

RAID
Rights & Accountability in Development

对中国在非洲的矿业公司的建议

Advice to Chinese Companies Operating in the Mining Sector in Africa

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Abstract

Advice to Chinese Companies Operating in the Mining Sector in Africa

This paper is intended to advise Chinese companies, particularly those involved in mining in Zambia and the DRC, about the concerns of civil society over the way in which the continent's abundant natural resources are being exploited. Historically mining companies have had a poor reputation. They have been seen as despoilers of the countryside, polluters of water sources, usurpers of ancestral lands, exploiters of cheap labour and accomplices to, if not instigators of, gross human rights abuses. The paper sets out to explain the OECD Guidelines for Multinational Enterprises, which is one of the standards that is being used to measure the performance of Western companies when they operate outside of their home countries. RAID argues that Chinese companies, including state-owned enterprises, should consider adopting a similar instrument, which RAID believes will not only help them improve their relations with local communities but also demonstrate to international civil society that China can be a good, global corporate citizen. The paper draws on RAID's experience of working in Democratic Republic of the Congo and Zambia where the trade in copper and cobalt is booming, largely as a result of Chinese expansion.

China's Africa Policy

Several years ago the Chinese government announced 'a going-abroad strategy' which was a series of policies to encourage domestic businesses, particularly oil and mining, to venture out into other parts of the world. Today, according to the World Bank, there are an estimated 80, 000 migrant Chinese workers in Africa. Over the past 10 years, trade between China and Africa has greatly increased from \$ 3billion in 1995 to over \$37 billion in 2005.¹

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.

Chinese businessmen tend to have less direct contact with African communities than, for example, their Indian competitors. This enclave mentality can make them vulnerable to misunderstandings and even hostility. Just before the important Africa Summit (the China-Africa Summit for Development and Cooperation, which took place in Beijing on 1 to 6

¹ World Bank, Africa's Silk Road: China and India's New Economic Frontier, Washington 2006

November 2006), Wei Jianguo, a Vice-Minister for Commerce rejected criticism that China is ignoring environmental and anti-corruption standards.²

The Paper then discusses concerns that have been raised about Chinese companies operating on Zambia's Copperbelt, including China Non-Ferrous Metal Industries Corporation and the Chambishi Mine. In the DRC the problems relate to arrangements for the supply of copper and cobalt from Gecamines' concessions to China as payment for military support during the Congolese war. These "war contracts" are under increasing scrutiny by the international community. It is hoped that the newly elected Congolese parliament will support calls for a renegotiation or cancellation of mining contracts that are not in compliance with Congolese law. So the paper warns that it would be better for the international reputation of China and Chinese companies to try to place all such contracts onto a formal legal basis.

There is a section describing the OECD Guidelines for Multinational Enterprises which explains how the Guidelines are implemented. It provides information about the outcome of the UK consultations on improving the NCP and the role of the Joint Working Group (JWG). It draws to the attention of the Chinese Government and Chinese companies the shared view of members of the JWG that a guidelines-based mechanism like the OECD process has the potential to play a useful and appropriate role in underpinning responsible corporate conduct, so long as it is properly implemented. In particular, to command the confidence of stakeholders, it must be credible, effective, fair, and timely, operating in accordance with due process and with proper safeguards against malicious, vexatious or insubstantial complaints. The process should aim to assist companies in need of clarity and guidance on the application of the Guidelines, and to be a tool to facilitate responsible business operations and investment.

The paper concludes by reminding the Chinese Government that it has already expressed interest in the OECD Guidelines. In September 2005, Chen Jian, the Assistant Minister of Commerce requested a dialogue with the OECD on government approaches to corporate responsibility in the light of the OECD Guidelines. This dialogue is underway and it may just be a matter of time before the Chinese Government formally adopts this instrument or develops a similar mechanism. But the problems of doing business in an acceptable way in Africa need to be urgently addressed. The Ministry of Commerce should consider other ways of making China's 'going abroad strategy' more effective by, for example, training its managers in international ethical standards for business and encouraging companies to engage in informal dialogue with NGOs. Failure to take action soon may exact a heavy price in terms of damage to the environment, strained relations with local communities and lost investment opportunities for Chinese companies.

² Richard McGregor, China defends its stance on Africa as summit nears, 27 October 2006, Financial Times

对中国在非洲的矿业公司的建议

本文旨在向中国公司，特别是那些在非洲从事采矿业的公司提出规劝，向它们反映公民社会对于开发非洲大陆丰富矿产的担忧。矿业公司的名声历来不佳：人们认为它们剥夺了农村地区的财富，污染了水资源，霸占了世袭的土地，残酷剥削廉价劳动力，成为粗暴侵犯人权行为的帮凶（如果不是主谋的话）。本文解释了《经济合作与发展组织跨国企业指导方针》的精神。这个《指导方针》是衡量西方企业在国外运营的标准文件之一。

“发展中的权利与责任组织”（Rights & Accountability in Development, 缩写为RAID, 以下均用英文缩写）认为，包括国有企业在内的中国公司应该考虑采纳类似的准则，因为这样做不仅有利于改善它们与所在非洲社区的关系，而且有助于向国际民主社会表明中国可以成为一个好的跨国企业界成员（global corporate citizen）。本文总结了RAID在刚果民主共和国和赞比亚得到的经验。在这两个国家，主要由于中国公司的业务发展，铜和钴的贸易非常兴旺。

过去的15年中，在非洲国家运营的西方跨国公司日益受到欧美非政府组织越来越严格的监督和批评。当前，在全球经济中外来直接投资达到创记录的水平，极大地增加了跨国公司对于发展中国家经济发展的影响力。许多穷国的政府把寻求外资视为发展经济的关键，千方百计鼓励外商投资。然而，这些国家几乎没有力量规范那些大公司的行为。

