carried out by Samentha Goethals of RAID with the assistance of Jean-Pierre Okenda, ACIDH and Raphael Mbaya, PADHOLIK

Chinese Mining Companies in Katanga

Executive Summary

This report, the first of its kind, provides a snapshot of working conditions in Katanga in Chinese-run enterprises. It synthesizes the views, experiences, concerns and recommendations of Chinese and Congolese workers interviewed. The report is based on a survey carried out in 2008 by Rights and Accountability in Development (RAID) into working conditions in Chinese private mining companies in Katanga Province in the Democratic Republic of the Congo (DRC).

RAID, a British NGO based in Oxford, was established in 2003 and works to promote responsible corporate behaviour, particularly in Africa. RAID is one of the founders of the international network OECD Watch, which tries to ensure that companies comply with the OECD Guidelines for Multinational Enterprises.¹ In 2007 RAID produced a briefing paper entitled *Advice to Chinese Companies Operating in the Mining Sector in Africa* in which some of the human rights issues that had confronted Chinese-owned mining companies and factories in Zambia and the Democratic Republic of the Congo (DRC) were discussed. In 2008 just before the Olympics, Patricia Feeney, RAID's Executive Director, visited Beijing and held meetings with Chinese officials at the Ministry of Commerce and at the China Institute of International Affairs, a think-tank under the Ministry of Foreign Affairs. She also met Chinese academics and researchers at the Institute of Western Asia and Africa, Chinese Academy of Social Sciences (CASS).² RAID's briefing paper was presented at all of these meetings and China's approach to responsible business conduct was discussed.

The research for RAID's latest report *Chinese Mining Companies in Katanga* was done in partnership with *Action contre l'impunité pour les droits humains* (ACIDH), a Lubumbashi-based NGO which provided invaluable support throughout. In Likasi, RAID's NGO partner, PADHOLIK provided assistance. The objective of the research was to survey working conditions in Chinese companies operating in the mining sector in Katanga by getting information at source: from the workers themselves. To this end over 140 Chinese and Congolese workers were interviewed and/or asked to complete questionnaires to help provide systematic input. Congolese workers seemed grateful and very enthusiastic about the opportunity to voice their views and concerns. Many talked about the abuses of human rights and labour rights they had encountered in their working lives. In Congo, although there is a labour inspection body (*l'Inspection du Travail*), workers have no effective right to a remedy since they cannot trust the authorities or the courts to uphold the law and to protect their human rights of formal or informal workers.

Fifteen per cent of the Chinese-owned companies in Katanga were included in the survey. The companies surveyed, listed below, included smelters and trading house depots, where minerals are bought and stockpiled before being processed or exported. It was not possible to include conditions for workers in Sicomin, the Chinese joint venture with the state-owned mining company Gecamines.

- Congo Dong Bang Mining (CDM): Kolwezi Depot and Lubumbashi smelter
- Congo Loyal Will Mining: Lubumbashi smelter
- COTA Mining: Lubumbashi smelter
- Emmanuel Mining: Kolwezi depot
- Huachin: smelters in Lubumbashi and Likasi
- Jia Xing: Kolwezi depot and Lubumbashi smelter
- JMT: Kolwezi depot
- Song Hua: Lubumbashi smelter
- Feza Mining: Likasi smelter

¹ RAID was founded in 1997. Until 2003 all research and advocacy work was carried out under the auspices of the Refugee Studies Centre, Queen Elizabeth House, University of Oxford. Close ties remain between RAID and the University. In September 2003 RAID was incorporated as a private, not-for-profit company limited by guarantee. The Articles of Association are set out in the Companies Acts 1985 to 1989. More information about the work of the organisation can be found on RAID's website: www.raid-uk.org.

² The Chinese officials RAID had meetings with were: Mr. Xianghua Huang, Deputy Director, Division of Overseas Chinese Enterprises, Department of Foreign Economic Cooperation under the Ministry of Commerce and Mr. Hongyi Wang, a senior fellow in African studies and Deputy Secretary General, Centre of African Studies, CIIA. At CASS, Dr He Wenping, Director of African Studies Section, chaired a meeting between RAID and researchers working on corporate responsibility issues.

