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“Go ahead, try to  
accuse us...”

Human rights violations by Chinese mining  
companies in the Democratic Republic of  
Congo:

The case of China Nonferrous Metal Mining Co. In  
Mabende

Lubumbashi, november 2018

**Cover picture :** The Mabende forest destroy by effluents of *CNMC Huachin Mabende factory*.

**Report title :** « ...you can go accuse us where you want... » : violations of human rights by chinese mining companies established in Democratic Republic of Congo case of china non *2ferrous Métal mining Corporation* à Mabende.

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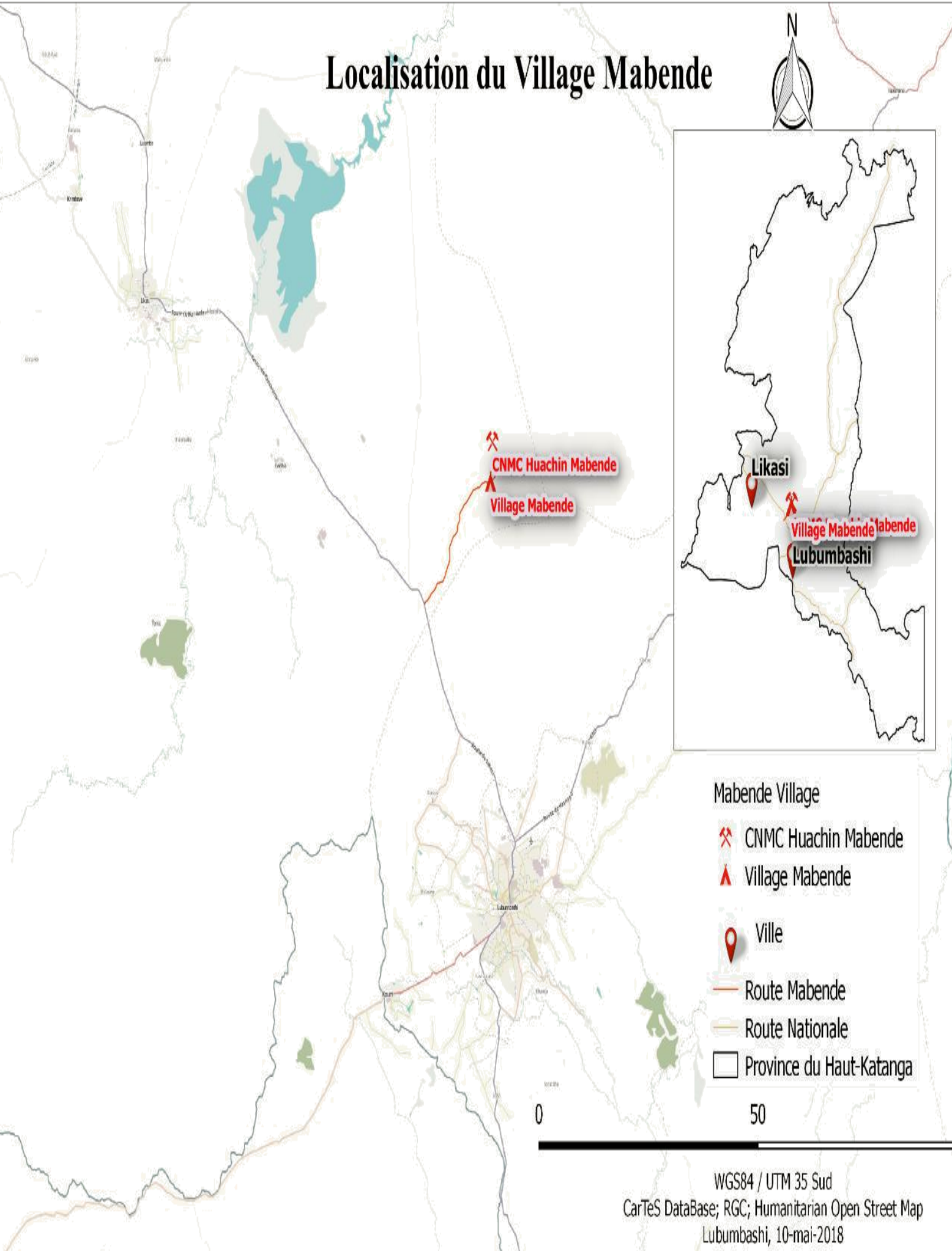
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PREMICO CONGO is Congolese NGO specializing in environmental protection and the defense of communities impacted by extractive industries. For more information, visit [www.premicongo.org](http://www.premicongo.org)

# Localisation du Village Mabende



Mabende Village

 CNMC Huachin Mabende

 Village Mabende

 Ville

 Route Mabende

 Route Nationale

 Province du Haut-Katanga

0

50

WGS84 / UTM 35 Sud  
CarTeS DataBase; RGC; Humanitarian Open Street Map  
Lubumbashi, 10-mai-2018

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## **Abbreviations and acronyms**

**ACE:** Congolese Agency for the Environment

**CCCMC:** China Chamber of Commerce of Metals, Minerals and Chemical Importers & Exporters

**CDF:** Congolese franc

**CNMC:** China Nonferrous Metal Mining Corporation

**CNMHK:** China Nonferrous Mining Holdings Ltd.

**COMILU:** Luisha Mining Company

**CSR:** Corporate Social Responsibility

**CTCPM:** Technical Mining Coordination and Planning Unit

**DPEM:** Directorate for the Protection of the Mining Environment

**DRC:** Democratic Republic of Congo

**EIA:** Environmental Impact Assessment

**EITI:** Extractive Industries Transparency Initiative

**EMnet:** Emerging Markets Network

**EMP:** Environmental Management Plan

**EWES:** Environment Water and Engineering Services

**FPIC:** Free prior and informed consent

**GECAMINES:** La Générale des Carrières et des Mines (State Mining Company of the DRC)

**ICMM:** International Council on Mining and Metals

**INSS:** National Social Security Institute

**ISO:** International Organization for Standardization

**MKM:** Kalumbwe Myunga Mine

**NGO:** Non-Governmental Organization

**OECD:** Organization for Economic Cooperation and Development

**PREMICONGO:** Protection of the Ecoregion Miombo in Congo

**RCI:** Responsible Cobalt Initiative

**SDP:** Sustainable Development Plan

**SOMO:** Centre for Research on Multinational Corporations

**TCC:** The Carter Center

**UNILU:** Lubumbashi University

**US:** United States

**WWF:** World Wildlife Fund

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## Foreword

In the last two decades, the volume of Chinese investments in the mining sector in the DRC has continued to grow. According to an estimate by the Mines Department of the Haut-Katanga District in early 2018, Chinese companies constitute 90% of the companies in the operation phase in Haut-Katanga and Lualaba provinces, where the main products are copper and cobalt. But these newcomers in the Congolese mining industry have not received good press, not only from the local communities at their operating sites, but also from observers, particularly in the sciences, the press and civil society<sup>1</sup>. The local communities are disappointed not to receive economic compensation for suffering the negative impacts of mining. Other observers have also confirmed that these companies are not observing legal obligations for environmental management and for the rights of the communities who are impacted.

This negative image by the public is corroborated by the Committee for Coordination and Mining Planning (CTCPM) of the National Ministries of Mines. In fact, they state that "...in any case, it is found that most of the mining operators don't respect their environmental and social commitments."<sup>2</sup> For more than a century, paternalistic models have been used in the field in which mining companies take charge of the social issues of neighboring communities. Yet the Chinese mining companies are almost always perceived as being "predatory," and expressions of "looting resources", "rampage of nature" and "violations of human rights" are almost always used when commenting on their activities in the sector of copper and of cobalt in the former province of Katanga.

It is this bad reputation among the public, along with a near absence of specific reports on the topic, that motivated the study that we have done on Chinese mining companies in 2014 and 2015. This study demonstrates that the deficit observed in the management of the environment and the respect of the rights of local communities was due to the government's inability to enforce laws as well as the corruption which undermines the country. Thus, our conclusion has been recently supported by one of the arguments by the national government of DRC in explaining the revision of the mining code: "The DRC has in a certain way succeeded at equipping the country with laws and rules to improve the frame of operations in the mining sector. However, it has not quite succeeded in applying these rules and promoting the principles of good governance in the sector."<sup>3</sup>

If the mining companies of Chinese origin do not respect the laws of their host country due to weak governance in the country in general and in the sector in particular, we can at least hope that they respect the laws and rules of their own country. It is through this lens, during the course of this new research, that we decided to compare the behavior of a Chinese mining company to the recommended guidelines of Chinese origin, namely the *Guidelines for Social Responsibility in Outbound Mining Investments*, the *Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains*, and the *Responsible Cobalt Initiative*.

