

CHINESE MINING OPERATIONS
IN KATANGA
DEMOCRATIC REPUBLIC OF THE CONGO



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www.raid-uk.org

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Cover picture: Chinese Coke factory in Zimbabwe which supplied Chinese mining companies in Katanga

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Exchange Rate:

Franc Congolese CDF 559.65 = US\$ 1 August 2008

Preface

和谐社会 (héxié shèhuì - a harmonious society) ¹

For a number of years the ultimate goal of China's development has been to build a peaceful and prosperous world. In 2006 President Hu Jintao expressed China's approach to the rest of the world, as a philosophy based on the construction of a harmonious society and this was the essential principle of the Chinese government's foreign policy.² But as the numbers of Chinese workers and economic actors in Africa increase, so too have reports of clashes and misunderstandings with the local African workforce and communities.

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, including the explosion at the BGRIMM factory in Kitwe (belonging to NFC Africa Mining) in which over 40 Zambian workers lost their lives. In September 2005, Chen Jian, the Chinese Assistant Minister of Commerce had requested a dialogue with the Organisation of Economic Cooperation and Development (OECD) on government approaches to corporate responsibility and high level contacts had already been established. RAID's paper set out to explain the OECD Guidelines for Multinational Enterprises to the Chinese authorities and businessmen because they are one of the key standards for measuring the performance of Western companies operating abroad. The OECD Guidelines have become widely known to Congolese civil society as a result of the reports of the United Nations.³ RAID argued that Chinese companies, including state-owned enterprises, should consider either adhering to the OECD Guidelines or adopting a similar instrument, which would not only help improve relations with local communities but also demonstrate to international civil society China's determination to be a good, global corporate citizen. The paper concluded with the warning that:

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.

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).⁴ RAID's briefing paper was presented at all of these meetings and China's approach to responsible business conduct was discussed. There was general recognition that Chinese companies were struggling with the issue of responsible conduct abroad and that the high profile cases had been a cause of embarrassment and disquiet to the authorities. Some of the state-owned enterprises and larger companies now produce CSR reports but these are often written by outside consultants and are not considered particularly informative. Some academic researchers expressed frustration that they had little access to senior managers of state-owned enterprises or to the Chinese-operated mines and oil installations in Africa. Some CASS researchers were however invited to Zambia because of the public conflicts between NFC Africa Mining Company (majority

¹ The concept of harmonious socialist society was first launched at the Fourth Plenary Session of the Communist Party of China Central Committee in September 2004. It was further interpreted by President Hu Jintao at a high-level party seminar held prior to the sessions of National People's Congress and the National Committee of the Chinese Political Consultative Conference in March 2005.

² Yu Xintian (2006 winter), 'Harmonious World and China's Path for Peaceful Development', in *International Review*, Volume 45, cited in Liu Haifang (2008) 'China-Africa Relations through the Prism of Culture ----The Dynamics of China's African Cultural Diplomacy.'

³ The United Nations Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo was established by the Security Council and issued a series of reports between 2001 and 2003 which examined inter alia the role of companies in helping perpetuate the conflict. In an annex to its October 2002 report (III) the Panel listed 85 companies, which it declared to be in violation of the OECD Guidelines for Multinational Enterprises.

⁴ 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.

owned by China Nonferrous Metal Mining Corporation, CNMC), the workforce and the wider community. In some cases Chinese researchers have only been allowed to visit philanthropic projects financed by the companies, rather than to conduct an objective examination of the impact of the companies' operations, their hiring policies or workplace practices. There was general agreement that the issue of providing guidance to Chinese companies operating in Africa and other parts of the world was needed and RAID was reassured that high level discussions were taking place. But officials and researchers warned that it would take some time before these deliberations would be translated into officially endorsed Chinese standards for responsible business conduct.

Responsible Business Conduct: China and the Organisation for Economic Cooperation and Development (OECD)

RAID was invited to participate in the OECD-China Symposium on government approaches to encouraging responsible business conduct and the OECD-China Seminar on Promoting Responsible Environmental Conduct which took place in Paris at the end of June 2008. The main focus of the meeting was on the promotion of corporate social responsibility (CSR) in China rather than on the conduct of Chinese companies abroad. The fact that only a few, relatively junior Chinese officials attended these OECD events indicated that although China was prepared to look at OECD instruments and other Western CSR models it was not willing to adopt them. However there is little doubt that the Chinese government takes these issues seriously and that it will in time develop a responsible business conduct model with 'Chinese characteristics'.

China considers itself 'the largest developing country in the world' but Chinese civil society does not believe that this should prevent action being taken now to promote higher standards of behaviour by its companies⁵. The Chinese authorities recognise the need for improvement to enforce the rule of law in China including through public education.⁶ This means accepting the legitimate role of NGOs and other civil society actors in monitoring and reporting on abuses. It also requires greater transparency and openness on the part of the authorities. In 2007, the Chinese State Council issued important new legislation (Decree 492, the People's Republic of China Ordinance on Openness of Government Information) giving citizens and civil society organisations greater access to government information.

China has acceded or is a party to over 30 international conventions related to environmental and natural resource management. Its 11th Five-Year Plan gives a higher priority to sustainable development than earlier plans and specifies more and stricter targets and for energy conservation and environmental protection. A key feature of 'a harmonious society' is the promotion of overall human development. In the plan there is recognition that this will involve increased emphasis on social equity and enabling all people to share the achievements of reform and development, as well as paying greater attention to the construction of democratic and legal systems.⁷

As regards corporate behaviour abroad, China Daily reported that the PRC Government has completed a draft of mandatory environmental measures for Chinese companies involved in overseas projects. The regulations drafted by the Ministry of Environmental Protection and the Ministry of Commerce are awaiting approval but are expected to become effective before the end of 2009. All Chinese companies with businesses abroad will have to comply with them. 'In cases where China's environmental standards are higher than those of the host countries, Chinese investors will be required to apply Chinese standards'. Banks will also be required to take into account environmental and social issues when financing development projects overseas.⁸ In 2007, China's Export and Import Bank (China EXIM Bank) issued new Guidelines for Environmental and Social Impact Assessments for its project lending, including for overseas projects.⁹ These measures are welcome but as RAID's report shows, the Chinese government needs to take assertive action to promote higher standards of behaviour not only by large multinationals but also by smaller private companies operating in Africa, particularly as regards labour rights and the social, economic and cultural rights of local communities.

⁵ Information Office of the State Council of the People's Republic of China, 'China's Efforts and Achievements in Promoting the Rule of Law', Beijing 2008.

⁶ *Ibid.*

⁷ OECD Investment Policy Review: China 2008, Paris

⁸ Li Jing, 'Green rules eye Chinese firms abroad' *China Daily* 29 May 2009 available at: www.chinadaily.com.cn/bizchina/2009-05/29/content_7952605.htm

⁹ Guidelines for Environmental and Social Impact Assessments of the China Export and Import Bank's (China EXIM Bank) Loan Projects. For an unofficial English translation see: <http://internationalrivers.org/en/node/3139>

About Rights & Accountability in Development (RAID)

Rights and Accountability in Development (RAID) works to promote human rights and responsible corporate behaviour. RAID has investigated the human rights impacts of the privatisation of Zambia's copper mines and its report, *Zambia: Deregulation and the denial of human rights*, was published in 2000.

Since 2002, RAID has investigated a range of issues related to the mining sector in the Democratic Republic of the Congo (DRC) including forced and child labour, pollution and corruption with mine licences. RAID's 2004 report *Unanswered Questions: Companies, Conflict and the Democratic Republic of Congo* RAID examined the role of companies in human rights abuses, corruption and in perpetuating the conflict in the DRC. RAID analysed the companies' reactions to being listed by a UN Panel of Experts set up by the Security Council to investigate the illegal exploitation of the Congo's natural resources. In the report RAID explored the issue of how corporations should conduct business in zones of conflict and whether their behaviour ought to be regulated. RAID initiated the international campaign for a review of the mining contracts in the DRC; its 2007 report *Key Mining Contracts in Katanga: the economic argument for renegotiation* proposed an economic rationale for renegotiating some of the key copper and cobalt mining contracts in the Democratic Republic of Congo (DRC).

RAID has filed more than 12 complaints about the behaviour of OECD companies in connection to the allegations by the United Nations that the companies were involved in the illegal exploitation of the Congo's minerals and helping to fuel the conflict. Following a massacre in the remote town of Kilwa, north Katanga in 2004, RAID and its international and Congolese NGO partners called for a full and impartial investigation into the role of the Canadian-Australian company, Anvil Mining in the events which led to the deaths of over 70 civilians, including women and children, at the hands of the Congolese Armed Forces. In 2005, after local people expressed concern about pollution of Lubumbashi's water supply, RAID called for a full environmental impact assessment of a cobalt processing plant run by SOMIKA, an Indian-owned company.¹⁰

The present survey was an independent research project undertaken by RAID not funded or supported by any government or business group. The objective of the research is to improve conditions for everyone (Congolese and Chinese alike) employed by Chinese companies investing abroad and to support China's own efforts to set guidelines for and monitor responsible corporate conduct. Clearly the Congolese Government has the principal obligation to enforce the rule of law and to strengthen protection of labour and other human rights but in a country that is emerging from years of conflict and with weak institutions there is a great need for the international community to assist them to overcome these challenges. In such circumstances it is incumbent on foreign investors to adhere to the highest possible standards. RAID's work should be viewed as consistent with and as contribution to achieving the objectives set out in China's 2006 Africa Policy.

¹⁰ Further information about RAID's reports and work is available on the website at www.raid-uk.org

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 RAID into working conditions in Chinese private mining companies in Katanga Province in the Democratic Republic of the Congo (DRC). The research 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 the 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 Sicomines, 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

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. 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. In August 2009, RAID delegates visited Lubumbashi, Kolwezi and Likasi, the main mining centres in Katanga, to verify the 2008 survey findings and update the information in the report.

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.¹¹

¹¹ Simon Clark, Michael Smith and Franz Wild, 'China in Africa: Young Workers, Deadly Mines', *Bloomberg Markets*, September 2008

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.¹² Chinese managers in RAID's survey said that they would like to receive better guidance and support from their government and embassy.

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

¹² *Ibid.*

- 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

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
- Buildings 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.

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.¹³

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 urgent need

¹³ 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.

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.¹⁴ 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.¹⁵

Summary of Recommendations

- The Chinese government should, as a matter of urgency, issue a set of national guidelines for responsible business conduct overseas in line with internationally-recognised standards, such as the OECD Guidelines for Multinational Enterprises.
- A comprehensive guide to the DRC Mining Code and other relevant Congolese laws should be prepared in Chinese and distributed to all Chinese companies operating in the DRC.
- All Chinese mining companies should comply with the requirement to prepare environmental impact assessments and environmental management plans, which should be made publicly available.
- DRC authorities should investigate the allegations of ill-treatment and abuse of workers in Chinese mining companies and investigate assaults on Chinese nationals in Katanga and take appropriate action.
- Chinese managers, supervisors and other employees should be properly prepared, and given foreign language training, before starting work in the DRC.
- Both Governments should seek to improve social cohesion and inter-cultural dialogue in Katanga to build a climate of trust and understanding between the two communities.
- Should the proposed Chinese Chamber of Commerce be established in Katanga one of its main tasks should be to ensure that it reaches out to local civil society, including NGOs, and helps improve workplace conditions for all employees and reduce the negative environmental impacts of Chinese operators.
- The Chinese Academy of Social Sciences (CASS) should be invited to carry out joint research with Congolese academics into the conditions of Chinese labourers in Katanga.

¹⁴ *Bloomberg Markets*, September 2008

¹⁵ 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 Mining Companies in Katanga



Map No. 4007 Rev. 8 © UNITED NATIONS January 2004

Introduction

This report is based on a survey carried out in 2008 by Rights & Accountability in Development (RAID) on working conditions in Chinese private mining companies in Katanga Province in the Democratic Republic of the Congo (DRC). The research 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, *Plateforme des Activistes des Droits de l'Homme de Likasi* (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 the human rights of formal or informal workers.

In 2008, after receiving numerous complaints from a range of sources, RAID decided to examine workplace conditions and environmental standards in Chinese-run enterprises. In Katanga, it was clear that many Chinese managers, supervisors and workers perceive international human rights groups as being hostile to China. There is a tendency to regard NGOs as tools used to further the political and economic interests of Western governments and businesses by giving Chinese companies a bad press. It is undoubtedly true that some Western companies in order to divert attention away from their own poor record and dubious practices have sought to highlight problems with Chinese companies. Despite this background, during the course of its research, RAID was able to speak to Chinese managers and workers. Their views have enriched the research and offer a fresh perspective on the challenges and difficulties Chinese companies and workers face in the DRC.

This was an independent research project undertaken by RAID which was not funded or supported by any government or business group. The objective of the research is to improve conditions for everyone

(Congolese and Chinese alike) employed by Chinese companies investing abroad and to support China's own efforts to set guidelines for and monitor responsible corporate conduct. Clearly the Congolese Government has the principal obligation to enforce the rule of law and to strengthen protection of labour and other human rights but in a country that is emerging from years of conflict and with weak institutions there is a great need for international assistance to overcome these challenges. In such circumstances it is incumbent on foreign investors to adhere to the highest possible standards. RAID's work should be viewed as consistent with and as a contribution to achieving the objectives set out in China's 2006 Africa Policy which states:

The Chinese Government facilitates information sharing and cooperation with Africa in resources areas. It encourages and supports competent Chinese enterprises to cooperate with African nations in various ways on the basis of the principle of mutual benefit and common development, to develop and exploit rationally their resources, with a view to helping African countries to translate their advantages in resources to competitive strength, and realize sustainable development in their own countries and the continent as a whole.

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 Government of China and the DRC to investigate thoroughly. The report's findings highlight the urgent need to promote greater awareness of responsible corporate behaviour among Chinese companies operating abroad. RAID is aware that 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.¹⁶ 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, social responsibility and corporate accountability. 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.¹⁷

Scope and Methodology

The report covers working conditions in Chinese companies in Katanga involved in the mining sector. The companies surveyed include smelters and trading houses where minerals are bought and stockpiled before being processed or exported. Sicomin, a major Chinese joint venture with the state-owned mining company Gecamines, which has not yet started production, was not included in the survey.

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. Qualitative data was collected during semi-structured interviews with open-ended questions, adapted to the different contexts and cultural backgrounds of the interviewees, and during site observations. Questionnaires with closed, multiple answers and open questions were completed by Congolese and Chinese workers and managers to obtain quantitative data. Data was collected from nine different Chinese companies at various sites including smelters in Likasi and Lubumbashi, and the depots of trading houses in Kolwezi where minerals are stocked:

¹⁶ Simon Clark, Michael Smith and Franz Wild, 'China in Africa: Young Workers, Deadly Mines' *Bloomberg Markets*, September 2008

¹⁷ 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.