As an initial step RAID devised a questionnaire with the help of Congolese and Chinese partners. The questionnaire was translated into Chinese, French and Swahili in order to reach as many workers and managers as possible. Prior to the field investigation, RAID identified a selection of small, medium and large Chinese-run companies for the survey: trading houses, smelters and mining companies in the towns of Lubumbashi, Likasi and Kolwezi. The research is based on qualitative and quantitative methods of data collection. Additional research was carried out after the field work was completed in the first six months of 2009. A range of other published sources were consulted and the views of the provincial authorities, local government inspectors and international organisations like the US business consultancy, PACT-Congo and the Belgian NGO, Groupe One were also sought.

The Legal Framework

At a minimum all companies are required to obey the laws and regulations of the countries in which they conduct their business and Chinese companies are no exception. This obligation is set down in Article 1 of the Congolese Labour Code and is also explicitly recognised by the Chinese authorities at the highest levels. The Chinese Ministry of Commerce in Beijing has clearly stated that Chinese companies in the DRC should observe local labour laws and regulations and fulfil their social commitments.³

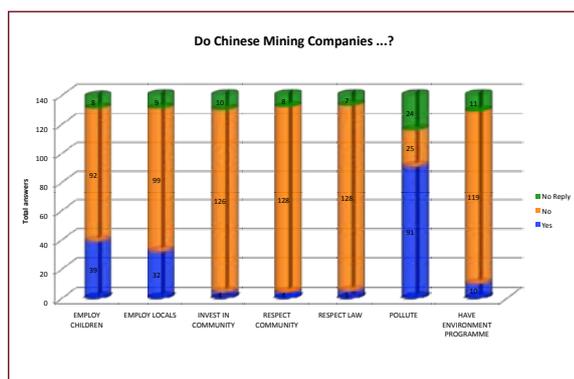


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There are a range of relevant international standards which should be observed by Chinese mining companies in Katanga. China and the DRC governments have ratified a number of international human rights standards like the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. Consequently their provisions should be respected by all companies operating in Katanga. Many of the key standards of the International Labour Organisation (ILO) have also been ratified by both governments: for example, Convention 100 and Convention 111 on the elimination of discrimination in respect of employment and occupation and Convention 138 on the elimination of child labour and Convention

182 on the elimination of the worst forms of child labour.

Results of the Survey



The results confirmed that working and living conditions in Katanga are unsatisfactory for both Congolese and Chinese workers. The Congolese workers complain about the lack of respect and neglect of their well-being by the Chinese managers. There was unanimous agreement that Chinese companies do not comply with the Congolese mining code and other laws and regulations, which is taken as affront to the Congolese nation. The Chinese Ambassador to the DRC confirmed that all Chinese investors are expected to respect the law, but he explained to journalists that in his view it was not the task of the Chinese Government to police the multitude of Chinese investors in Africa.⁴ Chinese

managers in RAID's survey said that they would like to receive better guidance and support from their government and embassy.

³ Simon Clark, Michael Smith and Franz Wild, 'China in Africa: Young Workers, Deadly Mines', *Bloomberg Markets*, September 2008

⁴ *ibid*

Main Problems: Perspective of Congolese workers

- Chinese companies have little or no understanding not only of international labour standards but also of Congolese law, in particular the *Code du Travail* and the Mining Code
- Environmental standards are not respected by Chinese companies
- Accidents in Chinese-run smelters are commonplace because of the lack of protective clothing, training and procedures
- Workers who sustain serious injuries as a result of accidents at work do not receive adequate medical attention; compensation is often inadequate or non-existent
- Minerals bought for processing or sold to trading houses are illegally mined with the use of child labour; children, some as young as 10 years old, load bags in the trading houses
- Workers are exposed to harmful dust from the minerals they handle - including radioactive minerals; they are not provided with face masks or other protective clothing; there are no facilities for taking a shower
- Workers work long hours, are treated arbitrarily and risk being summarily dismissed for trivial offences (like being a few minutes late for work) or on false accusations
- Chinese and Congolese security guards have assaulted workers and beatings are common. In some cases workers have sustained serious injuries
- Most workers are hired on a casual basis and the companies do not pay their insurance. Workers with contracts complain that these are written in Chinese and not translated
- Congolese workers are discriminated against; are given menial jobs and have no opportunities to upgrade their skills. They do not receive the same levels of pay as Chinese workers
- Workers are not treated with respect and are regarded as dispensable
- Workers' grievances are not taken seriously by the company and making complaints often leads to dismissal
- Corruption and inefficiency undermines the work of the Congolese police, labour inspectors and the courts. Workers have no access to an effective remedy
- Chinese companies and Chinese employees appear to be above the law