许多证据都表明：诸如石油和钻石这样利润丰厚的矿产品在非洲的各种冲突中起着重要作用。在争夺这些资源的竞争中，种族矛盾和其它纷争往往被政治化。暴力冲突一旦爆发，自然资源就成了提供资金的摇钱树。例如，对矿产资源的开采使刚果民主共和国最近的内战升级和延续，据估计这场战争已经使300-

400万人丧生。联合国专家小组和独立的人权领域非政府组织认为，若干总部设在经济合作与发展组织成员国的公司参与了这些非法开采活动，而采矿的利润则成为冲突持续的主要动因。

有鉴于此，如果中国公司认为西方国家（它们对中国的非洲政策深感怀疑）没有资格在道德问题上对中国指手画脚，这也是可以理解的。但是，如果那些期望成功的中国公司认为只要和非洲国家的政府与政治精英保持良好关系就足够了，从而忽视当地社区所关心的问题，那就是错误的，是一种短视行为。中国企业应该从西方公司所犯的的错误中汲取教训，避免重复这些错误。例如，在盛产石油的尼日尔三角洲，人民的愤怒主要是针对西方石油公司的，但是这种情绪也直接影响到中国企业。那里的年轻武装人员警告中国政府和公司远离三角洲。2006年4月，就在胡锦涛主席对尼日利亚进行国事访问并（与政府）签订石油协定后不久，武装分子在三角洲南部的瓦里市（Warri）引爆了一枚汽车炸弹。尼日尔三角洲解放运动（The Movement for the Emancipation of the Niger Delta，缩写为MEND）宣称这是对所有石油企业员工，特别是中国员工的警告。该运动的武装袭击活动已经使尼日利亚的石油出口减少了四分之一。

中国的非洲政策

若干年前，中国政府决定实施让国内企业“走出去”的战略。政府宣布了一系列政策鼓励企业，尤其是能源和矿产企业进军海外的政策。根据世界银行的估计数字，今天中国在非洲有8万工作人员。在过去10年期间，中非贸易额有了显著增长，从1995年的30亿美元增加到2005年的370亿美元。³

2006年1月中国政府发表了《中国的非洲政策》，该文件的主要目的是促进中非关系的稳定发展。中国的非洲政策以“和平共处五项原则”（互相尊重主权和领土完整、互不侵犯、互不干涉内政、平等互利与和平共处）为基础。在非洲政策的指

³ 世界银行：《非洲的丝绸之路：中国和印度的新经济领域》，华盛顿2006。

导下，中国将继续用提供优惠贷款和买方信贷等办法鼓励中国企业在非洲进行投资，特别是在资源经济领域进行投资。

与其它国家（例如印度）的企业相比，中国企业人员通常很少与非洲当地的社区发生直接联系。这种“围城”心态使他们很容易被误解甚至遭受敌意。在重要的中非首脑会议（中非发展与合作峰会于2006年11月1-6日在北京举行）前夕，中国商务部副部长魏建国驳斥了关于中国（在非洲）忽视环境和反腐败标准的批评意见。⁴

中国企业在赞比亚

根据设在卢萨卡的中国大使馆提供的信息，目前在赞比亚有7家中国矿业公司，总投资将近1.7亿美元。其中有一家位于铜矿带省（Copperbelt Province）的谦比希铜矿（Chambishi mine），它是中国在有色金属矿业领域的第一个海外矿山投资项目。1998年中国有色金属工业总公司以大约2000万美元购买了该矿，2003年7月矿山恢复生产，由中色非洲矿业有限公司（NFC Africa Mining Plc.）经营。

中国在赞比亚的其它矿业公司还包括“科罗姆煤炭工业公司”（Collum Coal Mining Industries Ltd），这是一个位于南部省（Southern Province）Choma地区的私人公司，2003年投产。此外，来自辽宁省的Chiman公司正在Kabwe开发一个锰矿。⁵

在赞比亚，尽管有这些投资，人们对中国企业的低工资和恶劣劳动条件的不满与日俱增。在过去的18个月里，一系列事件强化了对中国企业的负面印象。

Kitwe市BGRIMM 工厂爆炸事件

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Richard

McGregor:

《中国在峰会临近时为自己的非洲政策辩护》，《金融时报》2006年10月27日。

⁵ 新华社2005年7月消息。

2005年4月1日，设在赞比亚铜矿省矿山城市Kitwe的BGRIMM炸药（赞比亚）有限公司厂房发生爆炸，大约40人因此丧生。BGRIMM公司是北京矿冶研究总院和中色非洲矿业有限公司的合资企业，总投资760万美元。中色非洲矿业有限公司是谦比希铜矿的所有者，炸药工厂就坐落在该矿区内，是赞比亚铜矿业的主要炸药供应商之一。该工厂是中色非洲矿业有限公司的子公司，2003年10月投产，年设计生产能力为6000吨。

谦比希铜矿

《赞比亚时报》（*The Los Angeles Times*）曾经报道：在2006年7月底的时候，由于传闻中方管理层背弃提高工资的承诺，中色非洲矿业有限公司所属的谦比希铜矿（Chambishi）发生了有数百工人参与的骚乱。4名矿工被中方雇员击毙或击伤，另一名工人被警察打死。据说当中国员工看到（非洲）工人们向他们的居住地进军的时候，他们非常担心自己的生命安全。该矿山的管理人员现在正在计划赞助一些当地社区的事业，例如教育和防止艾滋病（HIV/AIDS）的传播。就像他们在“科罗姆煤矿”（Collum）工作的同行一样，这些中色非洲矿业有限公司的雇员也抱怨工作环境差，工资待遇低，安全生产措施废弛。⁶

