

CSR practice in the DRC's mining sector by Chinese firms

Johanna Jansson

Two distinctly different kinds of Chinese activities occur in the mining sector of the Democratic Republic of Congo (DRC): state-led, large-scale investment financed by China Export-Import (EXIM) Bank; and private investment in mineral processing, trading and, to an extent, mining.¹ While the minerals that interest the various Chinese actors are mostly located in the DRC's mineral-rich south-eastern Katanga province,² the nature of Chinese engagement differs greatly between the two categories. This policy brief seeks to outline these two strands of engagement and to discuss the different Chinese actors' commitment to corporate social responsibility (CSR). The questions that this policy brief seeks to answer are:

- To what extent are Chinese firms active in the DRC's mining sector committed to initiating and completing CSR activities?
- What are the implications of this for the sustainable development of the DRC's Katanga province?
- What measures can be undertaken to improve the situation?

Defining CSR

The current Congolese legal framework requires companies investing in the country to initiate and fulfil CSR activities. Article 69:g of the Congolese mining code requires that, in order for an investor to apply for an exploitation licence, the investor has to submit “[a] plan as to how the project will contribute to the development of the surrounding communities.”³ The legal framework is thus in place, however, general

implementation of the Congolese legal framework is weak and the legislation on CSR is no exception.

Thus, in a country such as the DRC where public functions to distribute the welfare generated by tax income have largely broken down after decades of mismanagement and neglect, where poverty is rife, governance weak and workers therefore vulnerable to abuse,⁴ there is no doubt that any corporate entity has a moral obligation to engage in “actions that appear to further [...]

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social good, beyond the interests of the firm and that which is required by law.”⁵

For this brief, CSR is defined as corporate entities engaging in activities aiming to further “governance, environmental management, stakeholder engagement, labour standards, employee and community relations [...]”⁶

State-led Chinese investment: the Sicomines barter deal

In terms of state-led, large-scale investment financed by concessional finance provided by EXIM Bank, there has been one major agreement: the Sicomines barter deal, signed on 22 April 2008. The value of the agreement was initially announced to be US\$ 9 billion, however, after the revisions made in August 2009, the agreement will now bring the DRC US\$ 6 billion worth of transport-, social- and mining infrastructure. In exchange, Sicomines, a 32/68 joint venture between the Congolese mining parastatal Gécamines and a Chinese consortium comprising China Railway Engineering Corporation (CREC) and Sinohydro, has been allocated mining concessions in Katanga province encompassing 10.6 million tons of copper and 626,619 tons of cobalt.⁷ However, it is anticipated that extractive activities at the allocated concessions will commence only in 2013, and it is, therefore, not yet possible to evaluate Sicomines’ CSR practices in terms of its mining activities.⁸ As a result, this brief’s analysis focuses on the existing private Chinese entities operating in the DRC’s Katanga province.

Private Chinese investment: mineral processing and trading

There is a great deal of private smaller-scale Chinese investment in the DRC’s mining sector. Generally, they not receive support from the Chinese government or from Chinese policy banks, a reality which stands in sharp contrast to the general perception of Chinese companies operating in Africa.⁹

Prior to the global economic downturn, a total of around 5,000 Chinese entrepreneurs and workers resided in Lubumbashi, capital of Katanga province, as well as in neighbouring Likasi and Kolwezi. The vast majority of these private actors operated processing plants for copper and cobalt, or *comptoirs*, trading houses where Chinese entrepreneurs acted as brokers, purchasing ore from Congolese middle men and selling it on to

Chinese-owned and other processing plants. While the exact number of processing companies ran by Chinese nationals at the time is not known, estimations range up to 70 companies.¹⁰

The global economic downturn proved these Chinese operations to be highly economically vulnerable. In December 2008, merely five of the Chinese processing companies in the Katanga province were still operating. Currently, only around 1,000 or fewer Chinese nationals remain in Lubumbashi. Operations have, however, slowly begun to recover, with several Chinese processing plants resuming operations on a small scale.¹¹