- Congo Dong Bang Mining (CDM): Kolwezi Depot and Lubumbashi smelter
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- Jia Xing Mining: Kolwezi depot and Lubumbashi smelte
- JMT: Kolwezi depot
- Song Hua: Lubumbashi smelter
- Feza Mining: Likasi smelter

Fifteen per cent of the Chinese-owned companies in Katanga were covered in the survey. Data collected in interviews, observations and questionnaires was analysed and triangulated to compare and validate the findings. Interviews were done individually where possible, to guarantee the objectivity and comprehensiveness of the information and to avoid participants being influenced by the presence of other workers or supervisors, as well as to guarantee their anonymity. Privacy was not always possible in the trading house depots, where interviews had to be conducted with workers in the presence of Chinese supervisors, but the latter did not understand either French or Swahili. Site observations, where possible, enabled information given by the participants to be verified. The questionnaires enabled the collection of systematic data from a range of individual workers, supervisors and managers. Participants were encouraged to provide additional comments and to make recommendations. The respondents could remain anonymous if they wished.

RAID acknowledges the limitations of this report which is based on a relatively small sample of the workforce. Access to the workers was often difficult and their fears of dismissal had to be given proper consideration. Neither the Provincial Government of Katanga nor the Chinese embassy provide reliable figures for the total number of workers employed by Chinese-run establishments or for the number of Chinese workers in Katanga overall so this makes it impossible to assess reliably the representativeness of the sample. It was a challenge to obtain interviews with more than a handful of Chinese managers and supervisors. The situation of Chinese contract labour employed by Chinese state-owned companies like China Railway Engineering Corporation (CREC) and Sinohydro is the biggest research gap and one that should be addressed in the future, if possible, with the cooperation of both the Chinese and Congolese authorities. Nevertheless 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 survey was conducted before the collapse in the price of copper and cobalt in last quarter of 2008 which means that at least one of the companies that featured in the sample has ceased to exist, while others, either reduced their operations (and laid off workers) or after a temporary stoppage, resumed their operations.¹⁸ Nevertheless RAID believes, given the long-term nature of Chinese investment in the DRC, that its findings remain relevant. The governments of China and the DRC should take into consideration the report's recommendations about the steps that are required to ensure that Chinese investment in Katanga is mutually profitable and brings a tangible benefit to the workforce and the local communities. Chinese and Congolese respondents had a number of positive ideas about how relations between the two communities could be strengthened in order to prevent future incidents and clashes.

Interviews with workers, supervisors and managers (Chinese and Congolese) in Chinese mining companies were held in Lubumbashi, Likasi and Kolwezi where the industry is concentrated.

Interviews were held:

- in Lubumbashi in ACIDH's office and/or in the vicinity of the smelters.
- in Likasi, in PADHOLIK's office and/or in the vicinity of the smelters
- in Kolwezi inside and/or in the vicinity of the trading houses.

Questionnaires (in Swahili, French and Chinese) were distributed to workers during the lunch break or after work outside the factories or trading houses. They were completed, and returned on the spot or a day later. In some instances, a member of the research team was asked by the workers to complete the questionnaires on their behalf to protect them from the risk of instant dismissal. Some workers volunteered

¹⁸ Jia Xing and Congo Loyal Will Mining reduced their output and cut staff but continued to operate. According to information supplied by sources in Katanga including the Provincial Ministry of Mines, the following companies had resumed their operations after a temporary closure although at a lower capacity: COTA Mining, Congo Dong Bang Mining, FEZA Mining, Huachin Mining and JMT. Only the Song Hua smelter is reported to have shut down. RAID has not been able to confirm whether Emmanuel is still trading in Kolwezi.

to pass questionnaires to their colleagues and collect them on behalf of the research team. A total of 20 people (workers, supervisors, managers, witnesses of incidents and victims of incidents at work) were interviewed: 15 Congolese and five Chinese. A weakness in the survey was the failure to interview Chinese contract labourers employed by the larger, Chinese state-owned companies. Such workers tend to be housed in secluded guarded compounds, which they do not normally leave. This makes contact with them almost impossible.

In most instances, the entrance to the smelters and mines is controlled by security guards. Agents of the *Agence Nationale de Renseignements* (ANR, the Congolese intelligence services), also keep Chinese compounds and establishments under surveillance; consequently European and Congolese human rights NGOs are not given access to such places. A total of 140 questionnaires were collected from nine private Chinese companies, only one of the respondents was a woman. 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 such as the US business consultancy, PACT-Congo and the Belgian NGO, Groupe One were also sought. In August 2009, RAID delegates visited Lubumbashi, Kolwezi and Likasi, the main mining centres in Katanga, to verify the 2008 survey findings and update the information in the report.

There was a marked similarity in the responses to the questionnaires and during interviews and a consensus emerged about the priority issues. Some of the observations were made with great vehemence which suggests that it would be in the interests of the Chinese companies and the Chinese and Congolese governments to try to resolve these grievances without further delay. Failure to do so will only increase the feelings of frustration and resentment towards Chinese companies which could spill over into conflict.

part 1

The Legal Framework

For Chinese companies working in Katanga there are a range of relevant international standards and domestic (Congolese and Chinese) laws and policies which should regulate or guide their behaviour. RAID's research indicates that the Congolese Mining Code and Labour Code (*Code du Travail*) are routinely breached by Chinese companies in Katanga.

International Standards

China and the DRC governments have ratified a number of international human rights standards such as 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 (Minimum Age Convention) and Convention 182 (Worst Forms of Child Labour). The ILO has drawn particular attention to its concerns about the participation of children in artisanal and small-scale mining and has made clear that this is not compatible with Convention 182. According to the ILO's International Programme on the Elimination of Child Labour (IPEC) an estimated one million children work in small-scale mining and quarrying around the world. These children work in some of the worst conditions imaginable, where they face serious risk of injury, chronic illness, or death. The ILO-IPEC programme on the promotion of sustainable development in mining communities has as its goal the removal of all child workers from small-scale mines and quarries. There are still large numbers of children working in the informal mining sector in Katanga.

Congolese 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.¹⁹

The pervasive problems that undermine the administration of justice in the DRC are well known. There is a culture of impunity which helps perpetuate human rights violations and induces a climate in which disrespect for the rule of law flourishes. Government inspectors are poorly trained, easily suborned or overruled. According to the World Bank 'Government institutions responsible for regulating and supervising the mining sector are ineffectual. They require considerable restructuring and strengthening and a greater measure of accountability.'²⁰ According to the Mining Cadastre at the beginning of 2008, 80 per cent of titleholders had failed to pay their annual surface tax for their exploration or exploitation permits despite the fact that in theory failing to pay should lead to the title being forfeited.²¹

But China's policy is not to criticise or to intervene in the politics and internal affairs of other countries. This position has been confirmed by Wu Zexian, China's Ambassador to the DRC: 'We will work economically in countries without interfering at all in their internal affairs.'²²

'Our policy is always that Chinese companies operating outside China must respect the laws and regulations of the countries where they work. That is very clear. But we can never be 100 per cent sure that all companies do that.'²³

¹⁹ *Bloomberg Markets*, September 2008

²⁰ World Bank, 'Democratic Republic of Congo: Growth with Governance In the Mining Sector,' Report No.: 43402-ZR, May 2008

²¹ Legal expert's private communication to RAID June 2008.

²² *Bloomberg Markets*, September 2008

²³ Barney Jopson, 'Chinese copper entrepreneurs flee DRC' *Financial Times*, 20 February 2009

In 2003 the DRC Government produced a simplified guide in English for companies wishing to invest in the Congo's mining sector.²⁴ The guide explains the role of various government departments and agencies involved in regulating the mining sector and it provides a summary of the Mining Code. But the guide says very little about the investors' obligations under the Mining Code to protect the environment and has only fleeting references to the Labour Code. An important opportunity therefore has been lost to ensure that all foreign investors are adequately informed about their responsibilities as regards human rights, the health and safety of their workers and the environment. This deficiency needs to be corrected. Many respondents commented on the ignorance of Congolese laws among Chinese operators.²⁵

RAID's research indicates that numerous provisions of the Congolese labour law set out in the 2002 *Code du Travail* are routinely breached by Chinese companies in Katanga. These include:

- The prohibition on employing children below the age of eighteen (Article 133)
- Ensuring safe and salubrious working conditions (Articles 55 and 170)
- Payment of the minimum wage for the job or sector (Article 86-97)
- Payment of sickness and injury benefits (Articles 105 and 108)
- Providing access to health care (Articles 160 and 177)
- Respecting the maximum working week of 45 hours or nine-hour shifts per day (Articles 119 and 120)
- Provision of a written employment contract, registration with the Congolese Employment Bureau (*Office National de l'Emploi-ONEM*) and payment of national insurance contributions (Articles 44-49)
- 22-day limit on hiring workers on a casual basis (Article 40)
- Termination of contracts and dismissing workers (Article 57-60)

Mining Code and Environmental Protection

The Congolese Constitution provides for the right to a healthy environment and states that everyone has a duty to protect it.²⁶ Article 54 of the Constitution also requires economic actors to pay compensation and undertake remediation if pollution or environmental damage occurs as a result of their activities. Enabling environmental legislation, though drafted, has yet to be approved.

The key legislation is the Mining Code (Law No 007/2002 of July 11 2002). The Code sets out in detail the way in which mining projects of any type may be undertaken. The Mining Code is supported by the Mining Regulations (Decree No 028/2003 of March 2003) which implement the provisions of the Code. The Mining Code provides a legal framework to regulate the environmental practices of mining companies in the DRC. The Mining Code requires mining companies to submit environmental impact assessments (*Etude d'Impact Environnemental*, EIE) and environmental management plans (*Plan de Gestion Environnementale du Projet*, PGEP) but these rules are easily circumvented and these documents are not usually available to the public, even though local communities are supposed to be consulted.²⁷

Article 83 of the Mining Code clearly states that mineral processing plants must comply with the environmental protection regulations.²⁸ The Directorate for the Protection of the Mining Environment (DPEM) within the

²⁴ Ministry of Mining, (2003) 'Guide of Mining Investors', Foreword. Democratic Republic of the Congo

²⁵ A Congolese administrative worker employed by FEZA Mining in Likasi, for example, told RAID that his Chinese managers knew nothing about laws in the DRC relating to labour rights, human rights and the Mining Code.

²⁶ *Toute personne a droit à un environnement sain et propice à son épanouissement intégral. Elle a le devoir de le défendre. Article 53 Congolese Constitution (2006)*

²⁷ *Code Minier article 69F and Règlement Minier article 451*

²⁸ *Code Minier: Article 83 : Des usines de traitement ou de transformation L'implantation et le fonctionnement d'une usine de traitement ou de transformation des substances minérales sont soumis à la réglementation en matière de protection de l'environnement prévue par le présent Code et par la législation particulière sur l'environnement*

Ministry of Mines is responsible for all aspects relating to protection of the environment. The Directorate ensures the implementation of and compliance with the relevant regulations by all mining developments. According to the World Bank, 'Mine inspection services (through the Directorate of Mines) in the provinces are wholly inadequate to perform their mandated function of monitoring production, health, safety and environmental protection issues at industrial and artisanal mining sites.'

There are very few inspections and officials often turn a blind eye to non-compliance. RAID was informed that there are only about 40 junior officials in the Ministry of Mines, who on the basis of a three-week environmental training course, are responsible for enforcing the environmental regulations throughout the entire country. The DPEM approves the environmental assessments and management plans and audits implementation.

Chinese Labour Laws

Chinese laws do not, of course, apply in the Congo but they should inform the standard of behaviour of Chinese companies overseas. Internationally China has a poor record on labour rights, but over the past few years there have been important areas of progress. According to the China Labour Bulletin, new legislation, which came into force in 2008, has given Chinese workers additional resources to obtain redress for violations of their rights.

- The Labour Contract Law attempts to address the problems associated with temporary workers and those who have not signed labour contracts. It specifies that the wage of part time and hourly-based work should not be lower than the minimum wage level, and that workers who have not signed a labour contract should also be covered by the law.
- The Employment Promotion Law requires employers to provide equal employment opportunities and fair conditions for workers, and forbids employment discrimination.
- The Labour Dispute Mediation and Arbitration Law provides for mediation services and arbitration for labour disputes. If these fail either party may bring the case to court.²⁹

In China, unlike the DRC, even if the local government is unwilling to enforce the law, workers can still seek redress through China's well-established institutions of mediation and arbitration and the court system. According to the China Labour Bulletin, the official figures show that once a labour dispute case is accepted by a court of law, the worker plaintiff has a much greater chance of winning than the employer defendant.³⁰ But it notes that despite the new legislation, enterprises and employers across China still operate outside the law, withholding wages and social security payments, refusing to pay work-related injury and illness compensation, and sacking employees with virtual impunity.³¹

Nevertheless these laws represent an important benchmark and are indicative of a change of approach by the authorities in China and one which should be reflected in the attitude of Chinese companies operating in the DRC and other developing countries.

²⁹ Information Office of the State Council of the People's Republic of China, 'China's Efforts and Achievements in Promoting the Rule of Law', Beijing February 2008

³⁰ <http://www.clb.org.hk/en/node/100020>

³¹ *China Labour Bulletin*, available at: <http://www.clb.org.hk/en/node/100020>

Results of the Survey: Views of Congolese Workers

“The atmosphere in the depot is uneasy, perhaps due to our presence. The Chinese manager doesn’t object to the Congolese workers filling out the questionnaires. But the Chinese workers are not allowed to and seem uncomfortable. None of the Chinese in the depot speaks French or Swahili and, although this is normally inconvenient the Congolese workers are pleased since it means they can talk to us. They’re guarded nevertheless.”

RAID field report

The analysis based on site observations, questionnaires and workers’ comments has highlighted two broad but related areas of concern: poor working conditions and non-compliance with Congolese laws. These concerns have wider social ramifications. The poor working conditions, have a direct impact on inter-community relations because so much of the interaction between Chinese and Congolese people happens at work. Therefore the negative perception of the Chinese community in Katanga is very largely a result of the

prevailing poor conditions in the Chinese-run smelters and trading houses and the harsh treatment of Congolese workers by their Chinese employers. But there are other factors that generate a climate of mistrust, the main one being the language barrier as relatively few Chinese speak French or Swahili. Although Katanga is calmer than other regions in the DRC tensions between different ethnic groups flare up into sporadic violent clashes, sometimes fanned by local politicians. The authorities in Likasi, aware of the desperation of the *creuseurs* (artisanal miners), are wary about clamping down on illegal artisanal mining in case such action provokes a riot. In this volatile climate foreigners can become the unwitting victims or even targets of violence if they are seen to be complicit in the exploitation of the Congo and its natural resources. The workers RAID interviewed in Katanga were unmoved by the DRC Government’s public expression of friendship towards Chinese investors and highly sceptical of China’s offer to help in the reconstruction of the Congo.