These different guidelines were published in 2014, 2015 and 2016. They constitute proof of the desire of Chinese governmental institutions to impose standards of social and environmental performances on their mining companies installed abroad, in order to encourage real sustainable development in the host countries. Thus, we would like to report on the actual outcome of these guidelines by the company

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<sup>1</sup> Ghislain Bakaniani, Direct investments of Asian and Western origin in the mining sector and sustainable development, Doctoral thesis, University of Lubumbashi, 2016

<sup>2</sup> National Ministry of Mines, the Committee for Coordination and Mining Planning (CTCPM), May 2018, page 38

<sup>3</sup> Ibid, page 5



*CNMC Huachin Mabende.* This monitoring has thus consisted in an update of data collected in 2014 and 2015 in order to check for any improvements in the implementation of social responsibility which may have resulted from the integration of these guidelines into company policy.

## Executive summary

This report constitutes the final result of research on the observance of guidelines issued by the *China Chamber of Commerce on Metals, Minerals and Chemical Importers & Exporters* (CCCMC) by Chinese mining companies established in the DRC. The study was focused on the case of the company *CNMC Huachin Mabende*, which mines copper and cobalt in the region of Mabende, located around 75 kilometers northeast of the city of Lubumbashi. The research was completed from July 2017 to September 2018. It was done by the team at PREMICONGO, assisted by various people and institutions.

The object of our research was to give a report on the degree to which Chinese mining companies in the DRC have followed the guidelines laid out by the CCCMC. Concretely, it was a question of comparing the behavior of *CNMC Huachin Mabende* to the prescribed guidelines published by the CCCMC, which are :

- ❖ Guidelines for Corporate Social Responsibility in Outbound Mining Investments (that we simply call “Guidelines for Social Responsibility” in this report)
- ❖ Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains (Due Diligence Guidelines)
- ❖ The “Responsible Cobalt Initiative” (RCI)

This approach allows us to note that not only does this company show no will to implement these guidelines, but that they are guilty of multiple violations of human rights in the local community of Mabende and with their workers of Congolese nationality. The violations observed are primarily :

### a) Concerning the Guidelines on Social Responsibility:

#### 1. Violation of the freedom of movement

On the large dirt road between the village “Forty-Five” and the mining site, *CNMC Huachin Mabende* set up restrictions on the freedom of movement of members of the local community, thus causing grave hindrances in their economic activities, particularly in marketing their agricultural products and non-timber forestry products.

#### 2. Violation of the right to access drinkable water

This company has also prevented the local community from accessing potable water, by diverting the Mabende river. This has brought about the drying of the wells which had allowed the village inhabitants to procure potable water. As compensation, the company has installed a tap at some places in the village. But the water provided is unfit for human consumption.

#### 3. Violation of the right to reparations and to the restoration of subsistence living

The company has destroyed the ability of the local communities to live through subsistence through the loss of arable earth and deforestation resulting in scarcity of nontimber forest products (PFNL), without proposing any compensation.

#### 4. Violation of right to information and of consultation

*CNMC Huachin Mabende* also does not respect the principle of “Free prior and informed consent” (FPIC). The local community of Mabende was not consulted at any point during the installation of the company, from the moment of creation or even after the start of production.

#### 5. Violation of the right to work and to equal pay

The conditions of work are precarious for the workers of Congolese origin. Their salaries are derisory, and the workers are housed on site in an overcrowded and intolerable living situation.

#### 6. Violation of the union and of the right to social security

There is no union at *CNMC Huachin Mabende* and abusive layoffs are frequent. When they are laid off, the workers are robbed of their social security number. These numbers are given to new agents.

#### 7. Violation of the right to a safe environment

The system of environmental management set up leaves much to desire: the company does not have sedimentation tanks and effluents are disposed of in the forest. Whole sections of the forest have been destroyed by the spreading of acid on the ground. In addition, contrary to what is happening elsewhere, nothing has not been set up for the conservation of endangered species.

#### 8. Violation of the right to receive income from the extraction of natural resources

The community in Mabende does not receive any economic benefit from the installation. No initiative has been taken to contribute to the development of the local community. The company did not set up a policy allowing participation from the local community over the management of social and environmental impacts.

#### b) Concerning the Due Diligence Guidelines and the RCI

The minerals processed by *CNMC Huachin Mabende* do not only come from the Mabende mine. More minerals, the proportion of which we could not estimate, come from the craft mines of Luisha. At Luisha, the company gets their products either at trading posts established by dealers, or at the Mbola quarry.

The dealers buy their products from diggers who themselves often get them in an illegal manner, by digging themselves or by covertly rebuying the concessions belonging to cooperatives or to the mining companies. This is the case of the Kansonga concession and that of Katekete.

At Mbola, *CNMC Huachin Mabende* has rebought the handcrafted mine. It consists of old released emissions from the Gécamines. The quarry is exploited by people are not legally authorized to do so. In addition, the negative impacts on the environment are so bad that the majority of the inhabitants of Mbola village have deserted the area. On the social plane, the process of procurement is also accompanied by violations of human rights. The conditions of procurement of minerals by *CNMC Huachin Mabende* thus constitute a violation of the Guidelines on Due Diligence as well as that of the RCI.

It thus appears that this company would have avoided falling into a number of cases of human rights violations if it had decided to enforce the guidelines of the CCCMC. The attitudes adopted by their leaders vis-à-vis the provincial political authorities allow us to confirm that it is a deliberated approach aimed at to “act like they own the place” so as not to have to report to local communities. Indeed, when the Provincial Minister of Mines in Katanga, concerned about reports he regularly received on bad environmental and social management, went to the site in May 2016, he was banned from accessing it by the managers at *CNMC Huachin Mabende*. One manager told him: “go ahead, try to accuse us...”. This incident is an eloquent illustration of a strategy to draw the maximum profit from the weakening of Congolese state structures.

The application of the guidelines of the CCCMC would have been an opportunity for *CNMC Huachin Mabende* to improve their image and to contribute effectively to the development of Mabende’s local communities. But the leaders of this company do not seem yet to have seized the interest of these guidelines for the durability for their investment, despite the fact that CNMC is a member of the CCCMC. Through this research, we have noted that as of today *CNMC Huachin Mabende* has not yet implemented the guidelines of the CCCMC, thus causing considerable damage to the environment, the local community of Mabende and their workers. That is why we recommend the following.

## **Recommendations**

### To the Congolese Agency of Environmental Protection (ACE)

- Conduct an environmental audit of the exploitation site of *CNMC Huachin Mabende*.
- Require a revision of the environmental studies of the company, while ensuring the involvement of the local community in Mabende in the process, conforming to the provisions of the law concerning fundamental principles of the protection of the environment.

### To the Direction for the Protection of the Mining Environment (DPÉM)

- Make the Environmental Impact Assessment (EIA) public and to update the company’s Sustainable Development Plan (SDP).
- Demand that the company makes the non-technical summary of these studies available to the local community, as required by Congolese law and the guidelines of the CCCMC.

### To the National Ministry of Work

- Create an investigation into the conditions of Congolese workers in the company, particularly in regard to wage policy, the union and housing conditions of workers at the operating site in Mabende.
- Order an inquiry on the fraud practice between *CNMC Huachin Mabende* and their accomplices by the National Institute of Social Security in order to restore rights to the workers who were wronged.

### To the CCCMC:

- Take sanctions against *CNMC Huachin Mabende*.
- Order the implementation of the above-mentioned guidelines.

### To *CNMC Huachin Mabende*:

- Put in place a managerial structure to allow a connection with the local community and other parties involved like NGOs or the press.

- Respect Congolese legislation on the subject of work, especially regarding the union and social security.
- Dismantle the social security fraud organized in complicity with INSS agents.
- Restore the subsistence ways of villages near the Mabende site or to develop alternatives in collaboration with the local community.
- Create an appropriate infrastructure, available to the Mabende community, that allows potable water to enter easily.
- Review environmental studies to conform to the mining legislation and to the law on environmental protection.
- Respect the norms of the CCCMC concerning the contribution to local development.
- Open up a collaboration with the local communities and the NGO who can advise on the guidelines of the CCCMC.
  
- Respect the international conventions signed by the Chinese government as well as the guidelines of the CCCMC.

To the local community of Mabende:

- Peacefully claim their rights by continuing to call out and challenge the direction of the company and the state authorities.
- Initiate a procedure of complaints against *CNMC Huachin Mabende* in comparison to the CCCMC in order to force the company to respect the guidelines of the CCCMC and so, indirectly, the rights of the local community.

To the government of the Republic of China:

- Take measures to force companies belonging to the Chinese state to scrupulously respect the guidelines of the CCCMC and the legislation of host countries.