Katanga province is known to be a challenging environment to live and operate in. Among the local Congolese communities and the expatriate Chinese working in Lubumbashi, Likasi and Kolwezi, a pattern which could be described as ‘parallel victim mentalities’ has been identified. On the one hand, the Chinese community perceive that they as economic actors are highly vulnerable in the opaque Congolese operating environment. Many of the Chinese entrepreneurs in Katanga’s mining sector have argued that they are subject to a great deal of harassment from corrupt Congolese government representatives and to abuse from local criminal elements.¹² On the other hand, the Chinese private companies operating in Katanga are often perceived by the local population as ‘rough capitalists’ who exploit their Congolese employees. The latter perception is discussed in the following section.

CSR practice of Chinese firms in the DRC’s mining sector

Chinese-owned firms operating in Katanga employ both local Congolese workers and expatriate Chinese workers. Working conditions differ between the two groups, as the Chinese workers are generally paid more and provided with accommodation. It has been noted that “[e]ven if, by Western standards, the conditions for Chinese expatriate staff are tough, they are distinctly superior to those of the Congolese workers.”¹³ Working conditions for the latter are often perceived as substandard. In a survey carried out in 2008 and 2009 by the NGO Rights & Accountability in Development (RAID), examining primarily remuneration, job security, freedom of association, health, safety, and social benefits, “[o]nly a few respondents had anything positive to say about conditions in Chinese companies.”¹⁴ This finding is supported by field research carried out by the Congolese NGO *Action Contre l’Impunité pour les*

Droits Humains (Action against impunity for human rights, ACIDH).¹⁵

Direct criminal acts committed by Chinese employers on Congolese workers have also been reported, such as physical abuse of Congolese workers at the hands of representatives for the Chinese companies and the non-payment of hospital bills of Congolese workers having sustained injuries at work.¹⁶ In the first half of 2008, 15 of 22 complaints lodged with the Congolese NGO ACIDH pertained to Chinese companies and largely regarded issues such as workplace accidents, outstanding indemnities for injured workers, and illegal retrenchments of workers involved in trade union activities.¹⁷ Moreover, child labour is an issue in terms of which much criticism has been directed towards Chinese companies, as the latter purchase ore from groups of artisanal miners often including children.¹⁸

In terms of environmental management, no particular initiative has been noted on the side of the Chinese companies. Whereas comprehensive data is not yet available on this matter, it has been suggested that the Chinese firms operating in the DRC's mining sector have neither completed the required environmental impact assessments, nor the mandatory environmental management plans for mining projects, as stipulated in article 15 of the Congolese mining code.¹⁹ It has further been suggested that Chinese companies do not respect regulatory requirements pertaining to the storage, transport and sales of mineral products.²⁰

In terms of governance, it has been noted that in the complex environment of Katanga, "Chinese companies are both the beneficiaries and victims of this system."²¹ While Chinese company representatives have expressed their despair at the harassment directed against them by corrupt local government officials, discontent has also been expressed by Congolese workers and civil society representatives over Chinese company representatives' habit of paying bribes to 'get out of situations,' since this is seen to exacerbate the problem. RAID notes that "Congolese workers spoke about complicity between the Congolese authorities and Chinese companies, and denounced the widespread practice among Chinese managers of bribing labour inspection agents, security services and members of the judiciary as a means of settling labour disputes to their own advantage."²²

Language barriers are widely identified as a challenge in terms of the Chinese companies' relations with their Congolese employees and local community stakeholders at large. Residential segregation and communication problems are found to be mutually reinforcing factors in this

regard. Chinese workers and managers do not feel safe in the Congolese environment and, therefore, hardly leave the compound where they are accommodated, which means that they have limited exposure to local languages and culture.²³ Moreover, Chinese company representatives are often perceived as highly unwilling to engage in dialogue with Congolese stakeholders such as trade union- and community representatives.²⁴ This is probably a result of four main factors: language barriers, cultural differences, experience of corrupt practices among Congolese government representatives making the Chinese stakeholders wary of unnecessary engagement, and attempts to avoid the costly implementation of improvement of working conditions and other CSR initiatives.