这些事件有助于解释为什么萨塔（Michael Sata）在他未能获胜的总统竞选中强烈抨击中国企业。萨塔指责中国企业剥削赞比亚的工人，并扬言如果他竞选成功，就要把中资企业逐出赞比亚。在赞比亚的中国大使馆曾经声明说，如果萨塔当选，北京也许要与赞比亚断交。不过，中国的企业家们应该反思，怎样做才是与赞比亚人民和平相处的最好方式？可以肯定地说，如果中国政府和企业能够让他们在非洲的工厂和矿山实施最严格的安全与环境标准，或者采取必要的补救措施，那么这要比简单地发出威胁管用得多！

中国企业在刚果民主共和国

⁶ Robyn Dixon写的报道《非洲人强烈抨击中方雇员》，2006年10月6日。

2003年中国国务院新闻办公室发表了《中国的矿产资源政策白皮书》。白皮书强调了矿产资源对与中国在21世纪头20年建设小康社会的重要作用。白皮书指出：仅仅依靠开发中国自己的矿产资源是不够的，中国的矿山企业应该走向世界。白皮书强调，中国高度重视可持续发展和矿产资源的合理利用。

中国对于钴的需求已经从1997年的大约1000吨增加到2005年的9500吨。中国自己的钴矿储量非常有限。据估计，从2001年到2005年，中国进口的钴精矿粉或钴矿石有75% 到90%来自刚果民主共和国。⁷

至少有一部分钴是被走私运出刚果民主共和国的。在康坦加省（Katanga），越来越多的中国买主直接从刚果的中间人手中购买钴。这些交易大部分是非法的，涉及到使用童工和极度危险的工作条件。一些刚果的高层政治人物介入了钴的走私交易。在金沙萨的中国大使馆告诉英国非政府组织“全球了望”（Global Witness）说，“刚果的不安全局势使投资者望而却步，”在康坦加省（Katanga）只有“极少数中国商人活动”，他们完全是独立的个体经营者，矿产品的交易量也很少。⁸

然而非政府组织相信，中国政府在调查这些经营者和协助制止钴的非法交易方面可以做更多的事情。

根据RAID自己所做的研究，中国同金沙萨的朗·卡比拉政府签有若干秘密协定，这些协定涉及到并购刚果的国有矿业公司GECAMINES。这个矿业公司的资产在刚果的内战期间遭到多年劫掠。1997年，当来自康坦加省（Katanga）的朗·卡比拉执政时，他开始用矿产资源和其它好处与赞比亚和中国的盟友做交易，换取他们的军事支持。2001年朗·卡比拉被刺杀后，这些秘密协定的有效性基本上没有改变。现任刚果总统约瑟夫·卡比拉拥有几个矿业公司，其中一个名叫CICO。CICO是朗·卡比拉创办的NOUCO公司的替代者，它与GECAMINES公司组建了一家叫COMID E的合资企业，这家合资企业的业务是开采铜矿和钴矿。根据刚果矿产部的数据，

⁷ 钴发展研究所：《钴业消息》2006年1月。

⁸ 全球了望：《深挖腐败》（Digging in Corruption），2006年

该企业的年产量为1932吨铜和2520吨钴。据说这家公司的利润被用来购买中国军火企业北方工业公司（NORINCO）提供的武器装备。

FEZA矿业公司也向COMIDE公司提供钴，据说FEZA公司由总统家族的其他成员控制。刚果矿产部估计FEZA矿业公司每年从各个小规模矿山那里获得的钴有960吨。这些属于GECAMINES公司的矿产品一般通过赞比亚出口到中国。现在，这类所谓“战争合同”（war contracts）的合法性日益遭到质疑，国际社会关于清查这些协议的压力越来越大。人们希望新选出的刚果议会将依照刚果法律支持重新谈判或者取消这类矿业协议的动议。尽早地在正式法律基础上重新签订有关协议，对于中国的国际声望和中国公司来说都是好事。

经济合作与发展组织的《指导方针》

《经济合作与发展组织跨国企业指导方针》（以下简称《指导方针》）列出了一系列企业应该自愿遵守的社会责任条款。这个《指导方针》适用于所有经济合作与发展组织成员国的企业，无论这些企业在世界哪一个地方运营。这个文件还适用于那些接受该《指导方针》规范、但不是经济合作与发展组织成员国的国家，如巴西和智利。

外商直接投资（FDI）在全球经济中的空前增长，极大地增加了跨国公司对于发展中国家经济发展的影响力，所以有必要制定这个《指导方针》。

许多穷国的政府把寻求外商投资视为发展经济的关键，为营造吸引外资的环境不遗余力。然而，这种投资环境经常意味着对大公司监管不力，放任这些公司破坏环境、侵犯人权，使它们对当地或者所在国的发展贡献甚微。

在过去10年中，越来越多的辩论涉及到跨国公司对其所在社会的影响。不过，这种影响力主要是用自愿遵守的准则和标准衡量的。目前很流行的一个词语是“企

业的社会责任”（Corporate Social Responsibility，缩写为CSR），它特指企业为解决相关社会和环境影响而自愿采取的行动。《经济合作与发展组织跨国企业指导方针》是在这个领域一系列自愿遵守的准则、措施的一部分。

《指导方针》包括了关于良好企业行为的一整套建议。这个文件是经济合作与发展组织30个成员国的政府和9个非成员国政府共同同意的，所针对的企业是位于这些国家领土内、或者从这些国家领土内指导业务的企业。⁹由于《指导方针》得到该组织商业与工业咨询委员会（OECD Business and Industry Advisory Committee，缩写为BIAC）所代表的商界和该组织工会咨询委员会（TUAC - OECD）¹⁰所代表的工会支持，它具有很强的合法效力。