This distrust of China’s motives for investing in the DRC is influenced by the failure of Chinese companies to respect the law. This is taken as a personal affront by Congolese workers. They also feel betrayed by their own government for turning a blind eye to the regular abuses of workers’ rights and other breaches of the law by Chinese enterprises. 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.

Corruption is pervasive in the DRC and Chinese enterprises are both the beneficiaries and victims of this system. Financial extortion by officials occurs regularly. Chinese companies complain that they are coerced into making large, often illicit payments to officials. None of this money is used to improve living conditions in Katanga which would be to everyone’s benefit. Chinese managers understand the requirement that minerals should be processed in Katanga before they are exported to add value but they argue that companies have no incentive to invest more because it is unlikely that any additional revenue would be used to rehabilitate the Congo’s dilapidated infrastructure.

These and other concerns and observations are examined in more detail below.

How do Chinese and Non-Chinese Companies Compare?

The responses expose a stark picture of working conditions in Chinese private mining enterprises, but they are not the only companies with a low ranking.

Respondents were invited to rank Congolese and foreign-owned companies according to workplace conditions. Only a few respondents had anything positive to say about conditions in Chinese companies which were ranked lowest in the RAID survey. About a third of respondents believed that working conditions in Chinese enterprises were average for the DRC. The majority however felt that conditions were considerably worse than in European and US companies, where standards, at least in the bigger mining companies, were significantly better. Congolese-owned companies were rated about the same as the Chinese. Conditions in South African, Australian and Canadian companies were not rated highly, which should be a cause for concern for the respective governments.

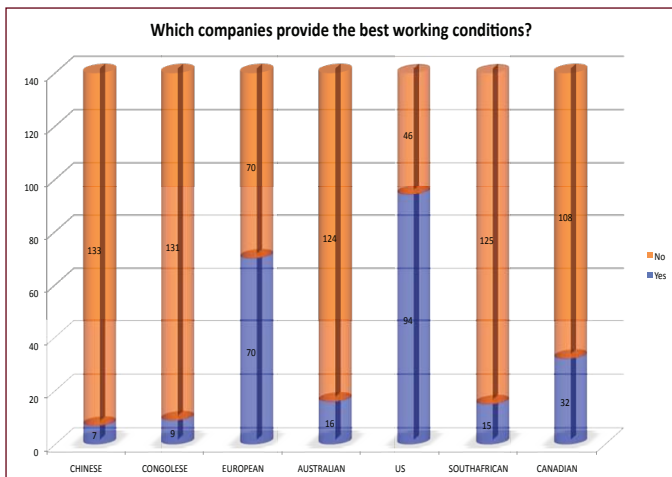


Figure 1

While certainly not all of the larger Western companies behave responsibly or have a good corporate conduct record, the respondents noted that substantial progress has been made in recent years. They were aware that the bigger mining companies paid higher wages, employed workers on contracts and provided protective clothing and equipment. Large, Western mining companies also provide some social benefits and respect (at least nominally) the workers' right to be represented by trade unions. Unfortunately the larger mining companies are highly mechanised and do not require a large workforce so it is the smaller Chinese companies that offer the majority of jobs.

However some respondents in their comments pointed out that Indian companies, like their Chinese counterparts, did not pay workers adequately; did not respect Congolese law; failed to provide protective clothing and equipment; and also employed Congolese workers on a casual basis.

The scope of the survey did not take into account other Asian investors such as Indian private enterprises.

Fair Pay and Job Security

'We live in the darkest misery, it's like the period of the 'African slave trade''³²

Huachin Smelter, Likasi

Workers are recruited directly or through intermediaries. Workers are employed as day labourers and receive limited training for their jobs. The company provides transport to and from work. Most workers do not get protective clothing or equipment and work in their everyday clothes, handling radioactive minerals with their bare hands and breathing in the corrosive dust. The company is affiliated to a health clinic in the town but workers have to pay for treatment. They do not receive sick pay.

RAID field report

Employing people on a daily basis has been the norm since colonial times. It is convenient for a company to employ day labourers because they are not officially registered with ONEM (the Employment Bureau) and the company does not pay employment tax or insurance contributions. This practice is common among most companies whatever their origins, and it is only relatively recently that some Western mining companies have started to employ workers on permanent contracts. As a general rule in Katanga, workers enjoy very little protection. Article 40 of the Labour Code, that stipulates that any person hired by

a company for 22 days over a two-month period automatically becomes a permanent employee, is widely disregarded.

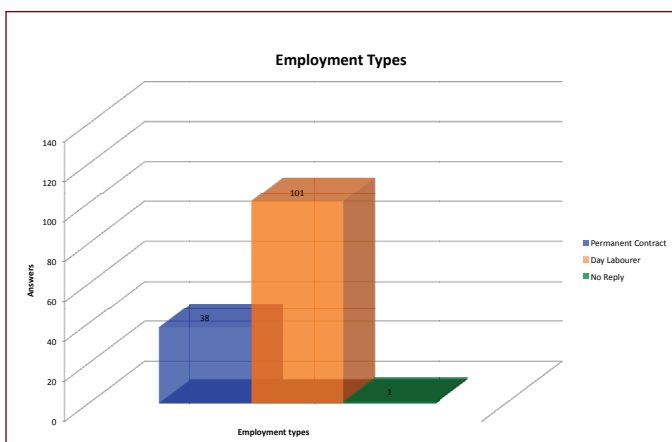


Figure 2

As figure 2 shows, over the 140 workers who replied to the questionnaires, 101 of them are daily workers (72%). Only 38 workers (27%) have permanent contracts and are officially declared which means they have job security and companies pay taxes, including national insurance, to the government.

However, in the case of Chinese companies it does not necessarily follow that workers with permanent contracts enjoy better treatment, higher wages or greater social benefits. Contracts are usually written in Chinese, it is not clear that the INSS (Congolese Institute for Social Security) is informed and permanent workers are often arbitrarily dismissed.

Workers expect to be given a contract soon after they are hired. This should in their view entitle them to a number of benefits: work equipment renewed on a regular basis; access to free medical care for the whole family; free transport; free lunch; a bag of flour each month to feed the family; set working hours and paid overtime.

³² A Congolese worker interviewed by RAID

These are benefits that workers at the state-owned mining company, Gecamines, used to get and this is still regarded as the norm. While some of the workers' expectations concerning their entitlements may be unrealistic, particularly for small private companies, there is an undoubted obligations on all companies to give workers proper employment contracts, a fair wage and decent conditions so that they can provide for themselves and their families.

The minimum wage in the DRC has been set at 550 CDF (about \$1) a day.³³ Since March 2007, as a result of the intervention of the Governor, Moise Katumbi, the average take-home pay of workers in Katanga is \$100 a month, much higher than in other parts of the country. Not all companies are willing to pay this amount on the grounds that it us up to the national government and not the provincial authorities to fix the minimum wage. \$100 a month is still only about a fifth of what an average worker needs to maintain a family and cover household expenditure like school fees.³⁴

Low Pay

Jia Xing pays the highest wages of all the processors in Lubumbashi. Workers receive \$220 a month to workers for a seven day week. There are two shifts (day and night) of between 12 and 13 hours with no break. In other factories where the work is less intensive, then set between \$100 and \$150. Jia Xing is said to be Katanga's biggest exporter of copper concentrate. On its website the company states that it has one of the biggest copper smelting operations in the DRC.*

At the CDM depot in Kolwezi, Congolese drivers and supervisors respectively earn \$150 and \$170 a month, while their Congolese manager receives around \$800. At the CDM processing plant in Lubumbashi a worker receives \$100 per month month for a seven-day week and an eight-hour day.

Workers' pay has to cover the cost of transport to and from work which is about \$22.50 a month, as well as food, healthcare, clothing and school fees. The wages of most Congolese workers are clearly insufficient to meet their basic needs and maintain a family. Most workers talk about just managing to survive. At a minimum workers need \$500 per month to cover their living expenses. Larger Western companies pay labourers about \$300 per month

RAID field report

Without exception all the Congolese workers interviewed raised the issue of low pay and most of the comments in the questionnaires referred to the fact that wages are 'too low' and 'unfair'. The discrepancy between the payment of Chinese workers and non-Chinese workers is a major source of grievance. Low pay and the sense of discrimination has a ripple effect throughout the mining areas of Katanga and fuels the widely held belief that unless Chinese investors are willing to improve the lives of the workers and their families 'they should pack their bags and go'. Chinese workers are said to earn ten times as much as the Congolese and in some cases they also get weekly bonuses, which are the equivalent of an entire monthly wage for a Congolese worker. It was not possible for RAID to ascertain whether the Chinese, who receive higher remuneration, are employed in similar unskilled jobs.

Fair Conditions at Work: 'We are Chinese!'

Generally workers earn about \$80 a month for carrying bags of minerals, crushing ore, loading bags, for on average nine hours a day, six days a week. Workers have been able to negotiate a few benefits but not basic things like a meal at lunch-time or permanent contracts, not even for workers who've been with the company for more than a year.

One worker from Likasi, desperate for a job, found a position in Kolwezi (over 200 km away and a four-hour journey by bus). He works seven days a week and earns \$80 a month. The company allows him to sleep on site. During the day he works as a handyman doing whatever task is required and at night he takes a turn guarding the depot. The money he gets he sends to his family.

Workers at Song Hua receive \$100 a month for a three-day week of between 36 and 39 hours. Their Chinese counterparts get paid \$1500. The Congolese deeply resent this disparity. Workers don't have access to medical care and. unless they're prepared to walk one-and-a half hours each way to and from work, they have to pay for transport.

Workers talked about the managers as "real dictators". The management dismiss any complaints with the reply: 'We're Chinese'.

Raid field report

³³ In August 2008 the exchange rate was 559.65 CDF:US\$1 by March 2009 it was 820CDF:US\$1

³⁴ Andre Marati workers representative on http://www.radiookapi.net/files/audio_file_7301.mp3, March 2007)

* Professor Gilbert Malemba N'Sakila, 'The Chinese Presence in Lubumbashi, DRC', published in *The China Monitor*, Centre for Chinese Studies, University of Stellenbosch, October 2008. Professor Malemba refers to an unpublished study by Gorus, J (2007), 'La morphologies du secteur minier artisanal'. See also Jia Xing's website at <http://bl-china.com/ENGLISH/index.html>

According to Congolese labour law the company must ensure that the wages and social benefits of permanent workers are negotiated prior to hiring. Wages are not calculated on concrete factors such as the workers' level of formal or vocational education, length of employment, nor even on the output and quality of work carried out. Nor do the companies take into account the cost of living and what an average worker would need to sustain a family.

Freedom of Association and Unfair Dismissal

Unfair Dismissal, Jia Xing

In May 2008, Jean, a foundry worker, was fired from Jia Xing for having had the temerity to explain why he and a group of workers had arrived a few minutes late for work. Jean tried to tell the Chinese manager that a road accident had delayed the company bus. He and twelve other workers, who had been on the same bus, were locked up in a container from 7 am until 5 pm in the evening. The workers were then fired. Under Article 76 of the Labour Code, a company cannot dismiss an employee without prior written notice and reasonable compensation. Jean and the others had permanent contracts and eventually after 'an informal approach' to the company by the *Inspecteur du Travail* the company agreed to give each worker \$100 for each month they had worked at Jia Xing.

RAID field report



Figure 3

The DRC, unlike China, has ratified Convention 98, the Right to Organise and Bargain Collectively and the right to form a free and independent union is enshrined in Article 38 of the Constitution. But in Chinese companies, unlike the large mining companies, there are no trade unions and attempts to negotiate with managers are usually ignored or worse may lead to instant dismissal. However, raising any kind of issue with the managers is useless; as one worker put it, 'If we raise a problem, it's as if we didn't exist'. Voicing concerns can also be dangerous and workers risk losing their jobs if they complain.

Some former workers from Jia Xing in Lubumbashi reported that they had been fired after being falsely accused of stealing. Any incident, however trivial, is seen as sufficient grounds to dismiss workers: work-related accidents or clashes with Chinese supervisors are cited as common pretexts. In the absence of a union to defend their interests, workers find it virtually impossible to contest unfair accusations or settle disputes with the management.

Types of Employment and Training

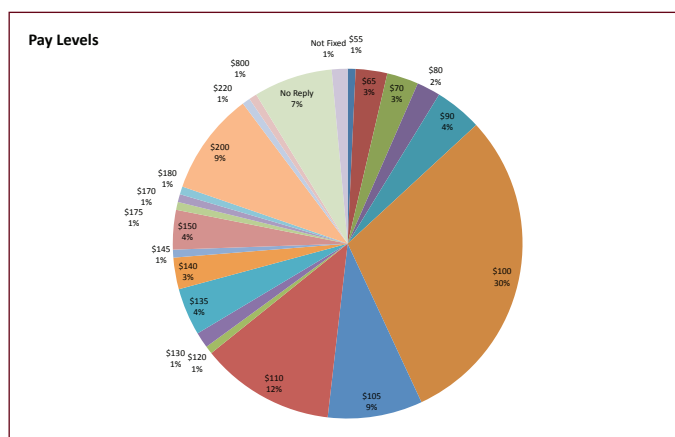


Figure 4

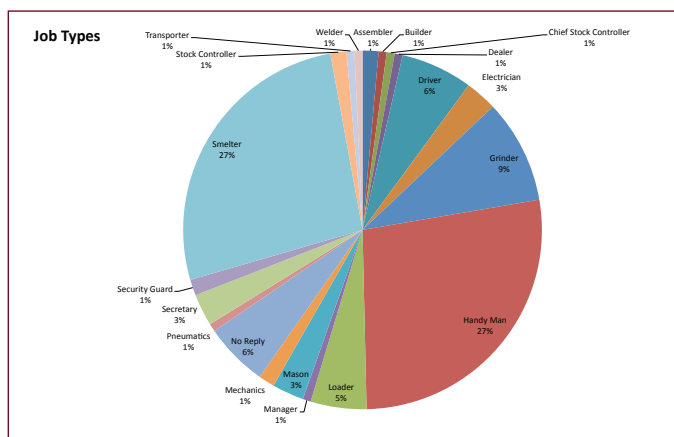


Figure 5

The charts (Figures 4 and 5) show the distribution of jobs held by Congolese workers and the average wages available to them. Congolese workers usually hold down low-paid manual jobs, irrespective of their educational attainments or experience. Chinese companies do not usually offer any sort of training, or provide workers with the opportunity of acquiring skills that could give them access to better-paid jobs

with more responsibility thereby increasing the efficiency of the workforce.