Discussion

A notion often echoed in discussions around CSR and Chinese companies' activities in Africa is that 'it is not reasonable to expect that Chinese companies should come to Africa and start implementing better standards than they are used to from home.' While such claims have no moral legitimacy - commercial actors cannot be exonerated from the consequences of their actions - the notion definitely holds explanatory power in terms of the CSR performance of Chinese operations in the DRC's mining sector.

Representatives from the Chinese companies in question, particularly the larger operations, have stated in interviews that they indeed seek to respect local Congolese labour- and other regulations as best as they can given the opaque operating environment.²⁵ However, engaging in CSR activities may not be perceived as a necessity by Chinese company owners and managers. It has been noted that "[u]nlike their Western counterparts, many Chinese managers arriving in the Congo are used to witnessing the hardships of migrant workers in China's cities [...]. [T]hey appear to take a fatalistic view of the problems in Katanga, which may in part explain why they do not take action themselves to prevent abuses [...]."²⁶ Indeed, Chinese company representatives interviewed have argued that they do not see the need to invest in local communities "because it is unlikely that any additional revenue would be used to rehabilitate Congo's dilapidated infrastructure."²⁷

Thus, part of the reason why CSR performance is poor in many of the Chinese operations in Katanga is probably that the Chinese owners and managers simply do not see the need to further improve working conditions or contribute to

community development. This being said, they are most certainly aware that local legal requirements have to be fulfilled. The given outlined evidence shows that legal obligations are commonly overlooked, and it is, therefore, apparent that intentional neglect also plays a role here. Such acts are more likely to occur in an environment such as the DRC where law enforcement is generally poor, and the deliberate disregard by corporate entities of their responsibilities towards their employees, the local community and the environment is not often followed up with legal action.

When seeking to understand and counter this challenge, it is imperative to deconstruct and contextualise the notion 'Chinese.' It should be born in mind that the Chinese companies responsible for the actions outlined here are not Chinese state-owned enterprises (SOEs). Instead, the Chinese firms in question are private commercial actors with little or no connection to, or support from the Chinese government and the Chinese Embassy in Kinshasa.²⁸ It can also be noted that there are differences within the group of Chinese companies operating in Katanga. Medium and large Chinese companies with a long-term strategy for their presence in the DRC are more likely to be open to CSR issues, whilst micro- and small sized companies, not intending to establish sustainable operations, seem to be more inclined to set things up quickly and at the lowest possible cost.²⁹

Conclusion

This policy brief paints a picture of Chinese-owned corporate entities that, far from initiating and completing CSR activities, barely fulfil the legal requirements imposed by the Congolese host government. It can, therefore, be concluded that CSR performance of Chinese companies currently active in the DRC's mining sector is, according to the data available at present, not satisfactory. If these practices continue unchanged, the private Chinese investments in question are not likely to contribute to sustainable development of the DRC's mineral-rich Katanga province.

While it must be recognised that the governance situation in Katanga is challenging for investors and difficult for foreign actors to change, it is also important to acknowledge the role that overseas companies play in terms of perpetuating such patterns. Efforts from both Chinese and Congolese stakeholders will, therefore, be needed in order to come to terms with the situation.

Notably, the Chinese Embassy in Kinshasa should become more active as a liaison between

Congolese local government representatives and the Chinese companies in question. In order to safeguard China's standing as a responsible international actor, it should be in the Chinese government's interest to engage with the Chinese expatriate business community in the DRC to address concerns raised by the local population and local civil society.