《指导方针》提供了与适用法律相一致的良好企业行为原则和标准。企业是在自愿基础上而不是法律规定的基础上遵守这个《指导方针》的。¹¹尽管《指导方针》对企业没有直接的约束力，但同意这个文件的各国政府要鼓励本国企业加以遵守。该文件还规定了执行程序，以便让有关国家的政府关注在本国注册的企业的违规行为。¹²

当违规行为发生的时候，跨国企业所在国家的政府有义务提出建议解决相关问题，这就使《指导方针》成为改进企业行为的有效工具。

经济合作与发展组织的《指导方针》如何发挥作用

⁹ 参见：《让跨国公司负起责任——运用经济合作与发展组织的指导方针保护工人权益》，英国职工大会2003年3月出版。经济合作与发展组织的成员国家是：澳大利亚、奥地利、比利时、加拿大、捷克共和国、丹麦、芬兰、法国、德国、希腊、匈牙利、冰岛、爱尔兰、意大利、日本、韩国、卢森堡、墨西哥、荷兰、新西兰、挪威、波兰、葡萄牙、斯洛伐克共和国、西班牙、瑞典、瑞士、土耳其、英国和美国。9个非成员国是：阿根廷、巴西、智利、爱沙尼亚、以色列、拉托维亚、立陶宛、罗马尼亚和斯洛文尼亚。

¹⁰ BIAC和TUAC是经济合作与发展组织在商业和劳工事务方面的咨询机构。

¹¹ 《经济合作与发展组织跨国企业指导方针》，概念和原则：第一部分。

¹² 《经济合作与发展组织跨国企业指导方针》，概念和原则：第二部分。

《经济合作与发展组织跨国企业指导方针》涉及到多个关键的业务领域，包括

:

- 信息公开
- 就业和劳资关系
- 环境
- 与贿赂作斗争
- 消费者权益
- 科学与技术
- 竞争与税务

《指导方针》中的有些条款还涉及到尊重人权和为可持续发展做出贡献，这些内容都散布在很宽泛的规定中。《指导方针》得到工商界代表组织和工会组织的支持，所以具有独特的合法性。

尽管《指导方针》对企业没有直接的约束力，但同意这个文件的各国政府要鼓励本国企业加以遵守，并且按照执行程序解决违规问题。每一个采纳《指导方针》的政府都要在本国建立国家联络处（**National Contact Point**，缩写为**NCP**），这个联络处要对工会、非政府组织或者个人所反映的任何企业不良行为做出反应。

国家联络处应该按照“可见性、可接触性、透明和责任”的标准运作。英国的国家联络处设在贸易与工业部（**the Department of Trade and Industry**）内，但外交部和国际发展部（**the Department for International Development**）也派代表参加。

国家联络处的作用是告知意向投资者什么是合适的企业行为，并向企业、雇员组织、非政府组织和公众宣传推广《指导方针》。¹³

国家联络处必须对任何企业的不良行为做出反应，其做法是运用“具体案例机制”。

具体案例机制要求政府设立一个论坛或者说提供讨论问题的场所，在这里投诉者可以直接向所在国的违规公司进行投诉。国家联络处应该对相关投诉进行初步评估。投诉方可以是工会组织、非政府组织或者个人。¹⁴

无论一个企业是否采纳《指导方针》，它的行为都会受到检验。

国家联络处在收到投诉后，应该联系相关的各个方面：工商业代表、员工代表、非政府组织、有关专家和其它国家的国家联络处。一旦立案，国家联络处应评估是否需要对这个案件做进一步的调查。¹⁵

如果国家联络处决定继续进行调查，它应该提供调停或者调解，协助有关各方解决问题。¹⁶若有关方面同意，则国家联络处可以在保密程序下提出调解方案。¹⁷如果各方未能达成协议，国家联络处需要就此案件发布公告，并向有关方面建议如何在本案例中应用《经济合作与发展组织跨国企业指导方针》。¹⁸

2006年7月，英国工商界代表和包括RAID在内的非政府组织代表组成了一个联合工作小组，这个小组的主席是曼斯勋爵（Lord Mance）。联合工作小组敦促英国政府改进英国国家联络处的工作。联合工作小组指出：一个依据《指导方针》建立的机制（例如经济合作与发展组织的程序）能在促进企业的负责行为方面发挥有效和适当的作用，只要这个方针能得到恰当的贯彻

¹³ 《经济合作与发展组织跨国企业指导方针》之《程序指南》：I. 国家联络处 B. 信息与推广 1 & 2。

¹⁴ 《经济合作与发展组织跨国企业指导方针》之《程序指南》：I. 国家联络处， C. 具体案例机制的落实。列举出的相关具体案例的各方包括工商业界、雇员组织和“其它方面”。所以整个程序对工会和非政府组织是开放的。文件的措辞也没有排除个人的投诉。

¹⁵ 《经济合作与发展组织跨国企业指导方针》之《程序指南》： C. 具体案例机制的落实，第1条。

¹⁶ 《经济合作与发展组织跨国企业指导方针》之《程序指南》： C. 具体案例机制的落实，第2条

¹⁷ 同上，第4 a 条。

¹⁸ 同上，第3条。

。为了提高利益相关各方的信心，这个机制必须是可信的、有效力的、公正的和及时的。它要依据规定的程序运行，并且能够排除那些恶意的、无理取闹的和无关紧要的投诉。这个程序应该帮助企业获得贯彻《指导方针》的清晰指南，并能够促进负责任的企业运营与投资行为。联合工作小组认为，经济合作与发展组织相关程序的重点应该是为各个方面提供协调和调解。但是，如果调解失败，国家联络处就应该依据对所获事实的评估对具体案例做出明确和合理的结论，说明被投诉的企业是否违反了《指导方针》，同时提出改进建议。