## General Introduction

### a) The General Context of the Study

In 2015 we published a report of our initial research on the Chinese mining companies. This report was titled “Chinese mining investments in Katanga and the distress of local communities: the case of the Kalumbwe Myunga Mine (MKM) and Huachin”. Three years after this first publication, it seemed to us timely to come back to the case of one of the two companies we researched in 2014 and 2015. Two main reasons have motivated our choice.

The first is the publication by the CCCMC, in 2014, 2015 and 2016, of the Guidelines on Social Responsibility, the Due Diligence Guidelines and the Responsible Cobalt Initiative. It seemed to us appropriate in this instance to check if the Chinese mining companies established in the DRC implemented or took steps to put in place these guidelines.

The second reason is the opportunity to return to the recommendations we made in the last report. Indeed, in 2015 our report contained recommendations to state agencies, to the two companies and to local communities. We were concerned that they take these into account, given that they constitute the base of the appeal to the state institutions and the companies.

The guidelines of the CCCMC have been elaborated with a view “to regulate investments and Chinese mining operations abroad, to guide Chinese companies to determine strategies for social responsibility and for sustainability, and to establish a corresponding management system.”<sup>4</sup>

Thus they aspire to raise the standards of social and environmental policy of these companies so that they actually contribute to the development of host countries and to the well-being of surrounding peoples. These guidelines constitute the reference standard of this study. Indeed, in our previous research, we have taken as norm of reference the Congolese legislation (mining, environmental and work), and international guidelines such as the guiding principles of the United Nations on companies and human rights or the principles of the OECD. But in this study, we will refer exclusively to the guidelines issued by the CCCMC which are in principle mandatory for the Chinese companies who are members of this group.

### b) Research methodology

For collecting data, performing analyses and writing the report, we have used the method Human Right Impacts Assessment (HRIA). Developed by the Canadian NGO *Rights and Democracy*, this method allows the user to monitor the respect of human rights step-by-step in investments abroad. We have used all the steps in our research.

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<sup>4</sup> Guidelines for corporate Social Responsibility outbound Mining Investments, page 2

### 1) The preparatory phase

This phase consisted first in the establishment of a research team. This multidisciplinary team was made up of the staff of PREMICONGO from the mining program. The team benefited from the support of a colleague from SOMO in Amsterdam.

This team first gathered information on the company *CNMC Huachin Mabende* and on the guidelines of the CCCMC through bibliography research. We have mainly used the publications on the Guidelines for Social Responsibility and the Due Diligence Guidelines, as well as the one on the RCI. The data on the multinational structure of CNMC was obtained through online research, among annual reports that the company posted on their website. We also gathered information from publications by public institutions of the DRC, like "The state of the Mining Sector," published by the National Ministry of Mines of the DRC in May 2018 and the reports published by "EITI – DRC". Finally, we used previous publications on the Chinese companies in the DRC: we refer to a document published by the office of Environment Water and Engineering Services (EWES) for the World Wildlife Fund (WWF), the doctoral thesis of Bakaniani on "Direct investments of Asian and Western origin in the mining sector and sustainable development"<sup>5</sup>, as well as our publication in 2015 on MKM and HUACHIN.

The following step was the identification of stakeholders in the investment: *CNMC Huachin Mabende*, the parent company CNMC, the CCCMC, DPEM, the Provincial Ministry of Mines, the Provincial Coordination of the Environment, the workers of the company, the members of the local community, and the National Institute of Social Security (INSS). We met with each of these actors, except CNMC and *CNMC Huachin Mabende* who refused to meet with us. As for CCCMC, we were able to meet a delegation during their visit to Lubumbashi in March 2018.

### 2) The fieldwork phase

We then began fieldwork to observe firsthand the impacts of mining activities on the Mabende community and to meet the stakeholders. We collected data through direct observation, interviews, focus groups and chemical and microbiological exams of the water in the laboratory.

As for the state services, the Direction of Protection of the Mining Environment (DPEM) and the Provincial Coordination of the Environment gave us the most numerous exchanges. While the Provincial Coordination of the Environment has fully accepted cooperation, it was instead some individuals at DPEM who took the responsibility to meet us individually. As agents of the state they have decided to remain anonymous. The community of Mabende in general and the chief of the village, Placide Mwalule, in particular have actively participated in collecting data. To ensure an active participation and enlightened population of Mabende in this research, we organized a workshop on capacity-building for community leaders on the guidelines of the CCCMC and the introductory procedures of non-judicial grievances.

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<sup>5</sup> Ghislain Bakaniani, op cit

We were able to access data on the work conditions within the company by interviewing a sample of twenty workers of Congolese nationality (10 former workers and 10 current workers). We also promised to preserve their anonymity.

Mabende's local community having made reservations on the quality of water made available by *CNMC Huachin Mabende*. We had to examine its quality in the laboratory. The samples were taken at the village's only water point, namely, the faucet placed by the company next to its facilities. The sampling was carried out by the inhabitants of the village themselves, under the supervision of Chief Placide Mwalule, in the presence of the PREMICONGO research team.

A total of five samples were taken at various times of the day to verify the consistency of the quality of the water supplied; at 5 am, 10 am, 1 pm, 4 pm and 9 pm. The samples were kept in a cooler so that temperature variations did not alter the quality of the water. They were returned to the laboratory the day after the sampling (July 17, 2018).

### 3) The phase of data analysis

We analyzed the data collected in light of the guidelines by the CCCMC. In other words, in each case we have compared the behavior of the company to the contents of the guidelines. Sometimes we refer to the Congolese legislation when for a given point the guidelines call on the host country's legislation.

We have presented the report in a simple fashion: we start with a brief presentation of the particular CCCMC guidelines which are not being followed by the company before describing the observed violations.

### **c) Difficulties encountered**

The major difficulty of the research has been the multinational CNMC and its subsidiary *CNMC Huachin Mabende's* refusal to collaborate. Indeed, we contacted both companies three times without success. The first time was before we had started research to explain our intentions and encourage transparent collaboration. Both the multinational corporation and its subsidiary have refused to acknowledge receipt of the letter containing this request. Next, we asked permission to use the private road maintained by the company to get to Mabende in order to organize a workshop with the community. Again, the company did not respond to our mail and the receptionist explained verbally that the person authorized to give us an answer was not present in Lubumbashi. Finally, we sent the draft of this report to the company to allow it to integrate its comments before publication. The company through its receptionist again refused to receive the mail.

As for the DPEM in Lubumbashi, the local director verbally promised us their collaboration. The director even promised to allow us access to the Environmental Impact Assessment (EIA) of the company in case the company did not put them at our disposal. But afterwards the leaders of the DPEM prevented us from consulting these studies by making a thousand and one excuses.

We have compensated for these shortcomings by gathering data in the informal sector, discussing with government officials individually and inviting them to participate in a workshop with the local community.



## **Chapter One: Research Framework**

### **a) Presentation of the CCCMC**

The China Chamber of Commerce of Metals, Minerals and Chemicals Importers & Exporters (CCCMC) is a public institution of the People's Republic of China. It was created by the Chinese government in 1988 and placed under the supervision of the Ministry of Commerce. Its members are companies active in the import and export of minerals and chemical products. The organization currently has more than 6,000 member companies and the volume of its imports and exports accounts for 30% of all Chinese industry transactions. Every year, at least 250 CCCMC member companies are among the top 500 Chinese import and export companies. The CCCMC is therefore an important player in economic exchanges between China and countries, more and more numerous, which host investments of this country.

Its main role is to promote and coordinate Chinese investments in the mining, chemicals and energy sectors abroad. It ensures that import and export operations are in compliance with the laws and standards in force. It also provides services to its members by providing them with information on their respective investment sectors and initiating advocacy with the Chinese government when necessary. This allows the CCCMC to make strategic ideas and recommendations to its members in China's economic policy. The CCCMC can also take punitive measures against members who violate the laws and regulations in force.

### **b) Presentation of the Guidelines of the CCCMC**

The remarkable economic growth of China and the outward strategy developed by its companies is a real turning point in the economic relations between this country and the rest of the world.

This upheaval is especially noticeable in Third World countries such as the DRC where, for more than a century, the economic landscape was dominated by large Western groups. In order to find the raw materials necessary for the development of their country, Chinese mining companies have in two decades conquered almost the entire copper and cobalt production sector in the former province of Katanga. But this is also where they are most confronted with the challenges of good environmental and social management.

Anxious to promote sustainable development for the mining investments of its members abroad, the CCCMC developed in 2014 The Guidelines for Social Responsibility in Outbound Mining Investments. This initiative is the result of a collaboration developed between the Chinese and German governments as part of a project on social responsibility and "the network for the sustainable development of multinationals in the markets" (Emerging Market Network or EMnet) of the Organization for Economic Cooperation and Development (OECD).