Violent Assault on a Worker

One worker stopped drilling into a wall because the drill had started to overheat. His Chinese supervisor insisted he should go on but the worker refused. The Chinese supervisor then allegedly took the hot drill and pushed it against the worker's genitals, severely burning him. The worker was not given any medical assistance and was forced to continue working. He struggled with the pain but was too unwell to keep on working. After three days he complained about his treatment and was fired on the spot during the night shift and sent packing.

RAID field report

Main Problems: Perspective of Chinese Employees

- Chinese workers are at risk of assault by gangs; some attacks are racially motivated; some Chinese employees have been seriously wounded
- Threats to their personal security means Chinese employees do not go out much and stay in their compounds
- Places where Chinese expatriate workers are housed are often targeted by thieves
- Chinese face constant harassment from Congolese officials who extort money from them on the slightest pretext: for example, that their visas are not valid
- Corrupt officials try to impose fines on Chinese companies or demand payment of 'taxes' without due cause
- Living conditions for many Chinese workers are poor
- Many are unhappy and would prefer to work in neighbouring African countries where corruption and security problems are less prevalent
- Pervasive corruption makes it difficult to do business and bring prosperity to the region
- Chinese companies are supposed to add value by processing minerals inside Katanga but they see no sign of the mining revenues being used by the Congolese authorities to improve local infrastructure or the living conditions of the population
- Chinese people are the victims of the frustration that the Congolese population feel as a result of their neglect by the Congolese Government
- They would like to have better relations with Congolese people but there are language and other barriers that need to be overcome
- Chinese employees do not feel that their human rights are respected and that the Chinese embassy, in cooperation with the Congolese authorities, should take action to tackle these problems

Chinese supervisor, Ndenga Depot, Kolwezi

"As a Chinese working in the mining industry in the Congo, I feel that human rights are not respected. Different government departments send officials to bother us, asking for money, travel expenses, etc. They even threaten us with closure or being taken over. To put it simply they use various excuses to extort money from us. What's more local people regularly break into Chinese people's places, sometimes as often as three times a week. Some Chinese have been robbed and shot and crippled on their way back home after work... All this shows that our personal safety is not guaranteed in the Congo. These are just a few examples. I hope the Chinese Embassy will seriously consider the matter and cooperate with the DRC Government, so that all these problems can be properly resolved. I eagerly look forward to that."

RAID field report

In general, the absence of responsible corporate conduct was attributed by respondents to the failure to translate the high-level expressions of Sino-Congolese cooperation and friendship into concrete action at the local level. Congolese workers criticise their government for 'selling' their country to Chinese investors. For their part Chinese managers said that private companies derived little benefit from the amicable relationship between the two governments. This did not protect them from extortion, harassment, corruption and violence, often instigated by local Congolese officials. The Chinese companies

in Katanga overall are not well informed about CSR, which is not surprising given the widespread misunderstanding among companies in China about responsible corporate conduct.⁵

Conclusions

This report does not seek to embarrass the People's Republic of China (PRC) nor to tarnish its image in the developing world. The report does however provide first hand allegations of widespread corporate misconduct and human rights abuse by Chinese companies operating in Katanga, which should prompt the Chinese and DRC governments to take urgent measures. The report's findings highlight the need to promote greater awareness of responsible corporate behaviour among Chinese companies operating abroad. The problems described in the report are not confined to Chinese operators and similar conditions prevail in companies owned by Congolese or nationals of other countries. But the Chinese are the most significant operators in the mineral sector in Katanga. According to the Governor of the Province more than 60 out of Katanga's 75 processing plants are owned by Chinese companies and over 90 per cent of the region's minerals go to China.⁶ Congolese workers and Chinese managers have given candid accounts of the indignities, harassment, threats and abuse that they endure on a daily basis. They have set out what they feel is needed to improve workplace conditions, environmental protection, health and safety standards, community relations and corporate accountability. The recommendations addressed to both the DRC and Chinese Governments are set out at the end of the report. In RAID's view it is only by supporting such improvements that China can hope to reach the goals that it has set itself in its Africa foreign policy declaration concerning sustainable development and harmonious relations between peoples.⁷