Jia Xing Depot, Kolwezi: 'Division of Labour'

'A truck is parked in front of the warehouse; some Congolese men are busy loading it under the supervision of the Chinese boss who sits on a chair. Another two Chinese men are seated at a table examining ore and buying minerals. They haggle over the price with traders who have brought them bags full of rocks. The contents of the bags are emptied on the ground and a Chinese supervisor assesses the quality. The bags are then refilled and stored in the depot before being transported to Lubumbashi. Congolese workers do the arduous, menial jobs: loading, carrying, storing, and cleaning. The Chinese do the trading and supervision.'

RAID field report

Only a minority of Congolese have posts as administrators or supervisors, but these are also often low-paid jobs with no formal employment contracts. While there is a general lack of vocational training and education available to Congolese people, these low-skilled, low-paid jobs clearly do not provide them with opportunities to acquire technical skills that could be of benefit to themselves and the DRC's long-term development.

Illegal Mining - the Only Alternative?



Artisan miners digging, Katanga. Photo © Lionel Healing

After he was fired, Jean became a *creuseur* and joined a group of artisanal miners. When he was dismissed his Chinese boss had told him that if he collected minerals for the company he'd be paid and that way he could make up for his lost wages. His boss promised that he would always buy from him.

Other workers told us that Asian traders (Indians and Chinese) were the best buyers. They paid the most and never asked questions about where the minerals came from. Because of the very limited areas where *creuseurs* can legally dig most of them have joined the ranks of illegal artisanal miners. Under cover of night, between 10pm and 4am, they slip into the concessions owned by large mining companies, and fill bags with ore. The illegal miners run many risks: being shot at by security guards if they're caught; death by suffocation; drowning in a waterlogged pit in the dark. But there are few other options in Katanga.

RAID field report

Companies seem content to have access to a pool of 'unskilled' cheap labour. Jobs that require a degree of responsibility are usually taken by expatriate Chinese (sometimes irrespective of their training or experience).

Many Chinese companies do not appear to care about the well-being of their Congolese workers. They retain them through the ever-present threat of dismissal. Workers are unlikely to complain because job opportunities are scarce and the Chinese companies are one of the few providers of employment. Any work is better than nothing and companies exploit the fact that there are plenty of people willing to fill vacancies in Katanga. The only option open to workers who lose their jobs is to join the ranks of the illegal artisanal miners.

Response to the Collapse in Copper and Cobalt Prices

In October 2009 CDM suspended its operations as a result of the fall in the price of copper and cobalt. The company shut down abruptly without obtaining the prior approval of the Labour Ministry as required under Congolese law. The company unilaterally decided to give each worker a flat sum of \$88, even though most earned \$150 a month. No account was taken of how long a worker had been employed at the factory.

In March 2009 CDM restarted but it only took back into employment workers who either had not received redundancy money or who agreed to repay the \$88. RAID was unable to ascertain whether the demand that workers should repay the redundancy money came from the Chinese managers or was simply Congolese supervisors cashing in. RAID was informed that Congolese intermediaries often take advantage of Chinese managers' ignorance of local languages to cheat the workforce out of their entitlements.

RAID field report

Health and Safety

Congo Loyal, Lubumbashi

Many workers complained about burns and reported that the company fails to give them anything for the pain. The only medicine available on site is aspirin. There is no first aid. Workers have access to an outside medical clinic and, according to some respondents, the company is willing to pay for treatment for work-related illnesses or injuries.

Emmanuel Depot, Kolwezi

In trading houses, workers shovel and handle radioactive minerals all day long, but at Emmanuel they are not provided with protective equipment, not even a pair of gloves or a mask. A worker holds two green stones next to my face and shouts, 'Do you know what these are? This is copper, and this is uranium. Everyday I handle radioactive minerals, and I've got nothing to protect me. If you touch it you'll become ill and die slowly!'

RAID field report

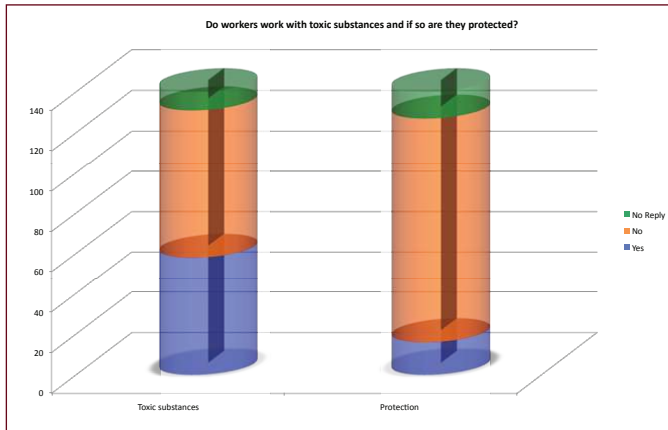


Figure 6

After wages, health and safety issues are the main concerns for workers. At all stages of mining, from extraction to processing, workers are directly exposed to various toxic substances, as well as the to the risk of accidents. In Katanga public hospitals are in a state of disrepair, lacking medicines and sufficient trained doctors and nurses. Gecamines, the state-owned mining company, used to run a number of local hospitals, clinics and health centres and employed over 1,500 medical support staff. But as Gecamines sank further into debt and its assets were closed or sold off, the parastatal no longer funds these health care services. As a result secondary medical services in Katanga are no longer freely available to ex-miners and their extended families. None of the workers

RAID interviewed could afford to pay for treatment at private clinics.

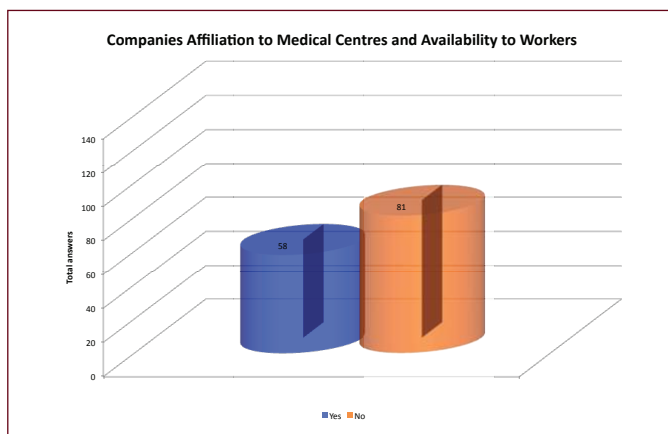


Figure 7

Workplace incidents are supposed to be reported to the INSS (the Congolese Social Security Institute) which provides compensation but only for permanent workers. Under the Labour Code all companies must set up a health and safety committee whose duties include the technical supervision of workers and supervision of health in the workplace, and the implementation of an accident prevention scheme. Health risks and accidents could be reduced by providing workers with decent protective equipment (e.g boots, mask, gloves, clothing, hard hats, etc), which should of course be regularly replaced. Workers handling unprocessed copper and cobalt are exposed to radioactive elements but in most cases they work with their bare hands, without a mask. Companies do not provided sufficient equipment and even when workers have been given some protective gear it is worn out.

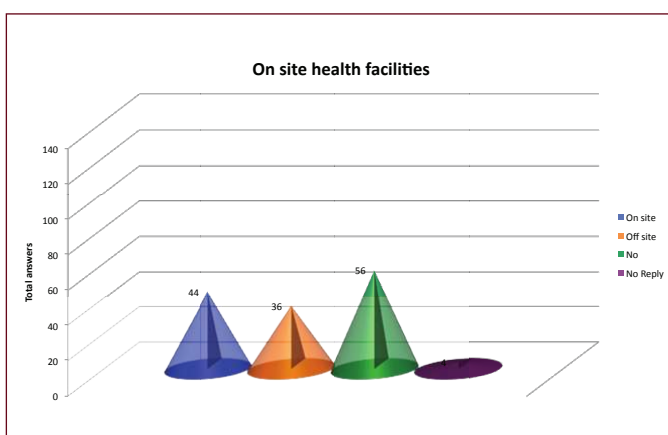


Figure 8

Workers complained most about headaches, feeling dizzy and superficial burns. If a foundry worker faints because of the heat there is a real risk that he may sustain life-threatening burns or even be killed. Workers reported an almost total lack of preventive measures, training or even first aid in most Chinese establishments.

According to the Mining Code Regulations mining

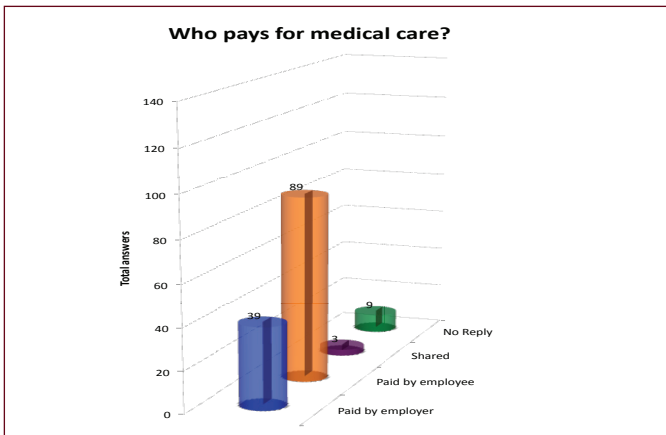


Figure 9

companies should provide suitably equipped medical facilities and medically trained staff on site. But few companies provide workers with access to health care. Access to first aid and medically trained staff on site is haphazard. Often workers are given an aspirin, water or a Coca Cola to treat any symptom whatever the cause but they are not allowed to rest. Some companies are affiliated to a private health clinic where workers can go, provided they are willing to pay the costs of an examination or treatment. In most cases workers do not receive any sick pay and any days they miss are debited from their wages.

Apart from occupational illnesses and accidents, malaria is endemic and treatment is expensive.

Workers who fall ill with malaria have to take time of work until the flu-like symptoms recede but they are not given sick pay. The benefit they would most like to have is health care for the whole family. As chart 8 shows, a majority of companies offer their workers access to medical assistance, whether on site or offsite. Companies might be affiliated to a medical centre and send their workers there for medical care. However, as chart 9 illustrates, most companies do not pay for their workers' medical treatment. Consequently, although workers have access to medical care they do not benefit from it because they cannot afford it.

Mining sector workers are exposed to enormous health risks and occupational hazards. This is particularly the case in smelters where furnaces can reach temperatures of 1,981 degrees Fahrenheit (1,082.7 Celsius - the melting point of copper ore). Chinese companies are failing to register workers with the INSS thereby depriving them of state insurance benefits. By refusing to provide sick pay or to cover the costs of medical treatment for work-related accidents and occupational illnesses the Chinese mining companies are in breach of Congolese law.

Excessive Hours

Jean, a former foundry worker (*fondeur*) described conditions at Jia Xing. The company buys minerals which are processed at its plant in Lubumbashi. Foundry workers work 12 hours non-stop. They take a short break on site to have a bite to eat but are often interrupted and sent back to work. Day shifts alternate with night shifts, and *fondeurs* get \$120 a month and if they work at the furnace they receive a bonus of \$100. The equipment is light and of poor quality. It is not replaced when worn out. Jia Xing employs about 100 Congolese and 100 Chinese workers and a degree of solidarity exists between them. Jean, who is an experienced foundry worker, explained that no one should work for more than a few hours at the furnace. Workers should be well-equipped and fully protected against the heat. They should be given milk to drink and facilities for taking showers. It's definitely not a job for life.

In Huachin, Lubumbashi, shifts last between nine and 12 hours a day, six or seven days a week. Some work night shifts. The average pay is \$100 per month. Workers do not have any protective equipment. They are given the equivalent of about 50 cents (USD) to buy food during the break; night shift workers are given six dry biscuits to keep them going.

RAID field report

Transport and Social Benefits

The Congolese employed by Chinese mining companies enjoy few benefits. The heavy, manual work with toxic minerals means that accidents frequently occur. The excessively long hours that are worked exacerbate the problem. In most cases, workers have to pay for their transport - which costs about a tenth of their monthly pay - or walk, which can take about one-and-a-half hours each way. Only a few companies provide transport. Workers are picked up in the morning at a bus stop and about 38 workers are crammed into a minibus that is supposed to carry a maximum of nine people.

In some companies work is organised in day and night shifts and teams rotate every 12 hours to ensure continuous output. Equipment is usually only provided to those working at the furnace and consists of poor quality masks, gloves, clothing and plastic boots which are never renewed. Workers are not allowed to take the gear home with them. In Likasi most workers have Sunday off and sometimes Saturday as well.

Since companies do not provide a canteen, the smelters and depots are surrounded by small shanty hubs



Lubumbashi, minibuses

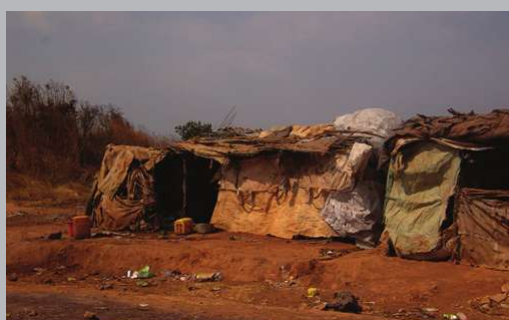
where makeshift cafes serve food and drinks. The canteens are no more than shacks constructed out of bits of plastic sheeting and wooden posts. In these unhygienic conditions local women come to sell food they've prepared while their small children play and roll around at their feet in the dusty, abrasive gravel.

These places are also used as a rest area, where workers can relax in the shade. In August at lunchtime the sun is scorching and the glare from the gravel intensifies the oppressive heat.

Some employers give workers some money for their lunch, but this is usually just enough to buy a couple of doughnuts. In most cases, workers either have to pay for their own food from their meagre wages or go

without.

'Bon Appetit!'



"Workers' cafe", Song Hua Mining, Lubumbashi.

In Congo Loyal workers are given 300 CDF (\$0.50) for lunch, just enough for a couple doughnuts that are fried on the spot or some biscuits. A bit more money buys a piece of grilled meat and some boukari (a mixture of corn and manioc dough). Some cans of Coca Cola and other fizzy drinks as well as cigarettes are sold at the makeshift canteens. Workers buy food 'on tick' and all owe money to one canteen or another.

In the Emmanuel depot in Kolwezi workers have just finished their one hour lunch break. Lunch is a time to get drunk and forget about the hard work. Curious about our survey, the workers gather around us, all clamouring to speak at the same time. Many smell strongly of alcohol. They have a lot to say and are extremely critical of the working conditions at Emmanuel's. Wage discrimination and racism are their biggest concerns, some describe the conditions there as 'forced labour'.