To elaborate the guidelines, the CCCMC drew on the content of several previous initiatives, including ISO 26000, the UN's guiding principles on business and human rights, principles of the International Council on Mining & Metals (ICMM), and more.

The guidelines therefore provide CCCMC member companies operating outside China with guidance for integrating social and environmental dimensions into their investment decisions. These guidelines are divided into eight essential positions:

1) Organizational governance:

Provide companies with management in charge of social and environmental management and adopt an ad hoc policy.

2) Fair exploitation:

Adhere to ethical behavior towards stakeholders: the host country, suppliers and customers, and local communities; in short, society.

3) Management of value chains:

Upstream and downstream of the extractive industries value chain, companies are encouraged to use their power to compel their suppliers to adhere to the principles contained in the guidelines.

4) Human rights:

Companies must respect human rights and use their influence to enforce them by the other actors with whom they collaborate.

5) Work issues:

Companies must never resort to child labor and forced or compulsory labor. Nor should they resort to any form of discrimination (sex, race, etc.) in access to employment and / or vocational training, etc.

6) Health and safety at work:

Businesses must promote and maintain the physical and mental health of workers.

7) Environment:

Companies must put in place an efficient system of sustainable environmental management to mitigate or eliminate the negative impacts of mining.

8) Community participation:

Businesses need to partner with local communities and other community organizations to contribute to the sustainability of the investment.

In 2015 the CCCMC published the Chinese Due Diligence Guidelines for Socially Responsible Mineral Supply Chains. This was designed to clarify the application of Clause 2.4.6. in the Guidelines for Social Responsibility. Inspired by the UN Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance for Mineral Supply Chains from Conflict- Affected and High-Risk Areas, these guidelines are an appropriate response to the context of mining investments in countries in conflict or countries with weak governance. They are therefore intended to help extractive companies, those who use products derived from mining or those who produce objects containing minerals to "identify, anticipate and reduce the risks of direct implications in conflicts or violations of human rights or serious offenses against legality and to Respect the UN Principles on Business and Human Rights at every stage of mining activity."<sup>6</sup>

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<sup>6</sup>Chinese Due Diligence Guidelines for Socially Responsible Mineral Supply Chains

The Responsible Cobalt Initiative (RCI) was released at the end of 2016, following a substantial increase in cobalt demand in the global market. Since the DRC is the main producer of this metal, the CCCMC wanted to take the lead by asking its members to ensure the health of their supply chain by tackling, among other things, the worst forms of child labor. The initiative automatically places cobalt on the list of minerals covered by the Due Diligence Guidelines, which initially concerned gold, tin and tantalum.

### **c) What do we mean by “Chinese company”?**

We are satisfied here with the definition given in the Due Diligence Guidelines (on page 10):

Chinese company means: "Any legal entity (for-profit) registered in China or abroad (including subsidiaries) and wholly or majority owned or controlled by a Chinese entity or individual".

### **d) Presentation of CNMC Huachin Mabende**

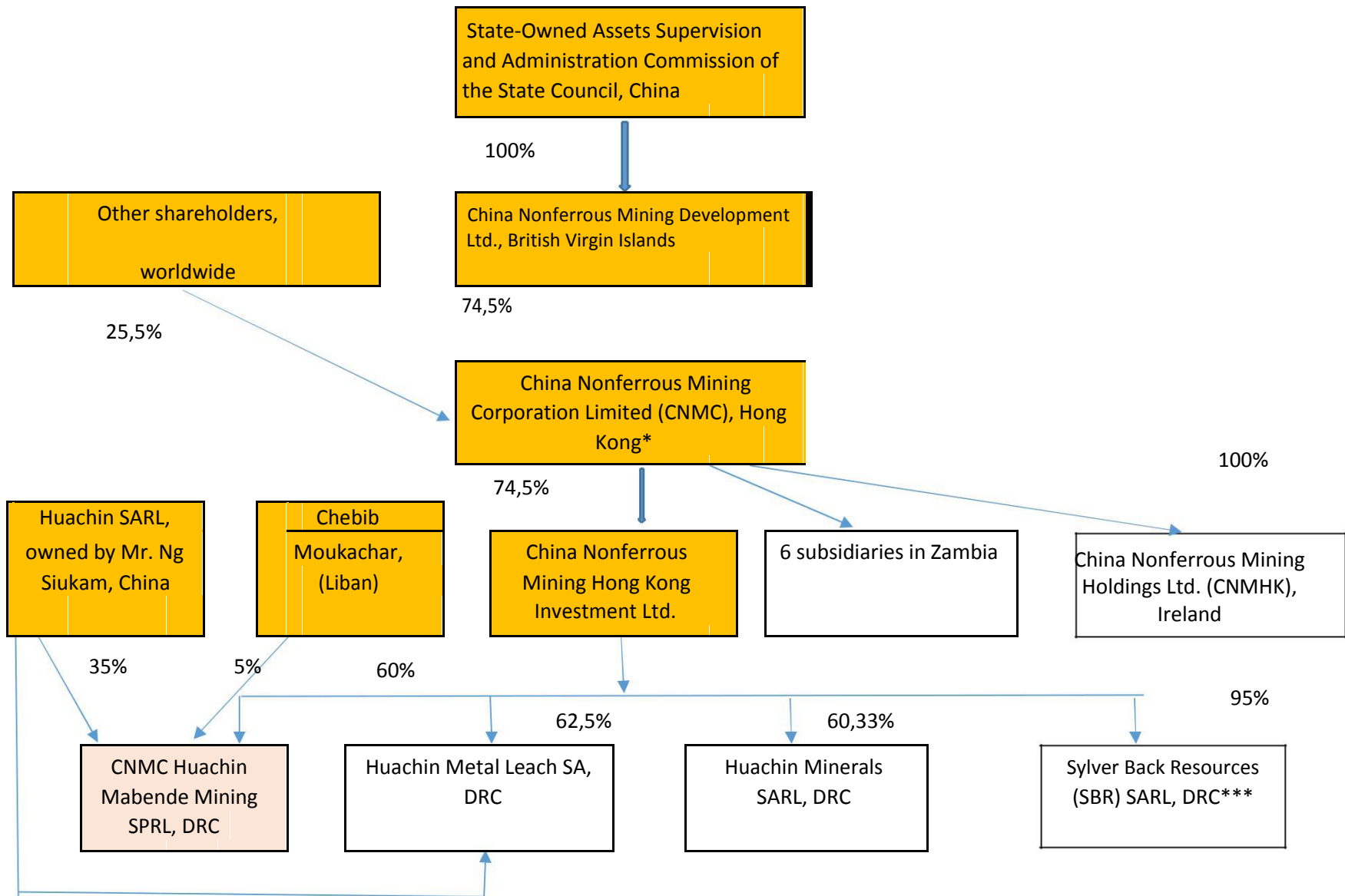
#### Background

The company HUACHIN was born in 2004 in Likasi, on the initiative of a few people, Congolese citizens along with Chinese citizens. It was then a modest foundry that transformed minerals from artisanal exploitation. With the expansion of its activities, the company opened a branch in Lubumbashi in 2007, then in Kolwezi in Lualaba. In 2008, HUACHIN signed a joint venture with the Chinese multinational China Nonferrous Metal Mining Corporation, CNMC. This was the birth of CNMC Group HUACHIN Metal Leaching Co LTD. Other Hong Kong companies also controlled by CNMC took shares in this new company. Founded in 1983, CNMC is a company in which the Chinese state owns all the shares. It is listed on the Hong Kong Stock Exchange and operates mainly in Africa. Before moving to the DRC, it was already operational in Zambia, still producing copper and cobalt.

The contribution of this new capital therefore allowed HUACHIN to start a large project in Mabende, a village located 75 kilometers north-east of the city of Lubumbashi. The new company, *CNMC Huachin Mabende*, started operations in April 2014. The operating site includes a mine and a hydrometallurgical processing plant. It is interesting to note that the CNMC HUACHIN Group Metal Leaching Co LTD also owns several other concessions, especially in the provinces of Upper Katanga of Upper Lomami, the activities there are still at the prospecting stage or at the stage of exploration.

#### Structure of the company

The corporate structure of *CNMC Huachin Mabende* is shown in the table below. It consists of China Nonferrous Mining Hong Kong Investment (60%), HUACHIN SARL (35%). A Lebanese individual, Chebib Moukachar holds the remaining 5%. It is interesting to note that, going up the financing structure, China Nonferrous Metal Mining Hong Kong has a subsidiary in Ireland (China Nonferrous Mining Holdings Ltd. in CNMHK). It is itself financed by another subsidiary of CNMC established in the British Virgin Islands. Since Ireland and the British Virgin Islands are tax havens, it would be interesting to find out whether this structure was put in place to encourage tax evasion. This is not the subject of this research, but we will be able to deepen this aspect of the CNMC structure in the future.