Recommendations

1. The Chinese government is understood to be preparing to announce a set of national guidelines for responsible business conduct overseas. China's increasing integration into the world economy will be made easier if the new guidelines are in line with internationally-recognised standards such as the OECD Guidelines for Multinational Enterprises. As the results of the survey show, such guidelines are urgently needed and should be widely promoted in Katanga.
2. It is the obligation of the DRC Government to increase awareness of the Mining Code and regulations and to ensure that mining legislation and labour laws, particularly as regards health and safety, are respected. However, the Chinese Government could assist the Congolese Government in this task and help strengthen the capacity of the institutions and personnel responsible for implementing the mining laws. There are specialist bodies in China, associated with the State Council's Leading Group for Poverty Reduction, that might usefully be involved in a South-South learning programme of this kind.
3. A more comprehensive guide to the Mining Code and other relevant Congolese laws should be prepared for Chinese companies by the Chinese Government in collaboration with the Congolese Ministry of Mines. It should be distributed to all Chinese companies planning to invest or already operating in the DRC. Given that there are problems with all mining companies in the DRC, such an initiative might usefully be undertaken in collaboration with other partners like the World Bank and the Extractive Industries Transparency Initiative (EITI).
4. The Chinese and DRC Governments should review the exemptions granted to Chinese operators to ensure that companies are in compliance with the obligations under the

⁵ OECD (2008), 'OECD Investment Policy Review of China: China CSR Survey 2006' conducted by Peking University's Market Economy. The study, the first in its kind in China, surveys the attitudes towards CSR of 890 companies in China.

⁶ *Bloomberg Markets*, September 2008

⁷ In January 2006, the Chinese government issued "China's Africa Policy" which is aimed at promoting the steady growth of Chinese-African relations. China's Africa policy is guided by the "Five Principles of Peaceful Co-existence": mutual respect for sovereignty and territorial integrity; mutual non-aggression; non-interference in each other's internal affairs; equality and mutual benefit; and peaceful coexistence. Under the policy, China will continue to provide preferential loans and buyer credits to encourage Chinese firms to invest in Africa, especially in resource-based sectors.

Mining Code. The terms and conditions under which Chinese mining companies are operating in Katanga should be made public, to dispel the widespread view that they are acting illegally.

5. All Chinese mining companies should comply with the requirement to prepare environmental impact assessments and environmental management plans and they should be made available locally and posted on companies' websites.

6. The DRC and Chinese authorities should investigate the allegations of ill-treatment and abuse of workers in Chinese mining companies and take appropriate action, including giving adequate compensation to workers found to have suffered workplace injuries.

7. The Chinese Government should request the Congolese authorities to investigate assaults on Chinese nationals in Katanga. The Chinese Ministry of Foreign Affairs should conduct its own survey into the level of violence against Chinese expatriate workers in Katanga and make a report.

8. The Chinese and Congolese authorities should develop an action plan to improve social cohesion and inter-cultural dialogue in the province between which should help build a climate of trust and understanding between the two communities.

9. All Chinese mining companies in Katanga should be reminded that the use of formal or informal child labour is illegal. The Chinese Government should consider how it could meaningfully contribute to efforts to eliminate child labour in the artisanal mining sector in Katanga possibly in collaboration with UNICEF.

10. With China's growing economic and political influence comes greater responsibility and the Chinese Government should consider adopting the provisions of the OECD Anti-Bribery Convention.

11. Chinese managers, supervisors and workers who are going to live and work in the DRC should be properly prepared. There should be more investment in enhancing foreign language skills of Chinese workers to assist integration.

12. In view of the gaps identified in RAID's research, the Chinese Government should consider inviting researchers from Chinese Academy of Social Sciences (CASS) to carry out a survey jointly with Congolese researchers into the conditions of Chinese labourers in Katanga to ensure fair conditions of employment and decent living arrangements and that their labour rights are respected. Chinese mining companies and entrepreneurs should be better informed about recent positive developments in China which should inform their actions overseas.



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