RAID field report

Ill-Treatment

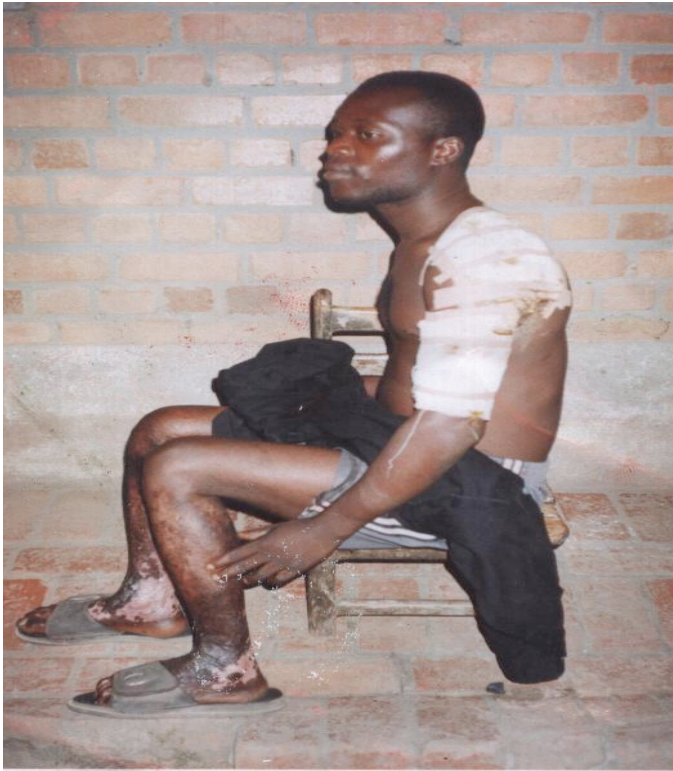
Not only are health and safety standards in Chinese mining companies woefully inadequate but also, as the survey showed, the behaviour of many Chinese managers and supervisors amounts to gross negligence. The treatment of the Congolese workers ranges from verbal aggression and bullying to beatings and in some cases extreme physical abuse. A number of cases of serious assaults were reported to the survey team. Local work inspectors, police and magistrates are not usually willing to prosecute a company or Chinese staff member even for flagrant violations of workers' rights and Congolese law. The workers are powerless and do not have access to lawyers willing to take on cases pro bono, contingency fee arrangements are almost unknown in the DRC. NGOs do their best to help but often lack resources to pursue the cases. There is a complete absence of an effective remedy.

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 against the pain for three days but was too unwell to keep on working. He complained about his treatment to the management. He was fired on the spot during the night shift and sent packing.

RAID field report

Case Study: Ilunga Franck Mutumbo, foundryworker, Lida Mining³⁵



Ilunga Mutumbo, © ACIDH 2008

Ilunga Mutumbo had started to work for Lida Mining in April 2006. Ilunga Mutumbo had signed a document which he believed was a contract but which was written in Chinese. The document had not been explained to him and he was not allowed to retain a copy.

On 6 January 2008 Ilunga Mutumbo collapsed while working and fell inside the furnace. He was pulled out, given painkillers and allowed to rest for a couple of hours. His workmates, who realised the gravity of his burns, managed to persuade the Chinese manager to drive Ilunga Mutumbo to the Panda Hospital in Likasi 120 km away. Ilunga Mutumbo was admitted to hospital and remained there for five months. Lida Mining only paid for about one and half months of his hospital care after that it was left to the injured worker and his family to meet the expenses.

When Ilunga Mutumbo was discharged from Panda Hospital he was declared by doctors to be unfit for work because of his work-related accident. Ilunga Mutumbo went to Lida Mining to claim his wages and compensation to cover his outstanding hospital bills. According to Article 178 of the Labour Code a

company has an obligation to cover any medical expenses incurred by a permanent contract worker as a result of work-related accident.³⁶

However the company manager refused to give Ilunga Mutumbo anything saying that if he wanted pay he would have to work. When Ilunga Mutumbo explained that he had been declared medically unfit for work, the manager offered to give him \$400 as a final compensation which Ilunga Mutumbo felt was insufficient as it scarcely covered his hospital bills. The Chinese manager insisted Ilunga Mutumbo go back to work and sent him to re-arrange the pipe that draws off water from the furnace. While he was doing this someone, he believes it was another Chinese employee, turned on the tap, spraying Ilunga Mutumbo's back with boiling water and seriously burning his shoulders. Another Chinese supervisor suggested that Ilunga be given 30,000 CDF (\$50) to cover his hospital fees. Ilunga was handcuffed and locked in a container on site all night. The following morning a company security guard took him to the offices of the mine police. A senior Mine Police officer, a Colonel, seeing Ilunga Mutumbo's condition ordered his release and advised him to find a lawyer. Ilunga was readmitted to hospital on the orders of the Procureur General where he remained but did not receive any further medical treatment because of his inability to pay.

All employers are obliged to register their employee with the regional INSS bureau. Lida Mining had not done so therefore Ilunga Mutumbo was not covered by insurance.

RAID was informed that companies frequently resort to bribery to avoid legal prosecution. Few crimes against workers are rigorously pursued.

Magistrates shield bad employers

Any complaint to work inspectors or the competent Congolese authority seems to be useless. Magistrates protect bad employers who use bribery to escape the legal consequences of their actions. Corruption is pervasive throughout the system.

RAID field report

³⁵ Case investigated by ACIDH

³⁶ Code du Travail Article 178: *En cas de maladie, d'accident, de grossesse ou d'accouchement, et meme en cas de suspension du contrat pour une cause de force majeure, l'employeur est tenu de fournir au travailleur et à sa famille, jusqu'à la fin du contrat : 1) les soins médicaux, dentaires, chirurgicaux, les frais pharmaceutiques et d'hospitalisation*

Case of Ephrado Kabanga, CDM³⁷

29-year-old Ephrado Kabanga was employed on a permanent contract at CDM as a construction worker. He had started working with the company in 2006 as a day labourer before CDM's processing plant had been built.

In April 2008, when he was leaving the plant with a group of fellow workers he was stopped and searched by Alex, one of the company's security guards. Alex, a Burundian, told them some screws were missing that had been left over after some construction work at the site. 'We were in effect arrested. Alex started to search us one by one'. All the missing screws for electrical sockets were found in a bag belonging to another workman. The man had asked to be allowed to relieve himself and, leaving his bag behind, had run away. At this moment M. Lee, the Chinese head of security, arrived and told us that we had to go and find the workman and bring him back. Ephrado Kabanga told Lee that he didn't know the man, who was a day labourer, and that it was the company's responsibility to find him. Lee and the two security guards started to beat him. Lee allegedly then knifed M. Kabanga in the stomach. He was bleeding profusely and an ANR agent present on site asked the injured man's workmates to take him to Prosecutor's Office (*Parquet de Grande Instance*) where a Prosecutor opened an investigation into the incident. A warrant for the arrest of the three attackers was issued. Lee was briefly arrested. The other guards fled. The Chinese security manager was ordered to leave the country and CDM was also ordered to pay due compensation to the worker for his medical bills. However, the Congolese worker is still waiting to receive compensation. Lee, the Chinese security manager, as of October 2008, was free and allegedly still working for CDM.

In August 2009, RAID was informed that before the case could come to trial and unbeknown to the plaintiff's lawyer, CDM reached "an amicable settlement" with Ephrado Kabanga, and paid him an undisclosed amount. RAID was unable to reach Mr Kabanga to confirm the details.

In August 2009, RAID interviewed Maitre Kabulo, one of the lawyers who had agreed to act pro bono for Mr Ilunga. Maitre Kabulo explained that the case had received a lot of media attention in Katanga, which had prompted action by the Minister of Social Affairs of the province. An official of the Ministry was sent to investigate and he visited the hospital where Mr Ilunga was receiving treatment. Lida Mining however refused even to allow the official to enter the factory. Although Mr Ilunga's lawyers had requested \$50,000 in compensation, Lida Mining, reached "an amicable settlement" and according to hospital staff paid the injured man him only \$1,700. A paltry sum in view of the fact that Mr Ilunga's injuries are so severe he will never be able to work again.

The above cases may be untypical. But many of the workers interviewed said that they do not trust the police or judiciary to uphold their interests and so they do not even bother report incidents of abuse.

Child Labour

Child Labour at the Depots



Boys washing minerals in a river, Katanga. Photo © Lionel Healing

Children and young adults aged between 12 and 18 years old can be seen at the depots everyday trying to sell minerals. They push bikes overloaded with bags, weighing between 70 and 90kg each, which they unload at the depots where the minerals are then inspected. If the Chinese trader is not interested in buying, the bags are refilled and painstakingly loaded back onto the bicycles and taken elsewhere. The boys often work either for a *negociant* or as part of a family group. Mothers and younger siblings wash minerals in the murky river, the fathers dig and crush the ore, or collect minerals from mine sites illegally at night. The older boys go from door to door trying to find a buyer.

RAID field report, Kowezi

There were an estimated one million artisanal miners, 20,000 of whom were children in Katanga as of August 2008.³⁸ Following the fall in the price of copper and cobalt the number of artisanal miners and child miners may have declined.

The ILO Convention 138 (Minimum Age Convention) and Convention 182 (Worst Forms of Child Labour Convention) state that children should not work before the age of 15 and that they must have finished school. The minimum age for lighter work is 13 and for hazardous tasks 16 to 18. According to the Congolese Labour Code the legal age of employment is 18. Employment of children at the age of 15 or more is allowed if permission is given by the Inspector of Work and the child's parents. But most children in the mining sector are not formally employed but work either individually or as part of family groups.³⁹

Children often conduct tasks like washing and sifting but they also dig since their size makes it easier for them to crawl into narrow holes. They may also undertake crushing and milling of ore and sieving, washing and sorting. Some of them only work during holidays. Others drop out of schools since families cannot afford to pay their school fees. Global Witness reported that death rates are the highest among young workers between 15 and 20 years of age and that illnesses observed vary from eye irritations to cancer.⁴⁰

Child Miners in Kolwezi



Children filling up minerals bags, Katanga. Photo © Lionel Healing

In 2007, the United States Agency for International Development (USAID) funded a study about the problem of child miners in Kolwezi. The study was undertaken by PACT, the US consultancy, and four international mining companies (Anvil Mining, Tenke Fungurume Mining, First Quantum Minerals) all of which have problems with illegal artisanal miners on their Kolwezi concessions. According to the study there are 4000 child miners in Kolwezi some as young as five years old. Both boys and girls are involved in mining (35:65 girls:boys). 70 per cent of the child workers attend school full time and dig at the quarries after school or during the holidays. Some 40 per cent of child miners are separated from their families; 72 per cent are free-lance and only 20 per cent are managed by middlemen (negociants). They tend to work in teams with groups of friends and earn

on average \$2.50 a day. 35 per cent of their earnings is given to their family, 25 per cent goes on school expenses, and the remainder they keep as pocket money. 6 per cent have been injured in accidents and four per cent have been the victims of violence. In 85 per cent of cases, the reason given for mining is the need to obtain money for school fees. 93 per cent claimed that they would stop if there was something else to do. According to PACT peer pressure from friends appears to be a strong motive for engaging in mining activity which is 'almost a social activity'. The study notes that 'Even though poverty is cited as a driver, in fact the children have a high degree of discretion over the use of their income.'⁴¹ Only 20 per cent of parents of the child workers are unemployed and a minority (seven per cent) claimed that without their contributions their families could not survive. However 30 per cent are sent to work by their parents and 60 per cent of parents approve of children working in the mines and quarries.⁴²

Apart from mining, artisanal mining sites offer a range of undesirable income-generating opportunities including petty trading and prostitution. At the quarries sterile rocks are pounded with mallets into gravel by mothers and children for use in construction work. After a day's work a four-metre pile of gravel might fetch around 3000 CDF about \$6 just enough to feed a family of six.

Chinese processing plants, do not use child labour. However the ore that they process inevitably has involved children. The RAID survey found clear evidence of children, some as young as 10 years old and

38 RAID interview with Groupe One a Brussels-based research NGO August 2008. In 2006 it began working in Katanga on a project funded by the Belgian Ministry of Foreign Affairs and Unicef on the protection of children working in artisanal mining.

39 *Loi no 015/2002 portant Code du Travail, Exposé des Motifs and Article 133*

40 Global Witness (2007), 'Digging in Corruption', p 32.

41 Extractive Industries Network (EIN) Democratic Republic of the Congo FY 2007 Annual Performance Report (October 2006-Sept 2007) & Quarter 4 Performance Report (July-Sept 2007), submitted to USAID DRC Mission Kinshasa, November 6 2007 p.38

42 Ibid p. 38

young adults below the age of 18 years, working in the depots in Kolwezi. The survey did not include site observations of the depots in Likasi and Lubumbashi. Although the children might not be formally employed by companies, many depots pay children to load bags and all of them buy minerals from children. Some, like a Chinese trader interviewed for a British television programme, undoubtedly do so out of a belief that they are helping children and because their own childhoods were harsh.⁴³ But according to Article 32 of the Convention on the Rights of the Child, which China and the DRC Governments have ratified, children have the right to be protected from economic exploitation. The fatalistic attitude of Chinese companies towards this problem is not conducive to ending child labour.

'It gives them some money'

On the whole it seems that Chinese mining companies, particularly the processing plants, do not use child labour. But the RAID survey found clear evidence of children, some as young as 10 years old and young adults below the age of 18 years, working in the depots in Kolwezi. Although they might not all be formally employed by companies, many depots pay children to load bags and all of them buy minerals from children. One Chinese trader from Liaoning Province told RAID that he bought minerals from children to help as they clearly needed money, adding that they reminded him of his own hard childhood.

RAID field report, Kolwezi

Groupe One which is working near the Ruashi mine in Lubumbashi has been trying to get the child miners to return to school by providing them with school equipment and improving the skills of their parents to increase their earning power. But developing viable, long-term income-generating projects for artisanal miners and their families is not easy. In UNICEF's experience, simply paying school fees is not enough to keep children in the classroom. Wider social protection schemes that offer emotional as well as financial support are required.⁴⁴ The Chinese Government should consider how it could meaningfully contribute to efforts to eliminate child labour in the artisanal mining sector in Katanga.

Outsiders Not Welcome



Guarded Entrance, Lubumbashi.

European visitors are not welcome in most Chinese mining companies. The Belgian NGO, Groupe One, told RAID that two members of staff, despite having made an appointment to see the manager of Jia Xing Mining in Lubumbashi, were stopped at the entrance and arrested by ANR agents (the Congolese intelligence agency). The Chinese manager told them that 'White visitors were not welcome at Jia Xing'. The ANR 'detained' the Group One representatives for the afternoon and, after extracting a \$500 'fine' in cash, released them.