It should also be noted that in addition to the companies listed above, CNMC is developing a new mine project with Gécamines. We have not yet obtained a report of the exact location of the future mine. Based on information obtained to date, CNMC will be responsible for constructing and operating the mine, which is considered potentially rich in copper and cobalt. The Chinese multinational will hold 51% of the capital. Gécamines will own 49% and bring the concession to the joint venture. They will also get a \$870 million loan from the Chinese company. This may also be a subject of research in the future, with regard to the interests of the Congolese State represented here by Gécamines.

#### Production

CNMC's annual report (2016) states that *CNMC Huachin Mabende* produced 24,126 tons of copper cathode. The increase was 28% compared to 2015. The report attributes this increase to the continuous improvement in the supply of raw materials, the stability of supply and the increase in production capacity. We were surprised to find that this report did not refer to cobalt production while the two products are found in the same mineral rock. But the 2015 EITI-DRC report indicates that *CNMC Huachin Mabende* produced 11,575 tons of cobalt worth \$ 19.7million.

#### Corporate Social Responsibility

With regard to job creation (CNMC Annual Report 2016), the company claims to have 83 agents (13.1%) of Chinese origin and 553 Congolese workers in Mabende. On the subject of environmental protection, CNMC declares on its website that it will take specific measures in the DRC with regard to the repair of obsolete parts, the use of waste, the treatment of wastewater and the management of liquid acids. The company also claims to be engaged in tree planting activities to create good living and working conditions for its employees.

Regarding the Mabende site, this report indicates that it has invested US \$3.3 million for the maintenance of the dirt road between National No. 1 (Village 45) and the operating site (more than 30 kilometers), to allow the inhabitants to circulate more easily. *CNMC Huachin Mabende* also says that watering the road during the dry season will spare villagers along the road to lung diseases.

#### CNMC's customers

In the table below, we show the location of buyers of CNMC products by geographic area. (Source : CNMC, 2016 Annual report, page 152)

Geographical areas	Transaction amounts (in millions USD)	
	2015	2016
China	772,940	891,101
Hong Kong	-	173,054
Australia	202,750	-
Swiss	94,769	136,696
Singapore	57,750	15,781
Africa	17,227	27,226
Luxembourg	44,502	69,433
	1.189.164.000	1.313.291.000

### e) The village of Mabende

Administratively, the village of Mabende depends on the traditional group Kyembe which is itself an integral part of the territory of Kambove in the new province of Upper Katanga. Mabende takes its name from the river located 800 meters from the site of the settlement. This village is a village of 394 people according to the census carried out by the chief at the beginning of 2017.

To reach this village from Lubumbashi, one must take National road No. 1 towards Likasi and stop in the village called "Forty-Five" (meaning forty-five kilometers from Lubumbashi). From this point, one will have to go towards the North-East, taking a dirt road, 30 kilometers further to reach Mabende. Since the arrival of HUACHIN in the country, the village Mabende is also called "Two" because it is located two kilometers from the company's site of extraction.

The population of Mabende traditionally lives on subsistence agriculture, growing maize, cassava, sweet potatoes, beans, etc. The making of charcoal is also an activity for young people. During the dry seasons, the villagers are engaged in cultivating crops to sell. Collection of non-timber forest products (mushrooms, caterpillars, medicinal plants, etc.) is also a key activity. It is used for both subsistence and marketing purposes. The exchanges are usually done in the village "Forty-Five". The dense dry forest that surrounds the village provides animal protein to the population, small game (caterpillars, buckwheat, squirrels, moles, etc.) are usually multitude, while the Mabende River provides families with fish and crab. Mabende does not have any social infrastructure. The current chief of the village, Placide Mwalule counted nearly 120 young people and children of school age. Given the presence of a few qualified people in the village, school courses are organized in a makeshift church, by grade: the children of the first and second year (elementary grade) study together, the same teacher teaches t of the middle grade (third and fourth year) with their back turned to one class at a time. In the afternoon, classes are organized for the children of the final grade (fifth and sixth year).

There is no health center either, the majority of the population is treated through traditional medicine. A nurse recently installed in the village sells drugs in a kind of kiosk and people wanting to buy these products do so without a medical prescription.



**Photo 1 : The road towards Mabende from « forty five ». A sign indicates the existence of a mining operation at the beginning of the road. Signs of « clandestine operation »**

**Photo 2 : A control point between the village "Forty-Five" and Mabende**

**Photo 3 : Deforestation on a large scale**

**Photo 4 : The school in Mabende**

## Chapter Two: Human rights violations by *CNMC Huachin Mabende*

In this second chapter, we systematically compare the shortcomings found during our monitoring with the CCCMC guidelines. Failure to comply with these guidelines has in turn led to violations of the rights of Mabende communities and the workers of the company.

We therefore reprint at full length the guidelines violated before describing the violation as noted during our monitoring. We end with a brief analysis of the responsibilities of the various actors in these violations.

### a) Violations of the Guidelines for Social Responsibility

Regarding organizational governance

*Clause 2.1.5: Identify stakeholders, solicit and respect their comments and expectations and respond proactively. Stakeholders here include non-governmental organizations (NGOs) and local communities. Stakeholders identify any individual or interest group that may influence or be potentially influenced by decisions and mining. Companies need to establish stakeholder engagement mechanisms to ensure their participation and access to information and supervision.*

Since we did not have access to *CNMC Huachin Mabende's* organization chart, we are not able to say that there is or is not a service responsible for community liaison, complaint reception or community development. But every time we approached the company, our interlocutors referred us to a person who was never present at the office.

The inhabitants of Mabende corroborate this attitude of the company. Chief Placide Mwalule explains at length that he had tried several times to initiate the dialogue with the company but was always coming up against "a wall"; He often had to wait for hours at the company office to be received for a few minutes by a manager who could not do the job and always rushed the interview because he was "very busy". In the absence of this person, no one had ever received him.

The letter of application for the use of the company's road, to which we referred in the section "Difficulties encountered," has never received answers to date because "the person who could answer" was never present at the office and no one knew when she would return to Lubumbashi.

From all the above, it appears that not only has *CNMC Huachin Mabende* not set up a structure responsible for relations with other stakeholders, but also that the company does not collaborate with NGOs or representatives of the local community.

*CNMC Huachin Mabende* also ignores the views of provincial political authorities<sup>7</sup>. According to the testimony of his Chief of Staff, the former Provincial Minister of Mines of Katanga, concerned about the reports he had

received on environmental mismanagement, had visited the site in May 2016, and was denied access to the site by those in charge of the company, who told him: "go ahead, try to accuse us...". This attitude

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<sup>7</sup> Before the enactment of the new Mining Legislation in March 2018, only the national government had the responsibility to manage the mining sector.



is proof that the company has decided to operate by ignoring the other actors of the sector, state or not. It is also a violation of the Guideline on Organizational Governance.

**Clause 2.1.6:** *Transparency issues: Based on CSR reporting standards, make all relevant information available to stakeholders on a regular and timely basis, including decisions that have social and environmental impact.*

- *Establish and improve information disclosure mechanisms and provide stakeholders with CSR performance information on an ad hoc basis.*
- *Disclosure of information must follow a structured process in which not only mandatory information is disclosed, but also all internal and external company information that relates to stakeholders.*
- *It is recommended to seek a standardized certification to verify the authenticity and accuracy of the information disclosed.*

In regard to transparency issues, we have noted one positive point and several negative points.

Positive Point:

1. Publication of payments are made to state financial authorities through EITI DRC, which is a standardized form of publication.

Negative Points:

1. *CNMC Huachin Mabende* did not make social payments in 2015 (see EITI-DRC 2015 report, page 89 and following).

2. The company has not published multiple pieces of information despite their impact on the life of the local community. These include:

- ❖ The environmental impact study (EIS) summarizing the characteristics of the environment before the establishment of the company and the main impacts that the mining activities will have on the environment.
- ❖ The Project Environmental Management Plan (EMPP) which describes the implementation of measures to eliminate or mitigate negative impacts.
  
- ❖ The Sustainable Development Plan (SDP) which describes the company's contribution to the development of the local community.

It is not just *CNMC Huachin Mabende* who refuses to publish these studies. DPPEM also refuses to make these documents public by highlighting their technical and confidential aspects. However, the mining legislation of the DRC as well as the law on basic principles relating to the protection of the environment make the publication of the summaries (non-technical) of these studies obligatory. It also requires that they be made available to local communities.

By not publishing these studies, *CNMC Huachin Mabende* violates both the CCCMC guidelines and Congolese legislation.

3. During the creation of these environmental studies, local communities in Mabende and neighboring villages were not involved.

The guidelines require that consultations be conducted according to the principles of FPIC. But this company did not consult with anyone in regard to the implementation of their project. The information published on the CNMC website and annual reports is therefore inconsistent with the reality of the Mabende site.