结论

中国政府已经表现出对《经济合作与发展组织跨国企业指导方针》的兴趣。2005年9月，中国商务部部长助理陈健要求就贯彻《指导方针》中涉及的政府对企业责任的作用展开对话。这一对话目前仍在进行，中国政府正式采纳《指导方针》或者形成类似机制只是时间问题。但是，现在迫切需要解决的问题是如何用非洲可以接受的方式在那里经商办企业。中国商务部应考虑其它更加有效的方式让企业“走出去”，例如对经理人员进行国际商务道德标准的培训，鼓励企业与非政府组织开展非正式对话等。如果不能迅速采取行动，那么对环境的破坏、与当地社区的紧张关系等就会让中国企业付出重大代价，失去投资机遇。

采矿是一项复杂和危险的工作。国家联络处（NCP）的机制提供了实现真正的促进与和解的服务。国家联络处邀请的专家可以帮助澄清企业与社区之间在某些采矿的技术性问题方面（环境、社会与财政）存在的误解。国家联络处也能够帮助建立分阶段实施的互信措施（**confidence building measures**），以便为企业和社区之间形成更具建设性、更和谐的关系打下基础。《指导方针》提供了解决冲突的方法，指出了企业与当地民众和平共处的途径。

与此同时，RAID相信，中国在赞比亚和刚果民主共和国的矿业公司如果能够开始采纳《指导方针》规范自己的行为，特别是与当地社区建立起更加公开透明的关系，那将符合中国企业的根本利益。信息公开是企业界的一个关键问题，因为透

明的政策会使企业对外界的意见负责。许多非洲国家已经决定加入“采矿业阳光计划”（Extractive Industries Transparency Initiative, 缩写为EITI）。这个计划和非政府组织发起的“公布你的支付信息”（Publish What You Pay）运动将不可避免地迫使中国企业公开更多与环境 and 财务有关的信息。同这些国际性的计划合作与中国的非洲政策的目的是是一致的，这有助于打击腐败。从最终意义上来说，一个成功的全球化中国企业战略将依赖中国工商业的领袖们认识和适应社会期望值的能力。

这篇简要的论文也许能够引起其他领域企业的兴趣。但我们希望它能够通过中国政府设在赞比亚、科特迪瓦和其它非洲国家的投资贸易中心散发，以便为中资机构提供相关的商业咨询服务。

(2006年11月)

背景资料：关于RAID

RAID（“发展中的权利与责任组织”Rights & Accountability in Development, 缩写为RAID）成立于1997年。在2003年之前，其所有的研究工作和宣传造势活动都由牛津大学伊丽莎白女王大厦的难民研究所（the Refugee Studies Centre, Queen Elizabeth House, University of Oxford）主管。目前RAID与牛津大学的关系仍然密切，RAID的执行主任Patricia Feeney女士是伊丽莎白女王大厦的研究员，并任教于难民研究中心。2003年9月，依据《1985年公司法》和《1989年公司法》RAID注册为一个私人非营利有限责任公司。若要了解该组织的更多情况可以登录其网站：www.raid-uk.org。

另外，RAID是一个国际性网络OECD Watch的协调机构。这个国际性网络的使命是促进负责任的企业行为和贯彻落实《经济合作与发展组织跨国企业指导方针》。有关这个国际性网络的情况可以登录网站www.oecdwatch.org。

(译者：牛津大学中国访问学者 徐彤武)

Advice to Chinese Companies Operating in the Mining Sector in Africa

This paper is intended to advise Chinese companies, particularly those involved in mining, about the concerns of civil society over the way in which the continent's abundant natural resources are being exploited. Historically mining companies have had a poor reputation. They have been seen as despoilers of the countryside, polluters of water sources, usurpers of ancestral lands, exploiters of cheap labour and accomplices to, if not instigators of, gross human rights abuses. The paper sets out to explain the OECD Guidelines for Multinational Enterprises, which is one of the standards that is being used to measure the performance of Western companies when they operate outside of their home countries. RAID argues that Chinese companies, including state-owned enterprises, should consider adopting a similar instrument, which RAID believes will not only help them improve their relations with local communities but also demonstrate to international civil society that China can be a good, global corporate citizen. The paper draws on RAID's experience of working in Democratic Republic of the Congo and Zambia where the trade in copper and cobalt is booming, largely as a result of Chinese expansion.

Over the past 15 years or so western multinational enterprises operating in African countries have been subjected to ever closer scrutiny and criticism, much of it from NGOs based in Europe and North America. Foreign direct investment in the global economy has now reached unprecedented levels, dramatically increasing the influence of multinational companies on the development prospects of developing countries. Many governments of poor countries see foreign capital as key to economic growth and actively encourage foreign investment. However, few such countries have the power to enforce corporate regulation.

Lucrative minerals such as oil and diamonds have played a central and well-documented role in many African conflicts. Ethnic and other divisions can become politicised in the competition for these resources. Natural resources can also provide a means of funding violent conflicts once they have begun. For example, resource exploitation exacerbated and prolonged the recent war in the Democratic Republic of the Congo (DR Congo), which is now estimated to have cost between three to four million lives. Reports by a UN Panel of Experts and independent studies by human rights NGOs concluded that a number of companies headquartered in OECD countries were complicit in this illegal exploitation, the profits of which became a primary motive for continued conflict.