RAID field report, interview with Group One, Lubumbashi 18 August 2008

43 Unreported World, 'China's African Takeover', Quicksilver production for Channel 4; broadcast, May 2007

44 Shantha Bloemen, 'Pounding rocks and crushing potential: Child Labour in DR Congo', 12 June 2009 at: http://www.unicef.org/infobycountry/drcongo_49979.html

Results of the Survey: Views of Chinese Workers

Profile of Chinese Mining Companies in Katanga

Chinese companies have been buying minerals from the informal and formal mining sector in Katanga for many years. China's reliance on imported copper concentrate has increased as the growth of its domestic ore production lagged behind its expanding smelting capacity. During the war years (1997-2002) and the period of the transitional government (2003-2006) transactions with the informal sector were hidden and traders would operate discreetly buying ore from middlemen or directly from artisanal miners, which was then transported across the border to Zambia for processing. In 2005, officially recorded copper exports from industrial and artisanal sources were 27,925 tonnes of copper metal and 177,310 copper concentrates. Cobalt exports were 17,770 metric tonnes of cobalt and 84,835 metric tonnes of cobalt concentrates.⁴⁵ Between 2001 and 2005 an estimated 75 to 90 per cent of concentrates and ores that were imported into China originated in the DRC.⁴⁶ The Chinese Government signed two bilateral agreements with the Kinshasa Government during 2001, the terms of which have not been made public, but they seem to underlie a number of the deals, including the controversial minerals-for-infrastructure swop.⁴⁷

Chinese brokers used to be shadowy figures glimpsed on the outskirts of the mines and if anyone tried to film or photograph them they would react violently.⁴⁸ Following a visit by President Joseph Kabila to Beijing in March 2005, Chinese entrepreneurs and companies started to operate more openly in Katanga. Companies like Huachin and Congo Loyal Will Mining were given permission to buy and process heterogenite from artisanal mining sources.⁴⁹ Most of the processing plants and trading houses are not publicly listed. In 2008, according to the World Bank of the 325 mining companies active in Katanga, only 10 were traded on international stock exchanges.⁵⁰



Fluctuation in Copper Prices © infomine.com 2009

The DRC's copper output during the first eight months of 2008 was 261,212 tonnes, compared with a recorded 97,385 tonnes for the whole of 2007. Total cobalt production in January-August 2008 was 28,126 tonnes, compared with 18,000 tonnes in January-December 2007.⁵¹ But the global economic downturn has had a profound effect on economic activity in the mining sector. In April 2008 the price of copper on the London Metal Exchange Ltd (LME) reached an all time high of \$4.08 per pound and averaged \$3.61 per pound for the first nine months of the year. In October 2008, as the impact of the global financial crisis began to be felt, copper prices plummeted, the LME price falling below \$1.70 per pound.

Data from the first six months of 2009 showed that Chinese demand kept copper prices high even though

45 World Bank, 'Growth with Governance in the Mining Sector', May 2008 at: <http://siteresources.worldbank.org/INTOGMC/Resources/336099-1156955107170/drcgrowthgovernanceenglish.pdf>

46 Cited by Global Witness (2007), 'Digging in Corruption', p. 13

47 Preliminary Agreement between the Democratic Republic of the Congo represented by Monsieur Pierre Lumbi OKONGO, Minister responsible for Infrastructure, Public works and Reconstruction and the grouping of Chinese Enterprises comprising the Export-Import Bank of China (EXIM Bank of China), China Railway Engineering Corporation (CREC), and SINOHYDRRO Corporation, represented by Monsieur LI CHANGJIN, Chairman and Director General of CREC. Dated Kinshasa, 17 September 2007. The Preamble to the agreement states: 'Considering the cooperation agreements signed on 3 April and 7 December 2001 by the DRC and the Peoples' Republic of China'.

48 Unreported World, 'China's African Takeover', Quicksilver production for Channel 4; broadcast, May 2007

49 Arrêté Ministériel No 023 CAB./MIN/MINES/01/05 du 08 mars 2005 portant autorisation de traitement de l'hétérogenite au profit de la société Huachin srl, avenue Lundala No 8 Commune de Lubumbashi. Journal Officiel de la République Démocratique du Congo Kinshasa 15 April 2005; and Arrêté Ministériel No 031 CAB./MIN/MINES/01/05 du 02 mars 2004 portant autorisation de traitement de l'hétérogenite au profit de la société Congo Loyal Will Mining 'CLWM'; Journal Officiel Kinshasa 1 September 2005.

50 World Bank, 'Growth with Governance', 2008

51 World Bank, 'Democratic Republic of the Congo: Economic Report', (Spring 2009)

globally usage decreased by four per cent in the first quarter of 2009, as compared to the first quarter of 2008. Had it not been for a very high apparent usage in China, and the decision of the Chinese government to buy for its strategic stockpiles, the decline in copper prices would have been much greater.⁵²

By November 2008, 41 of the 75 processing companies in Katanga had abruptly halted production and the remainder had reduced their output.⁵³ An estimated 300,000 mining jobs were lost in Katanga as companies mothballed their operations or scaled back production.⁵⁴ The way in which Chinese companies closed down was severely criticized by the Governor of Katanga: 'They didn't pay their people, they didn't respect anything. We have already written to them to ask them to give severance pay to their staff and to pay the tax due to the government. If they don't, we are going to ask the court to auction their properties to pay the bills.' The Governor claimed that the majority of the Chinese companies were 'speculators' and that they would not be allowed to return.⁵⁵ But despite such statements Chinese operators in Katanga continue to enjoy the patronage of senior Congolese political figures.

Mr Wu Zexian, the Chinese Ambassador to the DRC has reiterated in interviews with the press the Chinese Government's position that that Chinese companies operating outside China are expected to respect the laws and regulations of the countries where they work.⁵⁶ The Ambassador has also made clear the view that it is not the task of the Chinese Government to police the multitude of Chinese investors in Africa.⁵⁷

This view is not however shared by the Committee on Economic Social and Cultural Rights, a United Nations Treaty Body, which has stressed the importance of States seeking to prevent negative impacts 'by their own citizens and companies' operating overseas and 'to take steps to influence other third parties' to respect rights "through legal or political means" in accordance with international law.⁵⁸

In the view of many analysts, China is a meeting of provinces. Each one operates in a manner that appears independent of the state, but that does not necessarily mean that provinces are autonomous. Researchers have noted that once one company from a particular province starts a project in an African country, other companies from the same province tend to follow.⁵⁹ Many of the Chinese companies surveyed appear to have links to Liaoning Province but RAID was not able to ascertain whether they had been given explicit incentives by the Chinese Provincial authorities to start operating in Katanga. The influence and interests of major Chinese companies cannot be discounted in the Congolese copper and cobalt mining sector. China has a strategic and long-term approach to Africa, and it would seem that many of the Chinese companies, far from being isolated players or speculators, are part of an integrated, regional investment strategy. The smelters, processing plants and trading houses often have close associations with larger enterprises in China; many have cross border links with Chinese companies in other countries in the region, such as Zambia and South Africa; even fuel is supplied by Chinese-owned coke factories in Zimbabwe (see cover picture). The state-owned China Nonferrous Metal Mining Corporation (CNMC), for example, holds an 85 per cent shareholding through its subsidiary, NFC Africa Mining Company, in the Chambishi Mine in Zambia. Chambishi was the first nonferrous metal mine to obtain approval from the Chinese Government for development abroad. According to CNMC's website, the project is a symbol of Sino-African cooperation, adding:

There are many large and super large copper and cobalt mines in Zambia and neighbouring Congo. With support of the state, and further work, the region may become the largest overseas copper and cobalt resource base of China. Under the situation of short domestic nonferrous metal, especially for such resource as copper, aluminium and cobalt, it can make up for the deficiency of Chinese copper and cobalt resources.⁶⁰

52 US Geological Survey, 'Mineral Commodity Summaries', January 2009

53 Franz Wild, 'Congo Says 41 Processing Companies Close After Metal Price Drop', 14 November 2008, *Bloomberg*

54 Franz Wild, 'Katanga Mining Workers Facing Dismissal Protest at Copper Mine', 17 April 2009, *Bloomberg*

55 Barney Jopson, 'Chinese copper entrepreneurs flee DRC', February 20, 2009, *Financial Times*

56 Barney Jopson, 'Chinese copper entrepreneurs flee DRC' *Financial Times*, 20 February 2009. Mr Wu Zexian is quoted as saying 'Our policy is always that Chinese companies operating outside China must respect the laws and regulations of the countries where they work. That is very clear. But we can never be 100 per cent sure that all companies do that'

57 Ibid.

58 General Comment No 15 (2002) para 33

59 RAID interview with Carine Kiala, Senior Analyst, Centre for Chinese Studies, University of Stellenbosch

60 <http://www.cnmc.com.cn/en/gsyw/ysjszykf.asp####>

Although there are occasional threats of a clamp-down on Chinese activities and reports that Chinese workers have been deported for failing to have proper work permits⁶¹, an analysis of Chinese operators suggests that many of them are *'bien introduit'* and enjoy a significant degree of political support from both the Chinese and Congolese authorities. There are also allegations that some Chinese entrepreneurs function as figureheads for prominent Congolese who wish to hide their interests in mining ventures.⁶²

Jia Xing Mining Industry Congo, is a subsidiary of Yingkou BL Mining Company Ltd, a multinational company, located in Liaoning Province, China. The company includes Yingkou BL Mining Company refractory plant and Electro-refined plant in China. Apart from Jiaying Mining Industry Congo, Yingkou has two other African subsidiaries: Jiaying Mining Zambia Limited, and TCKY Mining South Africa (PTY) Limited. In 2002, the company diversified into the nonferrous industry. The companies' main operations in Africa are copper and cobalt ore prospecting, mining and smelting. The main products are blister copper and other ores. The African subsidiaries have more than 1200 employees and all the managers and technical staff are sent from company's head office in China.⁶³ Jiaying Mining Industry Congo was established in 2007 and employs approximately 350 people, 150 Chinese and 200 Congolese.

FEZA MINING is a joint venture between COMIDE and WANBAO Resources Corporation, a subsidiary of WANBAO MINING LIMITED.⁶⁴ WANBAO MINING was established on March 16th 2005 with the approval of the Chinese government and has its headquarters in Beijing.⁶⁵ In April 2005, the Chinese ambassador to the DRC, Fan Zhenshui, and Augustin Katumba Mwanke, the former Governor of Katanga and close advisor to President Kabila, attended the inauguration of Feza Mining's polymetallurgical plant, at Shituru. Katumba Mwanke has wielded enormous influence over the allocation of mining rights in the province for many years. COMIDE is a joint venture between CICO and Gecamines. Joseph Kabila reportedly has interests in CICO, which replaced NOUCO, a company created by Laurent Desiré Kabila. Revenue from this joint venture has allegedly been used to pay for the delivery of arms by the Chinese ordnance company, NORINCO. Mama Sifa (the mother of President Kabila) allegedly has interests in FEZA Mining. Ramat Gan, owned by the Israel-based DGI International Ltd, is also a shareholder.

Metal Mines was established in August, 2007 in Likasi by Hanrui Cobalt and went into production in March 2008. With an initial annual production capacity of 1500-2000 MT Coarse Cobalt Carbonate and 20000-30000 MT Cobalt Concentrates. Metal Mines is also engaged in the sales and marketing of related cobalt products.⁶⁶ Metal Mines is situated in Likasi Industrial Zone. Hanrui Cobalt has a 70 per cent shareholding in Metal Mines and unspecified 'local shareholders' hold the remaining 30 per cent. Metal Mines has 12 hectares, including 2400M2 main plant building, 1000 M2 living, office and other area as well as 7000 M2 roads, purchasing yard. The company employs 30 Chinese and 50-60 local workers. The registered capital is 10 million US Dollar and 14 million US Dollar for the total investment of project. Metal Mines

61 According to the Governor of Katanga about 600 Chinese nationals were deported for violating labour and environmental laws in the 12 months ending March 2008. Simon Clark et al, 'China Lets Child Workers Die Digging in Congo Mines for Copper', *Bloomberg* 22 July 2008. 'In June 2008, 15 Chinese citizens were deported for having resided illegally in the country. They had entered on tourist visas and subsequently taken up work illegally.' Professor Gilbert Malemba N'Sakila, 'The Chinese Presence in Lubumbashi, DRC', published in *The China Monitor*, Centre for Chinese Studies, University of Stellenbosch, October 2008.

62 Ibid.

63 <http://www.bl-china.com/ENGLISH/NEWS.html>

64 www.wbmining.com/en/about/htm.

65 www.wbmining.com/en/about/htm.

66 Nanjing Hanrui Cobalt Co., Ltd. <http://www.hrcobalt.com/en/news.asp?id=469>. In 2007, Nanjing Hanrui Cobalt informed SwedWatch that it purchased its cobalt from different mining and trading companies in the DRC, but refused to give out the names of its suppliers. According to the company, it holds 40 percent of the Chinese market for cobalt materials. Just over half of the cobalt material imported by Nanjing Hanrui is used in rechargeable batteries for laptops, mobile phones. The company declined to name its customers, which reportedly include Samsung, LG, Hitachi and Toshiba. See Sara Nordbrand and Peter Bolme, POWERING THE MOBILE WORLD: Cobalt production for batteries in the DR Congo and Zambia, November 2007, Swedwatch available at: <http://makeitfair.org/the-facts/reports/Powering-the-Mobile-World-Swedwatch-November-2007.pdf>

is one of ten foreign-invested enterprises eligible to export staple cobalt products. Nanjing Hanrui Cobalt Co Ltd, one of the largest conglomerates in China, purchased three high-grade copper-cobalt mines in Lubumbashi in the DRC. According to its website, after a decade of growth, this private company has become the leading cobalt powder producer in Asia, ranking among the top three of the world.⁶⁷

Transparency

*'Chinese companies are not transparent. All the documentation is in Chinese, so how do we know what we've signed? Would a Congolese company be allowed to have all its administrative paperwork in a Congolese language in China? How can they do that here?'*⁶⁸

Chinese establishments in Katanga are heavily guarded and workers are fearful of speaking to foreigners. In Lubumbashi security is pervasive. The day after the first visit by RAID's survey team to processing plants and factories in Lubumbashi, the Congolese intelligence services were on the look out and questioned the Congolese researchers about their activities.