#### Concerning supply chain management of mining products.

The guidelines for supply chain development are explained in the second part of this chapter, and the analyses of this point are developed further below.

#### Concerning human rights

Chinese companies are required to respect human rights. The Guidelines for Social Responsibility stress the respect for human rights as set out in the "UN Guiding Principles on Business and Human Rights".

***Clause 2.4.1: Fully respect the UN Guiding Principles on Business and Human Rights throughout the life cycle of the mining project.***

- *Develop political principles to assume responsibility for respect for human rights.*
- *Develop a human rights due diligence process to identify, prevent, mitigate and eliminate negative human rights impacts.*
- *Develop or cooperate with local communities to compensate for legitimate damage to those who have suffered adverse human rights impacts.*

***Clause 2.4.2: Avoid human rights violations.***

- *Do not take advantage of human rights violations by others*
- *Do not tolerate human rights violations by others*
- *Communicate effectively with business partners on the company's human rights policies.*
- *Ensure that private or public security guards designated to protect the operation work in accordance with voluntary principles of security and human rights.*

***Clause 2.4.5: Protect the right of free prior and informed consent (FPIC) of local communities (and indigenous peoples).***

The local community of Mabende accuses *CNMC Huachin Mabende* of not respecting the steps of these guidelines on the respect of human rights. The criticisms made concern the absence of consultations, restrictions on freedom of movement, restrictions on access to drinking water and the destruction without compensation of living space through deforestation and pollution.

#### Restraint on freedom of movement

Freedom of movement is the right of every individual to move freely within their country, to leave or return as they see fit. It is guaranteed by Article 13 of the Declaration of Human Rights and can only be hindered by exceptional circumstances such as the law (for prisoners), the border (for those who immigrate illegally) and private property.

To ensure the security of its concession, *CNMC Huachin Mabende* installed control points on the road between the village "Forty-five" and its operating site in Mabende. But instead of being satisfied with preventing any possible criminal acts such as the fraudulent evacuation of mining products by this road, the security officers prohibit the passage of any vehicle that is not part of the company or which has no pass issued from the company. This provision constitutes an obstacle to freedom of movement. It seriously affects the lives of people in villages in the region, including those in Mabende who no longer have the ability to carry their products by vehicle from this road. The villagers are now taking detours under painful conditions.

Chief Placide Mwalule explains that it was he and his community who had once drawn this road to carry out products intended for commercialization. The fact that the company has expanded and improved the overall condition of the road does not give it the right to prevent vehicles from entering the village, he says. In addition, *CNMC Huachin Mabende* has locked the village Mabende by installing their property without asking the opinion of the inhabitants. The principle of free and prior informed consent advocated by the guidelines has therefore not been respected here.

The restrictions put in place by the company therefore constitute a violation of the freedom of movement. It is all the more blatant as the villages, including that of Mabende, were established in the area long before the arrival of the company.

#### Restraint on access to water

Since 2010<sup>8</sup>, access to drinking water has become a human right. It is an essential right for the survival of humanity. It is an essential condition for achieving the goals of the United Nations with respect to public health, sustainable development, and even world peace.

In Mabende, *CNMC Huachin Mabende* has significantly reduced the possibility for the inhabitants to access drinking water. They have always sourced from wells dug near the Mabende River. But when they arrived on the scene, the company built a dyke that diverted the river from its bed.

Located about three kilometers to the west of the village, the dyke allows the channeling of water to a hole from which a pumping system allows the necessary sampling of the company's facilities.

This provision caused the downstream part of the river to dry out. Water wells near the village are now dry. To make up for this deficiency, the company allows villagers to stock up on a tap next to their facilities (2 kilometers from the village). The distance makes getting the water painful.

In addition, members of the local community of Mabende have reservations about the quality of the water provided: it is often cloudy and tastes strange, they explain. To address these concerns, we asked EWES SARL to analyze and interpret the results of the water samples taken at this tap. In their conclusion, they are clear: the water supplied by *CNMC Huachin*

*Mabende* is "murky and microbiologically unfit for human consumption"<sup>9</sup>

By making it difficult for villagers to access clean water, *CNMC Huachin Mabende* has made the lives of villagers more difficult.

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<sup>8</sup> UN decision on July 28, 2010

<sup>9</sup> See the report by EWES SARL

### Destruction of other means of subsistence

The society has also deprived the local community of other livelihoods through deforestation. Huge parts of the forest have been destroyed to set up the company's infrastructure. Considerable areas of forest continue to suffer the same fate every day because of poor environmental management, including the spreading of effluents on the soil.

The reforestation service of the Provincial Environmental Coordination estimates that more than two thirds of the area of primary forest on the site has been destroyed since the arrival of the company on the spot. Significant livelihoods for the villagers for their food or marketing have disappeared; this loss is materialized by the growing scarcity of non-timber forest products : caterpillars, mushrooms, fruits, small mammals, medicinal plants, etc. The destruction of these means of subsistence has not been followed by any form of compensation. This loss of income has significantly affected the standard of living of the inhabitants of Mabende village.

### Questions related to workers' rights

With regard to workers' rights, the guidelines fall under several aspects. We only repeat here the points that relate to our observations :

***Clause 2.5.4: Respect the legal or industrial minimum wage and pay social security benefits.***

***Clause 2.5.6: Provide clean and safe working conditions that meet basic requirements:***

- *Offer and maintain work areas and equip on-site housing and dormitories where appropriate*
- *Efficient, accessible drinking water, sanitary facilities for storing food, bathrooms and toilets that are clean and hygienic.*
- *Develop a collective bargaining mechanism between employers and employees based on current laws and practices, as appropriate, encourage workers to participate in the management of the enterprise*

Congolese workers at *CNMC Huachin Mabende* are not satisfied with the wage conditions offered by the company. A skilled worker earns at least 400,000 CDF (250 USD) per month. Salaries for non-skilled workers range from 90,000 CDF (56 USD) to 160,000 CDF (100 USD).

These wages are more than derisory and cannot allow a worker to live decently. Housing conditions are not satisfactory either. The workers explain that they live in a camp on the site, eight days out of ten away from their families. They are housed in unacceptable conditions of overcrowding, packed in with eight people in rooms of three square meters.

At *CNMC Huachin Mabende*, there is no union and unfair dismissals are common. Collective complaints always end with the departure of those identified as "leaders" by the management of the company. We met with Grégoire Kimba, who was fired in 2015 with ten other companions for demanding better safety equipment. Individuals who have been fired also complain that their social security number has been removed; in complicity with agents of the National Institute of Social Security (INSS),

*CNMC Huachin Mabende* assigns new hires the social security numbers of the people who have been fired.

Poor wages, indecent housing conditions, unfair dismissal, lack of freedom of association and fraud on social security numbers are all violations of CCCMC guidelines. These violations also constitute violations under Congolese labor law while the CCCMC demands that its members respect local laws scrupulously.

#### Environmental management

In its publication on social responsibility, the CCCMC states that good environmental management is a prerequisite for the future well-being of humankind. Since the impacts of mining on the environment are significant, a large number of guidelines have been produced on this issue. We print here only a few excerpts to highlight the shortcomings found on the ground:

**Clause 2.7.1:** *Establish an environmental management system and adapt it to the laws and regulations of host countries:*

- *Integrate environmental protection into company strategies, plans and objectives, establish comprehensive rules and regulations on environmental protection, strengthen pollution control and offer environmental risk prevention*

**Clause 2.7.5:** *Regularly assess and mitigate the negative impacts of mining on soil, air and water.*

**Clause 2.7.6:** *Proactively inform local authorities, Chinese headquarters and the public of the potential impacts of mining on the environment*

- *Disclose environmental information on a regular basis, publicize environmental protection management systems and plans, measures implemented, and results achieved*

**Clause 2.7.9:** *Comply with legal requirements for chemical and toxic substances :*

- *Avoid contamination of groundwater or surface water from acid rock soil and leaching from mining*
- *Ensure that hazardous wastes are handled, stored, transported, treated and managed in accordance with laws and regulations, and that there are no overflows, leaks or other forms of releases to the environment during these activities*

**Clause 2.7.12:** *Promote conservation and protection of biodiversity and the environment throughout the life cycle and chain of mining and promote infrastructure through integrated land use planning.*

- *Take appropriate measures to identify and monitor elements of biological diversity taking into account the progress of the operation as well as the conservation and sustainable use of biological resources*
- *Identify key biodiversity areas affected by mining and seek to minimize, avoid, repair or neutralize negative impacts on biodiversity and ecosystems*

We have said above that we have not been able to directly receive an answer from the company about our request for these studies. But we are almost certain that *CNMC Huachin Mabende* has an EIA because the approval of this study is a condition for granting the extraction license in the DRC. However, it appears that this study was only produced for the purpose of obtaining the permit because

the company's workers claim that there is no environmental department. In addition, by observing the operating site, we noticed :

- ❖ Large-scale deforestation to put in place the necessary infrastructure. According to the Provincial Environmental Coordination, this deforestation was not compensated by reforestation equivalent in quantity and quality as required by the Forest Code of the DRC
- ❖ A lot of dust, especially during the dry season, on the road leading from the village Forty-Five at the operating site in Mabende. A company truck is used unpredictably to water the road, but this action is insufficient. In many villages along the road, residents have complained about the increase in lung disease since the establishment of the company.
- ❖ Effluents from the treatment plant (by leaching) are directly discharged into the forest without having been previously treated in a settling tank; the consequence is the destruction of the important parts of the forest by these effluents (see the cover photo).
- ❖ We have seen in many places traces of acid spills that have destroyed large proportions of the forests.
- ❖ The scarcity of water following the establishment of above ground infrastructures on the watercourse.
- ❖ The loss of biodiversity without the company taking measures, as others do, to protect endangered species.