In view of this, it is understandable that Chinese companies may feel that the West, which regards the Chinese approach to Africa with deep suspicion, does not have the moral authority to lecture them. But it would be a mistake for Chinese companies that want to be successful to think that it is sufficient to maintain good relations with African governments and political elites and to ignore the concerns of the local communities. That would be short sighted: Chinese companies should learn from the mistakes that Western companies have made and avoid repeating them. The anger of the people of the Niger Delta, for example, at the activities of mainly Western oil companies, is impinging directly on Chinese operators. Nigeria's militant youths in the oil-rich Niger Delta warned the Chinese government and its oil companies to steer well clear of the Niger Delta. In April 2006, militants detonated a car bomb near an oil refinery in the city of Warri in the southern oil-producing Niger Delta, shortly after President Hu Jintao signed oil deals with Nigeria during a state visit. The Movement for the Emancipation of the Niger Delta (MEND), whose attacks have

cut Nigerian oil exports by a quarter, said the bombing was a warning to all people working in the oil industry and particularly to China.

China's Africa Policy

Several years ago the Chinese government announced 'a going-abroad strategy' which was a series of policies to encourage domestic businesses, particularly oil and mining, to venture out into other parts of the world. Today, according to the World Bank, there are an estimated 80, 000 migrant Chinese workers in Africa. Over the past 10 years, trade between China and Africa has greatly increased from \$ 3billion in 1995 to over \$37 billion in 2005.¹⁹

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.

Chinese businessmen tend to have less direct contact with African communities than, for example, their Indian competitors. This enclave mentality can make them vulnerable to misunderstandings and even hostility. Just before the important Africa Summit (the China-Africa Summit for Development and Cooperation, which took place in Beijing on 1 to 6 November 2006), Wei Jianguo, a Vice-Minister for Commerce rejected criticism that China is ignoring environmental and anti-corruption standards.²⁰

Chinese Companies Operating in Zambia

According to the Chinese Embassy in Lusaka there are currently seven Chinese companies engaged in mining industry in Zambia, with a total investment of nearly 170 million US dollars. Among them is the Chambishi copper mine in the Copperbelt Province. Chambishi is the first ever overseas investment in non-ferrous metal mining by Chinese companies. The mine was bought by China Non-Ferrous Metal Industries Corporation in 1998 at about 20 million dollars reopened in July 2003. The mine is operated by NFC Africa Mining Plc. Other Chinese companies in Zambia include, Collum Coal Mining Industries Ltd a private firm based in Choma, Southern Province, which started production in 2003 and Chiman, a private firm from China's Liaoning Province, which is developing a manganese mine in Kabwe.²¹ But in Zambia, despite these investments, there is growing unhappiness over low wages and poor conditions in Chinese operations. Over the past eighteen months a series of incidents have contributed to a negative view of Chinese companies.

¹⁹ World Bank, Africa's Silk Road: China and India's New Economic Frontier, Washington 2006

²⁰ Richard McGregor, "China defends its stance on Africa as summit nears", Financial Times, 27 October 2006

²¹ Source: Xinhua July 2005

BGRIMM Factory Explosion, Kitwe

In April 2005, about 40 people were killed when the BGRIMM Explosives (Zambia) Ltd factory exploded in Kitwe, a mining city in Zambia's Copperbelt province. BGRIMM is a 7.6-million-US-dollar joint venture by the Beijing General Research Institute of Mining and Metallurgy and NFC Africa Mining Company. NFC Africa is the owner of the Chambezi copper mine, where the explosive factory is located. The BGRIMM Explosives factory, located on the premises of the Chambishi mine, is a major supplier of explosives to Zambia's copper mines. The factory, which is a subsidiary of the Chinese-owned NFC Africa Mining Company, has been operating since October 2003 and has the capacity to produce 6,000 metric tons of explosives a year.

Chambishi Copper Mine

The Los Angeles Times reported how at the end of July 2006 hundreds of workers rioted at the NFC Africa copper mine in Chambishi over reports that the management was renegeing on a pay increase. Four workers were shot and wounded by Chinese employees of the company. Another was shot by police. Chinese mine employees were allegedly frightened for their lives when the workers marched on their residential compound. **The mine's managers are now planning to contribute money to community projects such as education and HIV/AIDS prevention.** Like their counterparts at the Collum mine, the NFC workers have complained about poor working conditions, low pay and lax safety standards.²²

These events help explain the sharp criticisms of Chinese companies voiced by Michael Sata, during his unsuccessful presidential campaign. He accused Chinese companies of exploiting Zambian workers and threatened to expel Chinese companies from the country if he won the election. China's embassy in Zambia issued a warning that Beijing might sever ties to Zambia if Sata won. But Chinese businessmen need to reflect whether this is this best way to achieve peaceful coexistence with the Zambian population? Surely it would be more productive for the Chinese authorities and the company to demonstrate that the operations of its factories and mines comply with the highest possible safety and environmental standards or to take remedial action if necessary rather than to issue threats?