As the survey revealed it is common for workers employed by Chinese mining companies either to have no contracts or if they do, the contracts are written in Chinese without any translation. This means that the workers do not know the precise terms and conditions of their employment. Furthermore there is a general sense that the Chinese companies lack accountability which is attributable to the failure of both the Congolese and Chinese authorities to make public the terms on which the majority of them are allowed to operate in Katanga. The IMF expressed concern about a lack of clarity over key aspects of the \$9 billion mining and infrastructure deal signed between the DRC and Chinese governments in 2008, which failed to specify whether the financial obligations contracted by the DRC should be categorised as public or private debt.⁶⁹ Provincial Department of Mines officials complain that they are not always provided with copies of formal agreements made in Kinshasa, which means their records are incomplete.⁷⁰ Chinese companies lack accountability in other ways too: for example, according to the local NGO ACIDH, in two years of research they had found no evidence that any of the Chinese processing plants or depots have produced environmental impact assessments or management plans as required under the Mining Code.

Conditions for Chinese Employees

The Chinese employees receive higher wages and the costs of their board and accommodation are taken care of by the company for the duration of their contract. For Chinese workers there are clear financial incentives to working abroad on long-term contracts, though the terms are less good for labourers. Even if, by Western standards, the conditions for Chinese expatriate staff are tough, they are distinctly superior to those of the Congolese workers.

In a depot in Kolwezi, Chinese workers live on site. Six of them share a 15m x 2 m room which contains three bunk beds. The manager is Congolese and he keeps the Chinese workers' passports and work permits. These visas only allow them to work for a specific company. Chinese workers are unable to go out on their own because local officials often question the validity of their visas. This is a frequent ploy to extort money from companies and Chinese workers.

RAID field report

Chinese workers interviewed in Kolwezi talked about the poor living conditions and explained how insecure they felt in Katanga. Chinese employees are usually on two-year contracts and during this time are not allowed home leave. Managers sometimes retain their passports. They are harassed by local officials, who

67 'Africa: Environmental Impact - More of the Same?', 14/12/2006 http://www.illegal-logging.info/item_single.php?item=news&item_id=1844&approach_id=1. This site is maintained by the Energy, Environment and Development Programme of Chatham House in London, with funding from the UK Department for International Development.

68 A Congolese worker interviewed by RAID

69 IMF managing director Dominique Strauss-Kahn stated in Kinshasa on May 26, 2009, 'IMF staff are finalizing negotiations on a new program under the Poverty Reduction and Growth Facility, pending an outcome, consistent with debt sustainability, to the mining and infrastructure cooperation agreement between DRC and China. ... Before the IMF Executive Board can consider a new program for the DRC, a positive solution to the issue of the Sino-Congolese agreement and financing assurances of the Paris Club are needed.' Peter Lee 'China's copper deal back in the melt' Asia Times Online 12 June 2009 available at: http://www.atimes.com/atimes/China_Business/KF12Cb02.html

70 La Liste des Operateurs Miniers/Katanga dated 11 May 2007, Emmanuel Kianda Kibawa, Chef de Division Provinciale des Mines.

* Chen Zhouxi, 'A Chinese Laborer Recalls Horror in Equatorial Guinea', *The Economic Observer* online 5 May 2008 in *Nation*, page 13, issue no. 365, April 28, 2008. Translated by Zuo Maohong

pay regular visits to the mining centres in order to extort money and Chinese expatriate workers are often the victims of assaults by armed gangs.

Some of those interviewed link the hostility and harassment Chinese expatriates face to a number of different factors. The influx of Chinese workers has driven up the cost of rented accommodation in Katanga, particularly in Lubumbashi, which has forced many local people into the *cités* (shanty towns). Rumours of ill-treatment of Congolese workers by Chinese employers quickly spread and petty racketeers and local gangs roam around and carry out what they claim to be ‘revenge attacks’ on behalf of ‘their brothers’. Houses where Chinese workers live are frequently and repeatedly burgled. Chinese workers find it almost impossible therefore to go out alone and, as their passports have usually been confiscated by their managers, it would be risky to do so. When they are not working they spend their time cooped up in over-crowded rented accommodation or confined to guarded compounds. Life for Chinese managers and more senior staff living in Lubumbashi is much better and though they work hard they seem to enjoy a greater degree of freedom. The Chinese respondents talked about living lonely and secluded lives in a dangerous environment and do not see a future for themselves in the Congo. The Chinese respondents did not mention specific cases but they do not feel that they can rely on the Congolese or Chinese authorities for protection.

Non Interference : Equatorial Guinea

Contract labourers from Donghai and Weihai were recruited to work in Equatorial Guinea for a construction company, Jianyu Overseas Development Limited (a subsidiary of the Weihai Construction Group). The contractor promised that the workers would be paid a minimum monthly wage of \$540 and at the end of their two-year contract a lump sum of 90,000 to 110,000 yuan. This was five times more than the workers could earn at home. However the workers had to pay a number of expenses including a 20,000 yuan deposit, 3,000 yuan fee for employment services, and 2,000 yuan for a passport. The employment agency arranged for them to have anti-malaria vaccinations and promised that they would be provided with life insurance.

In Equatorial Guinea the workers found conditions to be almost intolerable and many of them fell ill with malaria. They discovered that the agency had not insured them. There were inordinate delays in paying them and when they complained to the project manager their grievances were dismissed. In early March 2008 Chinese contract labourers went on strike. On 20 March fifteen Equatoguinean policemen were sent to the workers’ dormitories. They told the workers that strikes are considered illegal in Equatorial Guinea. On 24 March armed police came to the dormitories and tried unsuccessfully to arrest thirteen workers. The workers had allegedly been singled out because they were on bad terms with the Chinese project manager. At 11:40 pm on March 25, about 40 policemen and soldiers returned to the dormitories and, through an interpreter, told the workers, that in the eyes of the local government, the strike was illegal. The police started to drag people away. The workers formed a line and tried to force the security forces out of the hostel yard. The police started to fire shots into the air and some workers retaliated by throwing stones. After that the police fired into the crowd killing two workers and injuring others. Over 100 workers were detained. The Chinese Ministry of Foreign Affairs (MOFA) stated that it had asked the Government of Equatorial Guinea to investigate and a team of Chinese officials were sent to the country. After ten days the 100 workers who had been arrested were deported. The remaining 350 workers were flown back to Shanghai a few days later. The families of the workers who had been killed were allegedly paid 300,000 yuan each in compensation.

MOFA issued a statement saying that as more Chinese went abroad for work, more labor disputes involving Chinese were occurring overseas, mainly due to failure to adjust to a different working environment and culture. The Ministry cautioned Chinese labourers working abroad to ‘do as Romans do when in Rome’ and ‘act in accordance with the law to seek redress’*.

The March 2008 incident in Equatorial Guinea shows how the doctrine of non-interference can backfire with tragic consequences for Chinese workers. Chinese officials in meetings with RAID confirmed the details of this incident.⁷¹

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 3 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

Chinese expatriates do not feel safe living in Katanga and find it difficult to integrate. In general the survey found that Chinese employees do not feel that their human rights are respected and believe that

⁷¹ Chen Zhouxi, ‘A Chinese Laborer Recalls Horror in Equatorial Guinea’, available at: http://eeo.com.cn/ens/biz_commentary/2008/05/05/98610.html information and export of minerals.

the Chinese embassy, in cooperation with the Congolese authorities, should take action to address their concerns.

Attitude to the Law and Corruption

*'The Congolese authorities who come here are only after money, it's very problematic. Yet, the Congolese working with us are good people. I'd rather go back home than carrying on working in these conditions.'*⁷²

Although in many ways Chinese companies are regarded by their OECD competitors as enjoying many special privileges in the DRC, they also face many of the same challenges as Western enterprises. The World Bank Group ranks economies on the ease of doing business from 1-181 with the first place being the best. A high ranking means that the regulatory environment is conducive to the operation of business. In the 2009 report, the DRC is ranked 181, at the very bottom.⁷³ The World Bank has also noted the problem of fiscal harassment and 'the danger of over-zealous government officials'.⁷⁴ Chinese employees have direct experience of 'the pervasive culture of corruption [that] exists at every echelon of Congolese politics and government administrative services'. But according to Transparency International overseas bribery is common among Chinese companies and China has failed to transport its domestic anti-corruption efforts overseas. Transparency International reminds the Chinese Government that with growing influence comes a greater responsibility and recommends China voluntarily to adopt the provisions of the OECD Anti-bribery Convention.⁷⁵

In theory the *Cadastre Foncier* (Land Registry) and the *Service Urbain de l'Urbanisme et Habitat* (Town Planning and Housing Department) control and regulate urban land concessions but they have little authority and political 'patrons' wield most of the power. During the copper and cobalt boom, a rash of small-scale smelters and processing plants opened in various locations around Likasi, Kolwezi and Lubumbashi with a seeming complete disregard for the impact on public health and safety or the stipulations of the Mining Code.⁷⁶ Many Chinese processing companies and trading companies do not comply with the Mining Code, instead they have benefitted from a range of exemptions, not all of which have been communicated to the local authorities. Chinese operators have obtained exemptions from the Ministry of Mines or the provincial government that allows them to process ores sold to them by artisanal and small-scale miners. Most of the processing operations do not appear to comply with requirements for environmental impact assessments or management plans.⁷⁷ The export of mineral commodities in a raw or unprocessed state is illegal under the Mining Code but Chinese and other traders have special exemptions. In April 2007, the Governor of the Province of Katanga closed the border to these exports causing significant disruption in Lubumbashi and in Zambia where the refining and processing facilities are located. More processing plants have opened as a result but many companies are still in an irregular situation. The World Bank has warned that the Government of the DRC 'will need to review the exemptions to ensure that companies are in compliance with the obligations under the Mining Code'.⁷⁸

Mine inspection services are entirely inadequate to perform their mandated function of monitoring production, health, safety and environmental issues at industrial and artisanal mine sites. In Katanga the Directorate of Mines has only 30 staff to cover a vast province with many operations. Moreover, the Directorate does not have logistical support, laboratories, vehicles. Occasionally, Chinese-run smelters have been closed temporarily for breaches of environmental regulations but they soon resume their activities, sometimes after the payment of a small fine or bribe. The Provincial Directorate of the Ministry of Mines (DPEM) shut down COTA Mining's cobalt drying plant near Lubumbashi in December 2007 because a pool of acid was in danger of leaking into a stream. The plant was supposed to stay shut till further notice. But in March 2008, the Governor of Katanga, Moïse Katumbi, overruled the DPEM and gave COTA Mining permission

72 A Congolese worker interviewed by RAID

73 Doing Business Report 2009 at: www.doingbusiness.org/documents/fullreport/2009

74 World Bank, 'Democratic Republic of the Congo: Growth with Governance in the Mining Sector', May 2008 p. 25 available at: <http://sitere-sources.worldbank.org/INTOGMC/Resources/336099-1156955107170/drcgrowthgovernanceenglish.pdf>

75 Transparency International press release, 'Foreign bribery by emerging export powers disconcertingly high', Berlin/Brussels 03 October 2006 <http://www.transparency.org>

76 *Code Minier, Chapitre II: Des Obligations Relatives aux Operations en vertu de Titre Minier ou de Carrieres*

77 World Bank May 2008 p. 23

78 World Bank May 2008 p.38

to resume its operations.⁷⁹ In September 2008, the Provincial Minister of Infrastructure and Public Works announced that several Chinese companies would be closed for failing to pay taxes related to the building of factories and industrial plants.⁸⁰ It is not clear which companies were deemed to be at fault nor indeed whether any closures followed the announcement.

In Katanga, Chinese managers did not feel any benefit from the high-level expressions of friendship and cooperation between the Chinese and DRC governments.

Jia Xing Manager, Kolwezi Depot:

Various Congolese 'officials' turn up on a regular basis and demand payment of 'taxes' and we pay up to avoid further trouble. On the road between Kolwezi and Lubumbashi the company's trucks are frequently stopped at road blocks manned by police, military and an assortment of 'hangers on'. A single trip can cost up to \$50.000, about half the value of the load.

RAID field report

⁷⁹ *Bloomberg Markets*, September 2008

⁸⁰ Ministre Provincial des Infrastructures et Travaux Publics statement broadcasted in an interview on the Nyota Radio and Television Station, 19 September 2008 at 22:00 hours

part 4

International Aid and Chinese Investment

*'Without the Chinese there'd be no jobs and the workers would have nothing.'*⁸¹

The DRC is heavily dependent on donor aid, both for specific humanitarian and development programmes and to support the government's financial position.⁸² In 2007, net ODA accounted for 25.2 percent of gross national income. The UN Integrated Mission to the DRC has an approved budget of \$1.2 billion, the equivalent of total ODA to the DRC in 2007.⁸³ The DRC is ranked 168th out of 177 countries on the Human Development Index (HDI).⁸⁴ The HDI measures a decent standard of living by the unweighted average of people without access to an improved water source and the proportion of children under age five who are underweight for their age. In the DRC 41.1 per cent of the population will probably not survive beyond the age of 40; 54 per cent do not have access to clean water sources; and 31 per cent of children under the age of five are underweight.⁸⁵

According to the IMF the DRC is one of the most severely hit countries in Africa by the economic downturn. Prices of copper, cobalt and diamonds have collapsed. Terms of trade are expected to drop by 20 percent this year. As a consequence, economic growth is projected at 2.7 percent in 2009, well below pre-crisis levels.⁸⁶ Since the elections the World Bank and Western donors have tried imposing conditionalities to promote good governance and curb corruption. The Chinese Government's pledge of long-term assistance has been particularly welcome to the DRC Government.

China's Minerals-for-Infrastructure Deal

The multi-year multi-project was signed in 2008. Under the terms of the agreement, the Export-Import Bank of China pledged a \$9 billion to build and upgrade the DRC's road and rail systems and to develop and rehabilitate the country's strategic mining sector. In return, China secured copper and cobalt concessions. The country will gain rights to extract 6.8 million tons of copper and 420,000 tons of cobalt. The operations are expected to begin in 2013. The Congolese parliament approved the agreement in May 2008. Three major Chinese companies, China Railway Engineering Corporation, Sinohydro Corporation and Metallurgical Group Corporation, have a 68 per cent shareholding in a new joint venture, Sicomin, with the rest held by Gecamines and the DRC government. By May 2008, 150 Chinese engineers and technical personnel were already in the DRC working on the new joint venture. The promised investment is more than three times that of the DRC government's annual budget (\$2.7 billion for 2007). The Chinese ambassador to the DRC hailed the deal as only the beginning of China's active promotion of its relations with the DRC. Congo's Infrastructure Minister Pierre Lumbi praised it as a 'vast Marshall Plan for the reconstruction of our country's basic infrastructure.'^{*} But in June 2009 the IMF, concerned that the agreement would load the DRC with unsustainable levels of debt, called for the deal to be renegotiated.^{**} The Congolese Government has been seeking a reduction in its multilateral and bilateral debt under the IMF's Highly Indebted Poor Country Initiative. But the Paris Club of official creditors is reluctant to write off historic debt, only for the Congolese to obtain new loans from China on commercial terms.^{***} The agreement with China has been enthusiastically presented on Congolese state-controlled television and radio as helping President Joseph Kabila deliver on his 2006 election pledges to build roads, railways, hospitals, schools and universities. The Financial Times described the deal as 'the most ambitious of the minerals-for-infrastructure deals reached, as China's fast-evolving relations with Africa began to challenge the dominance of former European colonial powers in trade, development thinking and political influence on the continent.'