The lack of a valid environmental management policy has therefore led to the destruction of the living space of the community of Mabende. It is also at the root of a major decline in biodiversity in the area.

### Community participation

With regard to community participation, the guidelines emphasize both the FPIC and the contribution to development of communities affected by the mining project. Both notions are taken up by Congolese legislation. The Basic Principles of Environmental Protection Act requires consultation with affected communities in the preparation of EIAs, while mining legislation gives local communities the right to benefit from the profits of mining to improve their life conditions.

***Clause 2.8.1:*** Evaluate the social impact and contact as soon as possible with the parties likely to be affected and establish mechanisms for regular communication

***Clause 2.8.4:*** Establish an appeal mechanism for community issues with the participation of a third party

***Clause 2.8.6:*** Contribute to community development by developing and implementing community development plans with local stakeholders

***Clause 2.8.7:*** Ensure job creation in communities where mining will occur and support local economic development.

***Clause 2.8.9:*** Support the development of small and medium-sized businesses in local communities.

***Clause 2.8.10:*** Support philanthropic initiatives in health care, education and infrastructure and other essential public services.

*CNMC Huachin Mabende* has not taken any initiative for the development of the local community of Mabende. This village has several important needs in the fields of education, healthcare access to water, etc. But the company has remained indifferent to all its requests. Nor has the company outsourced to members of the local community despite the potential for supplying agricultural products for the food of resident workers at the site. Regarding access to employment, note that no member of the local community was hired by the company.

### **c) Violations of the Due Diligence Guidelines**

The Due Diligence Guidelines provide the terms and conditions for the application of Clause 2.4.6 in Guidelines on Social Responsibility. The purpose of these guidelines is to help overseas Chinese mining investors to identify, anticipate and reduce the risks of implications in conflicts, human rights violations or breaches of law in the host country. The priority for the implementation of these guidelines was initially given to gold, tin, tungsten and tantalum. But the guidelines also specify "to serve as a reference for companies involved in the supply chains of other types of natural resources". The launch of the RCI in November 2016 is the manifestation of the concern to take into account the production of cobalt whose demand has steadily increased in recent times on the world market for minerals. The CCCMC has adopted the OECD definition of due diligence; a "continuous, proactive and responsive process that enables companies to ensure that they respect human rights, that they do not contribute to conflict, and that they respect international law and comply with national laws, including those related to the illicit trade in minerals and UN sanctions". The term "diligence" refers here to steps that Chinese mining companies must follow in order to "identify and manage the actual or potential risks in order to prevent or mitigate the negative impacts related to their activities or their supply choices..." Guidelines provide mining companies with a framework for action consisting of the following five steps:

*Step I: put in place a strong risk management system;*

*Step II: Identify and evaluate the risks associated with supply chains;*

*Step III: design and implement a strategy to reduce identified risks;*

*Step IV: Sponsor independent audits of bottlenecks in the supply chain;*

*Step V: Communicate on the functioning of the supply chain and the performance of the risk management system*

Unable to verify the effectiveness of the implementation of this framework within the company, the research team simply checked the supply sources of the company. *CNMC Huachin Mabende* does not only stock up at the Mabende mine. Some of the minerals come from artisanal mines. Every day, trucks filled with minerals are conveyed from the locality of Luisha, located 20 kilometers further north. We went to this locality to check the conditions of extraction in the sites where this company supplies. Our investigations led us successively to the quarries of Kansonga, Katekete and Mbola.

We first noticed that the conditions of extractions had evolved a lot in recent years in Luisha. Everywhere, the "diggers" have been expelled and the quarries conceded, either to companies or to "cooperatives". But there are still underground diggers working on unofficially identified sites. Still

others go to quarries belonging to mining companies or cooperatives at night to extract, sometimes in complicity with the guards. Houses of merchants have settled in the city of Luisha and get their supplies from anyone who can provide them with minerals by closing their eyes to the origin of the goods. At the Kansonga mine, for example, we collected from the diggers' testimonies claiming that some of them had obtained trucks filled with minerals with the complicity of the people of the interior. Cost of the operation: 3000 USD for a truck. *CNMC Huachin Mabende* is also guilty of neglecting the verification of its supply chain and most likely also buying minerals stolen from third-party concessions.

Another part of the supply comes from the Mbola mine near Luisha.

The mine of Mbola

Mbola is a small village located about ten kilometers north of the city of Luisha. This village, now endangered, is located next to a huge embankment made up of waste from an old mine that once belonged to Gécamines. The embankment, which during the previous years served as a digging site for diggers from all over Katanga, was bought by *CNMC Huachin Mabende* in 2016. The company has "hired" people unofficially, according to those hired. They have not signed written contracts with the company and enjoy no benefit other than a modest wage: 90,000 Congolese francs, or just over 50 USD a month. Since the company has placed machines on the site, the extraction is done by semi-industrial methods. For the guarding of the site, a private security team has been hired. But again, we found that serious human rights

violations have been committed in the name of the company, beatings and arbitrary arrests in particular. The traditional chief of the village (chief Mbola) explains that the guards of *CNMC Huachin Mabende* suspect that anyone circulating in the vicinity of the mine intends to smuggle minerals, which explains their aggressiveness. Villagers are mostly victims of the company's poor environmental management. The minerals undergo a first treatment on the spot and the effluents are discharged into the Kaluano River which flows at the foot of the embankments. The water from the river and the wells are polluted and can no longer be consumed by the population. These human rights violations are so important that they will require a specific study on Mbola in the future.

We thus have the right to express reservations on quality of the supply chains for the company from the artisanal sector. True, we did not detect the presence of children at the *CNMC Huachin Mabende* supply sites that we visited in Luisha. But the illicit conditions in which traders are sourcing and the human rights violations illustrate the failure to comply with the Due Diligence Guidelines.



#### ***d) Who should be held responsible for human rights violations?***

This research has allowed us to highlight human rights violations by *CNMC Huachin Mabende*. These findings made, it seemed essential to establish which actors hold responsibility for the guidelines in order to take steps to address abuses and avoid falling into these abuses in the future. Who must be held accountable? In this regard, we identified several responsible actors to varying degrees: the Congolese State, the multinational CNMC, *CNMC Huachin Mabende*, the Chinese Government and even the people of Mabende themselves.

##### **I. Congolese State**

The Congolese state is the first entity responsible for human rights violations by Chinese mining companies on its soil, mainly because of its failure to enforce the laws and standards in place. Several reasons explain this incapacity. Those most frequently mentioned by public administration officials are the lack of means and the interference of politicians.

The absence of means

The 2002 Mining Code empowers the DPEM to monitor the implementation of the EIA, the EMPP and the DDA. The new mining code (from March 2018) entrusts these prerogatives concomitantly with the DPEM and the ACE. Since the ACE is not yet operational, the DPEM agents have explained the inadequacies in the monitoring of the company by the lack of resources allocated : "we have hundreds of companies to follow, and very few human and material resources."

Political interference

Ministry of the Environment officials in the provinces complain of "interventions from Kinshasa" whenever action is initiated against *CNMC Huachin Mabende*. "This company must have an umbrella" in Kinshasa, says an officer of the Provincial Environmental Coordination.

##### **II. CNMC and its subsidiary CNMC Huachin Mabende**

The multinational CNMC and its subsidiary also have a great deal of responsibility. Having chosen to invest in a country with weak governance, CNMC could rely on international instruments or guidelines from its home country to demonstrate its investment in sustainability. But this company seems to have chosen the path of corruption and insider influence. The challenge to the former Provincial Mines Minister is an illustration of this.