China and the Democratic Republic of the Congo

In 2003 the Office of the State Council issued a white paper outlining China's Policy on Mineral Resources which highlighted the importance of mineral resources to the Government's ambition of building a prosperous society in the first 20 years of the 21st century. But the paper pointed out that it would no longer be sufficient to exploit China's own mineral resources Chinese mining enterprises would also have to enter other countries. [China's Policy on Mineral resources http://english.people.com.cn/200312/23/print20031223_131048]

The Policy stresses the importance China attaches to sustainable development and the rational utilization of mineral resources. Chinese demand for cobalt has grown from around 1000 tonnes per year in 1997 to 9500 tonnes per year in 2005. China's own cobalt reserves are very limited. Between 2001 and 2005, an estimated 75% to 90% of concentrates and ores that were imported into china originated in the DRC. [Cobalt News, Cobalt Development Institute, January 2006]

²² "Africans Lash Out at Chinese Employers", Robyn Dixon, LA Times. October 6, 2006

At least some of the cobalt is believed to have been smuggled out of the DRC. There are increasing numbers of Chinese traders on the ground in Katanga buying ore directly from Congolese middlemen. Much of this trade is illegal, involves child labour and the working conditions are extremely dangerous. High-ranking Congolese political figures are implicated in cobalt smuggling. The Chinese embassy in Kinshasa told the British NGO, Global Witness, that 'insecurity in the DRC was discouraging investment' and that only a relatively small number of Chinese individuals were operating in Katanga, who were completely independent and dealing with small amounts of minerals. [Global Witness, Digging in Corruption, 2006] But NGOs believe that more could be done by the Chinese authorities to investigate these traders and to help clamp down on the illegal cobalt trade.

According to Raid's own research China made a number of secret mining agreements with the Kinshasa Government of Laurent Kabila, which involves the acquisition of minerals belonging to GECAMINES, the Congo's state owned mining company. Gecamines' assets have been plundered for years. In 1997 when Laurent Desire Kabila, who was from Katanga, came to power he inaugurated a system of exchanging mining and other concessions to compensate his Zimbabwean and Chinese allies for their military support. After Laurent Kabila's assassination in 2001, the status of these agreements with China appears to have been largely unchanged. The current Congolese President, Joseph Kabila, allegedly owns several mining companies, one of which is called CICO. CICO formed a joint venture with Gecamines called COMIDE for the exploitation of copper and cobalt. According to information from the Congolese Ministry of Mines annual production is 1932 tonnes of copper and 2520 tonnes of cobalt.

Revenue from this joint venture is allegedly used to pay for the delivery of arms by the Chinese ordnance company, NORINCO. Cobalt is supplied to COMIDE by another company, FEZA Mining, which is controlled by a member of the President's family. FEZA supplies an additional 960 tonnes of cobalt (annually) which it obtains from small scale miners. The minerals which belong to Gecamines are then exported, usually via Zambia, to China. These "war contracts" are under increasing scrutiny by the international community. It is hoped that the newly elected Congolese parliament will support calls for a renegotiation or cancellation of mining contracts that are not in compliance with Congolese law. It would be better for the international reputation of China and Chinese companies to try to place all such contracts onto a formal legal basis as quickly as possible.

The OECD Guidelines

The OECD Guidelines for Multinational Enterprises set out a broad range of voluntary, socially responsible business principles for companies to follow. The guidelines apply to companies based in any OECD country irrespective of where in the world those companies operate. The guidelines also apply to companies based in non-OECD countries that have signed up to them. Among the non-OECD countries that have adopted the Guidelines are Brazil, Chile and the Czech Republic.

As foreign direct investment (FDI) in the global economy has reached unprecedented levels, the influence of multinationals on the development prospects of developing countries has increased dramatically – necessitating the guidelines. Governments of many poor countries consider foreign capital as key to economic growth and often go out of their way to create an environment that attracts foreign investors. Such an environment frequently involves weakly enforced corporate regulation, which lets companies get away with causing environmental degradation, abusing human rights and providing little benefit to local or national development.

The debate about companies' impacts on the societies in which they operate has evolved significantly over the last decade. However these impacts are measured largely in terms of voluntary initiatives and the popular term 'Corporate Social Responsibility (CSR) refers specifically to the *voluntary* actions of companies to address their social and environmental impacts. The Guidelines are part of the compendium of voluntary codes and initiatives which exist to provide a set of standards to guide companies in this area.

The OECD guidelines are a series of recommendations for good corporate behaviour made by the governments of the 30 industrialised countries of the OECD, and nine non-member adhering countries to the multinational companies that operate in and from their territories.²³ They have been endorsed by business, who are represented through the OECD's Business and Industry Advisory Committee (BIAC), and trade unions through the Trade Union Advisory Committee (TUAC),²⁴ giving them a high degree of legitimacy.

The guidelines provide principles and standards of good practice consistent with applicable laws. Observance of the Guidelines by enterprises is voluntary and not legally enforceable.²⁵ While they are not directly binding on companies, adhering governments are expected to promote them and they include a procedure for bringing alleged violations to the attention of the governments of the countries where the businesses are registered²⁶.

Where breaches occur, governments are obliged to make recommendations to address corporate conduct of multinational companies operating in or from their territories – making the guidelines a potentially useful tool for improving corporate behaviour.

How the OECD guidelines work

The Guidelines relate to key business operations, including:

- information disclosure
- employment and industrial relations
- the environment
- bribery
- consumer interests
- science and technology
- competition and taxation.

There are also provisions requiring respect for human rights and a contribution to sustainable development, though these are couched in very general terms. The guidelines have been endorsed by business umbrella organisations and trade unions, giving them unique legitimacy.

Although the guidelines are not directly binding on companies, adhering governments are expected to promote them and to follow procedures for resolving alleged violations. **Each country has a National Contact Point (NCP) to respond to any allegations of company misconduct raised by trade unions, NGOs or individuals.**

²³ Holding Multinationals to account – using OECD Guidelines to protect workers' interests, TUC, March 2003. The member countries of the OECD are Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, the UK, and the US. Nine non-member countries – Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania, Romania and Slovenia – have also declared their adherence to the guidelines.

²⁴ BIAC and TUAC are the advisory committees to the OECD of business and labour federations.