It is also imperative to improve communication on a local level between Congolese and Chinese stakeholders. For example, Congolese graduates from Chinese universities could, upon graduation, be engaged by Congolese authorities as well as Congolese and international civil society organisations to bridge the language barrier and engage with Chinese company representatives on issues of CSR. The recently established Chinese Chamber of Commerce in Lubumbashi could be an appropriate starting point in terms of such engagement.³⁰

Most important, however, is to improve the adherence to local Congolese legal frameworks among both Congolese local government representatives and Chinese economic actors. While it is acknowledged that this is easier said than done in this context, the corrupt practices outlined in this brief must cease to benefit the wellbeing of the local population.

Notes and References

- 1 In terms of mining, a number of micro-, small- and medium sized Chinese companies have exploration licenses in the DRC, mainly in the south-eastern Katanga province, but also in the eastern North and South Kivu provinces. This often takes place in joint ventures with Congolese business actors that hold mining licenses but lack the resources to carry out exploitation. The majority of these operations have not yet initiated extractive activities and are still in exploration phases. The activities of these Chinese actors are not discussed in this brief, given that there is no data available on their CSR practices. The number of Chinese entrepreneurs active in such mining ventures is not certain, but estimations range up to 20. Refer to La Nouvelle Dynamique Syndicale (2008), 'Sociétés partenaires de la Gécamines dans l'exploitation des domaines miniers.' Accessed 30.07.2008 from http://www.ndsrdc.cd/v1/images/stories/pdf/cartographie_des_entreprises_extractives.pdf. Refer also to:
 - Jansson, Johanna; Burke, Christopher and Jiang, Wenran (2009). 'Chinese Companies in the Extractive Industries of Gabon & the DRC: Perceptions of Transparency,' August; Centre for Chinese Studies, Stellenbosch University. Pp 24–43. Available on http://www.ccs.org.za/wp-content/uploads/2009/11/Chinese_Companies_in_the_Extractive_Industries_of_Gabon_and_the_DRC._CCS_report_August_2009.pdf.
 - Rights & Accountability in Development (RAID) (2009), 'Chinese Mining Operations in Katanga Democratic Republic of Congo,' September 2009. Available on www.raid-uk.org.
- 2 Chinese actors are also active in other mineral-rich parts of the DRC, such as the North and South Kivu provinces, where