##### **III. Chinese Government**

As the sole shareholder of the multinational, the Chinese government ultimately bears the responsibility for the political choices made by the company. We believe that it should ensure that companies under its control do not go astray in illegal territory, trading in influence and corruption when investing in countries with weak governance.

##### **IV. The local community of Mabende**

The population of Mabende's failure is mostly ignorance. They resigned themselves and chose to keep a low profile when they saw this mining company seize their traditional lands and forests without asking their point of view and without any compensation. They should have demanded to be consulted in order

to take the necessary measures to preserve their living space and to put in place mechanisms that could ensure the benefit of the economic profits of this investment.



*3: The riverbed of the Mabende river*



*5: Despite the efforts of the community, wells remains hopeless dry*



*4: The only spot of water in Mabende that unfit for human consumption*

## BULLETIN D'ANALYSE DES EAUX N°...025/AKT/2018

- ☛ **Désignation** : Analyse de l'eau destinée à la consommation humaine
- ☛ **Demandeur** : PREMICONGO
- ☛ **Période d'analyse** : juillet 2018

*Tableau 1 Résultats des mesures et des analyses*

IDENTIFICATION		Province		Haut-Katanga		Coordonnées GPS		
		Ville		Lubumbashi				
		Lieu		Mabende				
		Code échantillon		001				
pH		Turbidité (NTU)		Matières en suspension				
Résultat	Directive	Résultat	Norme	Résultat	Norme	Longitude	Latitude	Altitude
7,87	6,0 - 8,0	8	5	2	-	-	-	-
Analyses organoleptiques et microbiologiques						Composition chimique		
Paramètres			Résultats			Paramètre	Résultats	Normes
Organoleptiques sur site						Al	0,004 mg/l	0,2 mg/l
Couleur			-			As	<0,001 mg/l	0,01 mg/l
Saveur			-			Cd	<0,001 mg/l	0,003 mg/l
Odeur			-			Co	<0,001 mg/l	1 mg/l
Macroscopie au laboratoire						Cr	<0,001 mg/l	0,05 mg/l
Aspect (Limpidité)			Bonne			Cu	<0,001 mg/l	0,5 mg/l
Odeur			Nulle			Fe	0,005 mg/l	5 mg/l
Turbidité			Assez claire			Hg	<0,0001 mg/l	0,001 mg/l
Examen microscopie						Mn	<0,001 mg/l	0,4 mg/l
A l'état frais			Pas de parasites			Ni	0,045 mg/l	0,05 mg/l
Après coloration de Gram			Pas de germes			Ca	10,280 mg/l	-
Culture						Mg	14,670 mg/l	-
Paramètres			Résultats	Normes		Zn	<0,001 mg/l	5 mg/l
Flore mésophile aérobie			0	0 UFC/ml		TDS	363 mg/l	-
Coliformes totaux			150			Conductivité	678 µS/cm	-
Coliformes fécaux			18	0 UFC/ml		Na	7,690 mg/l	-
Escherichia coli			0	0 UFC/ml		K	1,910 mg/l	-
Spore d'anaérobie sulfite-réducteurs			0	1/20 ml		NO <sub>x</sub>	-	11 mg/l
Staphylocoques pathogènes			0	0 UFC/100 ml				

- ☛ **Interprétation des résultats** : Les résultats d'analyse indiquent que l'eau analysée est légèrement trouble et microbiologiquement impropre à la consommation humaine.

### ***Remarks on the results of the analysis of water samples from Mabende***

The analysis of the water samples and their interpretation focus on pH levels, turbidity, and chemical and microbiological aspects.

#### **a. pH**

pH measures the acidity of water. The report of analysis indicates a pH level of 7.87, which is comparative to the standard, between 6 and 8 for water. The analyzed samples are consistent with the standard, thus the water in Mabende is not acidic.

#### **b. Turbidity**

Turbidity is an optical characteristic that shows the content of the substances in suspension in the water, turning it murky. In other words, it shows the state of the water which has lost clearness. The standard is set at 5 NTU (Nephelometric Turbidity Unit), the degree to which turbidity is allowed for potable water. The tests indicate that the samples are at 8 NTU. This means that the water is not potable due to the presence of substances in the water.

#### **c. Chemical tests**

These determine the presence of metal content, a possible sign of water pollution by mining effluents. But the tests demonstrate that there was no metal pollution, since all traces of metal detected were below the threshold of the set standard.

#### **d. Microbiological tests**

##### The total coliform bacterial test

This test is an indicator of the potability of water. If they are in excess in water (10 coliform for 100 milliliters) this signals contaminated water. The results were 150 per milliliter, which is excessive and constitutes evidence of contamination.

##### The fecal coliform bacterial test

This test is an indicator of fecal pollution of water. These bacteria come from fecal material produced by humans and mammals. Water that contains any fecal bacteria is contaminated. The tests revealed the presence of these coliforms (18 per milliliter) even though the standard is that there are none. Thus, the water supplied by *CNMC Huachin Mabende* to the population in Mabende village is not polluted from mining effluents, but nevertheless it is improper for human consumption due to its turbidity and bacterial contamination.

## Conclusion

The CCCMC's publication of the Guidelines for Social Responsibility, Due Diligence Guidelines and the RCI is an encouraging initiative that will ensure the sustainability of Chinese mining investments in the DRC while contributing substantially to the development of local communities. However, our research allowed us to note that *CNMC Huachin Mabende* is among the companies that deliberately chose to take advantage of the decay of the Congolese state to maximize its profits by turning a blind eye to social and environmental obligations. But to hurt the local community of Mabende cannot be beneficial in the long run for this company. As Congolese state institutions are not yet in a position to ensure compliance with the laws and norms governing the mining sector, the CCCMC could play a key role in improving mining governance in the DRC by pushing its members to apply its guidelines, like companies in OECD countries that rely on "guiding principles" to distance themselves from corruption and implement, even if unsatisfactorily, their social and environmental obligations.

The famous slogan "win-win cooperation" that is put forward to promote Chinese investment in the DRC is not yet a reality for the local community of Mabende and those of the neighboring villages mentioned in this report.

### The demands of the local community of Mabende

The demands of the local community of Mabende can be summed up in five main points:

- 1) Restore the free movement for freight vehicles between Mabende and the village "Forty- Five."
- 2) Drill wells of drinking water inside the village.
- 3) Restore destroyed livelihoods (or replace them with other means of livelihood)
- 4) Contribute to the improvement of living conditions by constructing, equipping and putting into service some basic social infrastructures. The school and the health center are the two services whose need is most pressing

### The demands of the workers at *CNMC Huachin Mabende*

The workers with whom we talked with demanded:

- 1) Raising wages
- 2) A union
- 3) Improving the housing conditions on the site, including the possibility of living with their families
- 4) The respect of their rights in regard to their social security numbers

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### C. Notes

#### Foreword

- 1) Interview with the provincial Division chief of Mines of Upper Katanga, January 12, 2018
- 2) Interview with Mr Amisi, Provincial Director of the DPEM, Lubumbashi August 14, 2017

#### Chapter One: General Frame of Research

- 3) Interview with Mister Placide Mwalule, chief of Mabende village, Mabende, August 9, 2018

#### Chapter Two: Human Rights Violations by *CNMC Huachin Mabende*

- 4) Interview with the notables of Mabende village, September 21, 2017
- 5) Interview with Chief of Staff of the old provincial Minister of mines, Lubumbashi, November 24, 2017
- 6) Interview with community leaders during capacity building workshop held at PREMICONGO headquarters, Lubumbashi on March 22, 2018
- 7) Interview with the Planning Office Head of Provincial Mine Coordination during the workshop with community leaders at PREMICONGO Headquarters, Lubumbashi, March 22, 2018
- 8) Interview of the agents of the provincial coordination of the environment, Lubumbashi, March 22, 2018
- 9) Interview of inspectors from DPEM, Lubumbashi, March 22, 2018
- 10) Interview of workers of *CNMC Huachin Mabende*, Mabende, September 21, 2017
- 11) Interview of M. Gregoire Kimba, former worker at *CNMC Huachin Mabende*, Likasi, October 11, 2017
- 12) Interview with a group of workers from *CNMC Huachin Mabende*, Lubumbashi, November 1st, 2017
- 13) Interview of agents of the INSS, Lubumbashi, on September 18, 2018
- 14) Interview with the Chief of Mbola, Luisha, on September 13, 2018
- 15) Interview with a group of inhabitants in Mbola, Mbola, on September 13, 2018

- 16) Interview with agents from the DPEM, Lubumbashi, on March 22, 2018
- 17) Interview of agents of the DPEM Katanga, Lubumbashi on April 5, 2018
- 18) Interview of agents of the provincial coordination of the environment, Lubumbashi on April 5, 2018
- 19) Interview of agents in the mine ministry, Lubumbashi, on September 18, 2018