At the time of the RAID survey, the rehabilitation of the Lubumbashi-Kasumbalesa road, a vital export route for minerals, was the only evidence of the Chinese infrastructure programme in Katanga.

In August 2009, the IMF announced that, provided China agreed to put a third of its investment 'on the back burner' and withhold a state guarantee on another third for 25 years, it would not oppose the Sicomin deal. The DRC would then be eligible for as much as \$10 million in debt relief and a three-year loan programme. China will invest \$ 3 billion in Sicomin which may start producing in 2014.

81 A Congolese worker interviewed by RAID

82 OECD Development Assistance Committee (DAC), Annual Report 2008

83 OECD 'Resource Flows to Fragile and Conflict-Affected States', Annual Report 2008 available at: <http://www.oecd.org/dataoecd/14/14/43293581.pdf>

84 UNDP 2007/2008 Human Development Report, 'DRC Country Fact Sheet' available at: http://hdrstats.undp.org/en/countries/country_fact_sheets/cty_fs_COD.html

85 Ibid.

86 Statement by IMF Managing Director Strauss-Kahn at the Conclusion of his Visit to Democratic Republic of Congo Press Release No. 09/186, May 25, 2009 available: <http://www.imf.org/external/np/sec/pr/2009/pr09186.htm>

* Wenran Jiang, 'A Chinese 'Marshall Plan' or business?', *Asia Times* 14 January 2009

** Statement by IMF Staff Mission to the Democratic Republic of the Congo, Press Release No. 08/346 December 23, 2008: 'The Sino-Congolese cooperation agreement will also need to be made compatible with debt sustainability.'

*** William Wallis, 'Chinese deal threatens IMF aid for Congo', *Financial Times*, May 14 2009.

**** Ibid

***** Franz Wild, 'China Has No Plans to Alter \$9 Billion Congolese Deal', 2009-06-02 14:34:22.975 GMT; Bloomberg

The World Bank, OECD governments and Western mining companies are viewed with a great deal of suspicion by Congolese civil society and their actions are seen as perpetuating a system of exploitation of the Congo's minerals for the benefit of foreigners.⁸⁷ In Katanga the perception of Chinese investors is overwhelmingly negative and most of those interviewed were skeptical of the claims that the Sino-Congolese mining and infrastructure projects will help their country's development. For many of the Congolese respondents the Chinese are in the DRC to exploit the country's natural resources, just as the Europeans did before them. This negative perception however is not universal and many Congolese believe that the Sino-Congolese agreement will rebuild the country's infrastructure, provide much needed schools and hospitals, and transform the DRC's economy.



Workers' cités, Lubumbashi.

The attitude of the Congolese respondents towards Chinese mining companies may partly be explained by the miserable living standards of the Congolese workers and artisanal miners in Katanga. They live in small mud brick houses in the *cité* - the ever-expanding slums that surround the mining towns where there is no sanitation or access to clean water. Men are the main income providers and they have on average six children to feed, clothe and educate. Women carry out the household tasks and may supplement the household income by selling food on the market or participating in small-scale income generating projects. But most household incomes fall far short of the \$500 needed to sustain a family.⁸⁸ Programmes like those of the Extractive Industries Network (EIN), jointly financed by USAID and some of the larger mining companies, have only been able to reach a small proportion of the Katanga's artisanal workers. In 2007 only 1,020 artisanal miners were employed or assisted into new livelihoods under the EIN programme. Politicians and their relatives, military officers and security service all are implicated in the informal and often illegal minerals trade and 'the scale of the problem is vast so the level of effort and investment needed is huge to generate impacts.'⁸⁹

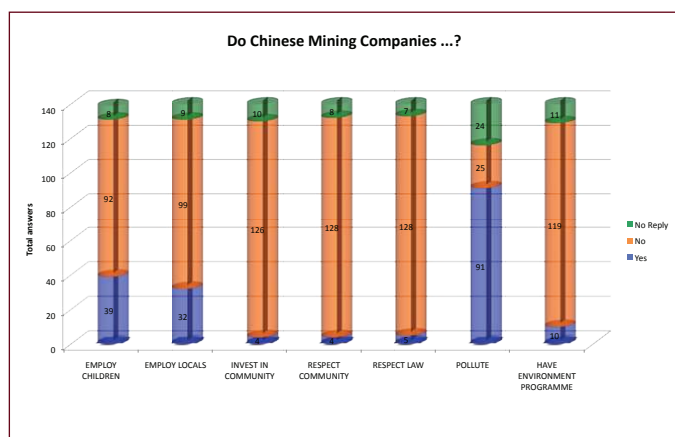


Figure 10

Under Article 69 of the Mining Code, mining companies are supposed to make a tangible contribution to community development, but the Chinese managers interviewed for the survey did not appear to feel that their companies had any such responsibility. Many of them referred to the 'minerals-for-infrastructure' deal as the way in which China was helping Congo's development. Unlike their Western counterparts, many Chinese managers arriving in the Congo are used to witnessing the hardships of migrant workers in China's cities and are aware of the dangers of artisanal and small-scale mining.⁹⁰ From their responses to the survey, they 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

like the employment of children in hazardous work.

87 OSC/RN, 'Propositions des Organisations de la Société Civile Congolaise Oeuvrant dans le Secteur des Ressources Naturelles pour la Finalisation des Renégociations des Contrats Miniers TFM Et KMT' Kinshasa 14 Juillet 2009 'Le Congo continue à exister comme pendant la colonisation. Les ressources naturelles du pays sont exploitées au profit des autres peuples. Les pays occidentaux en collaboration avec les dirigeants politiques congolais continuent le pillage. La spoliation est facilitée par l'élite congolaise qui se contente des miettes que l'exploitant capitaliste lui donne pendant que le peuple congolais croupit dans la misère.' p. 8

88 listen to http://www.radiookapi.net/files/audio_file_7301.mp3, March 2007, translation verbatim

89 Extractive Industries Network (EIN) Democratic Republic of the Congo FY, 2007 Annual Performance Report (October 2006-Sept 2007) & Quarter 4 Performance Report (July-Sept 2007), submitted to USAID DRC Mission Kinshasa, November 6 2007 pp. 38-39

90 The ILO reports that China's small scale coal mines, which employ roughly 2.5 million people, are among the world's most dangerous. Official statistics suggest that around 6,000 people die each year in these mines. See ILO Facts on Small-Scale Mining available at: <http://www.ilo.org/communication>

The Congolese workers in Katanga are equally distrustful of the Kinshasa government and one source of contention has been the delay in giving the province its share of mining revenues which was anticipated to start happening soon after the elections. Under the Mining Code 40 per cent of collected mining royalties, as well as 10 per cent of surface rents, should be retroceded to the provinces (25 per cent for the provincial administration and 15 per cent for the area where mining activities are conducted). In addition to the retrocession of royalties provided for in the Mining Code, the Constitution stipulates that 40 per cent of all tax revenues coming from national enterprises, including mining related tax revenues, be retroceded to provinces. However the Constitution does not exactly specify how this is to occur, which criteria are to be used for the calculation or the dispositions for accounting and monitoring of the revenues.⁹¹ Congolese civil society groups want greater transparency and effective implementation of the mining laws and they have called on the DRC Government to redistribute the mining revenues.⁹²

Language and Other Barriers to Integration



Chinese compound, Huachin, Likasi.

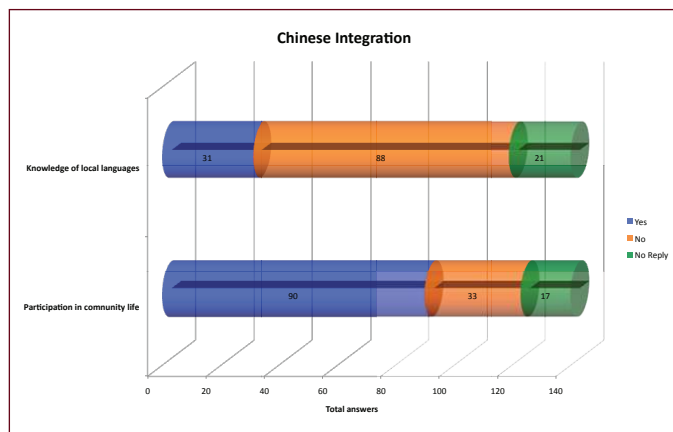


Figure 11

Chinese and Congolese workers live separate lives which should be a cause of concern to both governments. Interaction is usually limited to the workplace and the degree of acquaintance varies depending on the context. The nature of relationships in a smelter, where the work is intensive and workers are constantly supervised, is different to that of depot. The presence of security guards and of the ANR around the smelters and processing plants in Lubumbashi and Likasi is another source of tension. In comparison, the trading area in Kolwezi, where people can come and go without being checked at the gates, is much less oppressive. Superficially, at least, the relationship between Congolese and Chinese in the depots appears more spontaneous and some of the Chinese traders even speak French or Swahili. Not being able to speak French or Swahili is a real disadvantage, which is another factor inhibiting greater integration. Despite the many complaints about Chinese activities most of the Congolese respondents said that they would like the Chinese to take an active part in social life. Only a few Congolese said they had Chinese friends or even knew any Chinese people outside work. The fact that Chinese people live apart in compounds, which they rarely leave, creates resentment. Yet it is difficult for any foreigner, Asian or European, to move freely and safely in the DRC. The seclusion of Chinese workers however is not only related to a fear of violence. Chinese workers come to the DRC with a work visa that restricts them to work for one company only, and often their passports are retained by their manager. In the DRC, foreigners must have their identity documents. Not being able to account for one's whereabouts makes one liable to fines or even arrest. Not many Chinese expatriates can go around freely and thus few of them venture into town centres or work in shops. This lack of freedom, the risk of being harassed for bribes and the constant threat of aggression make life difficult for Chinese expatriates.

In the volatile atmosphere of Katanga sporadic outbreaks of violence, some of it inter-ethnic, readily occur. In August 2008 the RAID research team witnessed an incident in Luilu, a village some 30 kilometres north of Kolwezi. Luilu is an employment hub where both locals and migrants from other provinces find casual work in the mines. There is a widely held belief that migrant workers are taking jobs from local people. Around 9 pm on the night of 26 August 2008 an angry mob, allegedly incited by local politicians, attacked the

91 World Bank, 'Growth with Governance', May 2008

92 OSC/RN *Rapport Juillet 2009* : 'Il est temps que le gouvernement respecte ses lois notamment la redistribution de la redevance minière et autres taxes au bénéfice des communautés locales et initie des lois sur la transparence, l'accès à l'information, l'obligation de rendre compte et une loi sur la gestion des ressources naturelles qui consacrerait la part de l'Etat à 50% dans toute entreprise.' p.53

Cité de Kambimbi, a slum on the outskirts of Luilu where about 200 petty traders from the neighbouring province of Kasai lived. The mob set fire to the compounds where the Kasaiens lived and destroyed their bicycles and other belongings. The Kasaiens took refuge in a Gecamines building and the security guards (*Garde Industriel*) called the police. The Congolese police force only arrived at midnight, three hours after the incident. According to ACIDH, the violence against the Kasaiens appeared coordinated and recalled the brutal attacks and violent explosions of Kasaiens of the early 1990s, instigated by Mobutu.⁹³ There was no investigation into the incident. The police told ACIDH that they were unable to contain the violence because they were only had three officers on duty that night: all the others had been 'hired out' to foreign mining companies to guard their concessions from creuseurs. Lawlessness pervades the whole system and makes everyone vulnerable. Ethnic hatred is whipped up by local politicians and no action is taken by the police to contain or investigate such incidents. Foreign mining companies are seen to exploit cheap labour. Companies without concessions buy minerals from artisanal miners, which have usually been illegally obtained from the large mines. The large mining companies need to guard their concessions; and, because local police are underpaid, they moonlight as private night security guards, leaving the towns unprotected. As a result violent crime flourishes.

Chinese companies are not the cause of all these problems nor can they tackle them in isolation but they should consider in what ways their activities might be contributing to or exacerbating them. The Chinese and Congolese authorities should cooperate in developing a plan of action for reducing tension, combating crime, creating new employment opportunities and creating a stable, law abiding environment.

Ndenga Depot - A Common Language

The atmosphere is rather relaxed and relations are almost friendly between Chinese and Congolese workers. Two young Chinese men supervise the depot; they are mechanics by training but were hired without any previous experience of mining or management. Their job consists of checking and weighing the minerals, buying ore, supervising workers as well as keeping a close eye on the cash box. Through work they've learned Swahili and speak enough to talk and joke with the workers. The fact they can speak the same language as the workers makes a huge difference. It not only helps business but it also builds a relationship of trust.

RAID field report

⁹³ ACIDH, 'Haine Tribale a Kolwezi: ACIDH exige que les contrevants soient punis!', Communiqué de Presse No ACIDH/08/08/2008 1 September 2008. See also News from Africa Watch (New York). June 1992. Vol.5, No.10 'Zaire: Inciting Hatred: Violence Against Kasaiens in Shaba.'

Conclusions

The PRC Central Government, even if it has not directly encouraged these Chinese mining operators, must be aware of their presence in Katanga and like any government has a duty to ensure that they behave responsibly and in conformity with international human rights standards. 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. 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.

A Chinese Chamber of Commerce is now said to have been established in Katanga, although when RAID made inquiries about this at the end of August 2009, none of the lawyers or judges at the Tribunal de Commerce in Lubumbashi had heard of it. A Chinese Chamber of Commerce should provide the Chinese community with a forum for sharing experiences and a place to find solutions to common problems. But a Chinese Chamber of Commerce should also aim to become a focal point for Congolese civil society and NGOs, helping to bridge the gap between the two communities by encouraging cultural exchanges. In case of difficulties, the Chinese Chamber of Commerce, with appropriate Congolese expertise, could offer mediation services for problems related to the conduct of Chinese companies in Katanga.

The recommendations addressed to both the DRC and Chinese Governments are set out below. 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.⁹⁴

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

⁹⁴ 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.

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 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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