²⁵ The OECD Guidelines for Multinational Enterprises, Concepts and Principles, section one

²⁶ See The OECD Guidelines for Multinational Enterprises, Concepts and Principles, section 2.

NCPs must operate with ‘visibility, accessibility, transparency and accountability’. In the UK NCP operates from the Department of Trade and Industry (DTI) but includes representatives from the Foreign Office and the Department for International Development. The role of NCP is to inform prospective investors about the guidelines ‘as appropriate’, as well as promoting them to businesses, employee organisations, non-governmental organisations and the general public.²⁷ NCPs must also respond to any allegations of company misconduct. Allegations of misconduct are then dealt with using the ‘specific instance’ mechanism described below.

The ‘specific instance mechanism’ requires governments to establish a forum where complaints can be lodged directly against companies that operate in or from those countries and that violate the guidelines. NCPs are required to examine such complaints. Complainants can include trade unions, NGOs and individuals.²⁸ A company may find its operations examined – whether or not it has endorsed the guidelines.

When they receive a complaint, NCPs are expected to liaise where appropriate with businesses, employee representatives, NGOs, relevant experts and NCPs from other countries. Once a complaint is submitted, the NCP makes a prima facie assessment of whether it merits further investigation.²⁹

If an NCP decides to proceed, it plays a mediation role, bringing the parties together to resolve the issue.³⁰ Provided the parties agree to this process, the NCP then offers to mediate during what is a confidential procedure.³¹ If the parties fail to reach agreement, the NCP releases a statement and makes recommendations on how the guidelines should be implemented.³²

In July 2006, a Joint Working Group (JWG) that included representatives of British business and NGOs (including RAID) under the Chairmanship of Lord Mance urged the UK Government to improve the way the NCP operated. The JWG pointed out that a guidelines-based mechanism like the OECD process has the potential to play a useful and appropriate role in underpinning responsible corporate conduct, so long as it is properly implemented. In particular, to command the confidence of stakeholders, it must be credible, effective, fair, and timely, operating in accordance with due process and with proper safeguards against malicious, vexatious or insubstantial complaints. The process should aim to assist companies in need of clarity and guidance on the application of the Guidelines, and to be a tool to facilitate responsible business operations and investment. The JWG agreed that the primary focus of the OECD process should be on mediation between the parties. Nevertheless, if mediation is unsuccessful the NCP should reach a clear and reasoned finding on the substance of allegations and whether they represent a breach of the Guidelines, based on an assessment of the available facts, and offer practical recommendations to help improve compliance.

Conclusion

²⁷ Procedural Guidance, op cit, I. National Contact Points, B. Information and Promotion, 1 & 2.

²⁸ Procedural Guidance, op cit, I. National Contact Points, C. Implementation in Specific Instances. Parties to a specific instance are listed as the business community, employee organisations and ‘other parties’. Hence the process is open to unions and NGOs. The wording does not rule out submissions from individuals.

²⁹ Procedural Guidance, C. Implementation in Specific Instances, 1.

³⁰ Procedural Guidance, C. Implementation in Specific Instances, 2.

³¹ Ibid, 4(a).

³² Ibid, 3.

The Chinese Government itself has already expressed interest in the OECD Guidelines. In September 2005, Chen Jian, the Assistant Minister of Commerce requested a dialogue with the OECD on government approaches to corporate responsibility in the light of the OECD Guidelines. This dialogue is underway and it may just be a matter of time before the Chinese Government formally adopts this instrument or develops a similar mechanism. But the problems of doing business in an acceptable way in Africa need to be urgently addressed. The Ministry of Commerce should consider other ways of making China's 'going abroad strategy' more effective by, for example, training its managers in international ethical standards for business and encouraging companies to engage in informal dialogue with NGOs. Failure to take action soon may exact a heavy price in terms of damage to the environment, strained relations with local communities and lost investment opportunities for Chinese companies.

Mining is a complex and hazardous activity. The NCP mechanism holds out the prospect of a genuine facilitation and reconciliation service. The NCP by bringing in outside experts can help clarify misunderstandings between a community and a company about some of the more technical aspects (environmental, social and financial) of mining. The NCP can also help instigate phased confidence building measures which can lay down the foundations for a more constructive and harmonious relationship. By offering a means of resolving conflict, the Guidelines can be the path for peaceful local coexistence.

Meanwhile, RAID believes that it would be in the interests of Chinese companies operating in the mining industry in African countries like Zambia and the Democratic Republic of the Congo to begin adapting their conduct to the provisions of the OECD Guidelines, in particular as regards developing a more open relationship between the company and local communities. Disclosure of information is a key aspect of corporate citizenship since the disclosure policies render the firm accountable to outside assessment. The decision of many African countries to join in the Extractive Industries Transparency Initiative (EITI) and the related NGO campaign, Publish What You Pay, will inevitably put pressure on Chinese companies to release more financial and environmental information. Cooperating in such international initiatives is consistent with the aim of China's Africa Policy to help combat corruption. Ultimately a successful global Chinese business strategy will depend on the ability of Chinese business leaders to recognise and adapt to society's expectations.

We hope that this briefing paper, which may be of interest to companies operating in other sectors, could be disseminated through the Chinese Government centres for investment and trade promotion that exist in Zambia, Cote d'Ivoire and other African countries to provide business consultation services to Chinese enterprises.

End Note: About RAID

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. Patricia Feeney, its Executive Director, is a research affiliate of Queen Elizabeth House, and teaches for the Refugee Studies Centre. 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.

RAID coordinates the international network OECD Watch which promotes responsible corporate behaviour and the OECD Guidelines for Multinational Enterprises. More information is available at: www.oecdwatch.org