- a number of businessmen of Chinese nationality run *comptoirs* (trading and exporting companies that buy minerals from middle men and sell onto the market). However, given a current lack of data on CSR practices of Chinese actors active in these provinces, this policy brief focuses on Katanga province.
- 3 Law no. 007/2002 of July 11, 2002 relating to the Mining Code. Page 33. Available on http://www.miningcongo.cd/codeminier/codeminier_eng.pdf.
 - 4 See, for example, Carayannis, Tatiana (2003), 'The complex wars of the Congo: towards a new analytic approach' in *Journal of Asian and African Studies*, August, p. 232; Rotberg, Robert I. (2002), 'The New Nature of Nation State Failure' in *The Washington Quarterly*, Volume 25, Issue 3, page 93f; Schatzberg, Michael G. (1997), 'Beyond Mobutu: Kabila and the Congo' in *Journal of Democracy* 8.4, pp 70–84.
 - 5 McWilliams, Abigail; Siegel, Donald S. and Wright, Patrick M. (2006), 'Corporate Social Responsibility: Strategic Implications' in *Journal of Management Studies*, Issue 43:1, January, page 1.
 - 6 CSR Network (2008), 'What is CSR?' Accessed 12.12.2008 from <http://www.csrnetwork.com/csr.asp>.
 - 7 For detailed information on the agreement and the debate surrounding it, please refer to:
 - Jansson et al. (2009), *Op. cit.* Pp 33-36 ;
 - Jansson, Johanna (2009), 'Patterns of Chinese investment, aid and trade in Central Africa (Cameroun, the DRC and Gabon)'. Briefing paper prepared for World Wide Fund for Nature (WWF), August (2009). Pp 33-36. Available on <http://www.ccs.org.za/wp-content/uploads/2009/11/CCS-Central-Africa-Briefing-Paper-August-2009.pdf>.
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 - 8 *Ibid.*
 - 9 For further reading on Chinese private companies in Africa, refer for example to Gu, Jing (2009), 'China's Private Enterprises in Africa and the Implications for African Development' in *European Journal of Development Research Special Issue*, Volume 24, Number 1.
 - 10 Jansson et al. (2009). *Op. cit.* Pp 36-38.
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 - 11 Author's telephone interview with a well informed Chinese observer in Lubumbashi, 29.04.2009.
 - 12 Jansson et al. (2009). *Op. cit.* Pp 36-38.
 - RAID (2009). *Op. cit.* Pp 23-26.
 - 13 RAID (2009). *Op. cit.* Page 23.
 - 14 RAID (2009). *Op. cit.* Page 8.
 - 15 *Action Contre l'Impunité pour les Droits Humains* (ACIDH) (2009), 'Les investissements privés et publics chinois dans le secteur minier au Katanga. Bonne gouvernance et droit de l'Homme.' Paper presented at Fahamu workshop in Nairobi, 26th–27th November, 2009. Coming publication, Fahamu. Pp 10–41.
 - 16 ACIDH (2009). *Op. cit.* Pp 30–42.
 - RAID (2009). *Op. cit.* Page 15–17.
 - 17 ACIDH (2009). *Op. cit.* Page 27.
 - 18 RAID (2009). *Op. cit.* Pp 17–19.
 - ACIDH (2009). *Op. cit.* Pp 10–41.
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 - 19 ACIDH (2009). *Op. cit.* Page 24.
 - Law no. 007/2002 of July 11, 2002 relating to the Mining Code. Page 13. Available on http://www.miningcongo.cd/codeminier/codeminier_eng.pdf.
 - 20 ACIDH (2009). *Op. cit.* Page 25.
 - 21 RAID (2009). *Op. cit.* Page 8.
 - 22 RAID (2009). *Op. cit.* Page 8.
 - 23 RAID (2009). *Op. cit.* Pp 23-26, 29. Jansson et al. (2009). *Op. cit.* Page 40.
 - 24 RAID (2009). *Op. cit.* Page 11. ACIDH (2009). *Op. cit.* Pp 18-20, 26.
 - 25 Jansson et al. (2009). *Op. cit.* Page 38.
 - 26 RAID (2009). *Op. cit.* Page 28.
 - 27 RAID (2009). *Op. cit.* Page 8.
 - 28 Jansson et al. (2009). *Op. cit.* Page 40.
 - 29 Jansson et al. (2009). *Op. cit.* Pp 42-43.
 - 30 A Chinese chamber of commerce was established in Lubumbashi in 2008 in response to the Katanga Provincial Government's suggested rise in export taxes from 1% to 3–10% for companies that process minerals which they have not mined themselves. The president of the Chamber is the Chinese CEO of one of the major private copper smelters outside of Lubumbashi. This was reportedly the first time collective action such as this had come about. See further in Jansson et al. (2009). *Op. cit.* Page 41.



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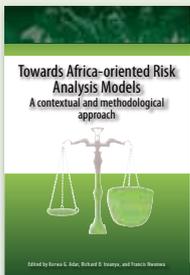
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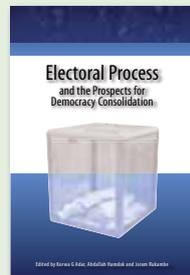
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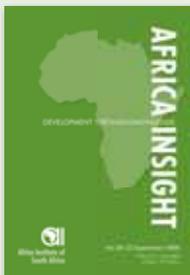
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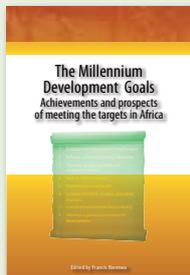
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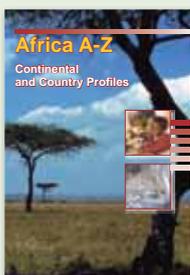
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ISSN 1998-7994



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