



ALTERNATIVE REPORT
ON THE UNIVERSAL PERIODIC EXAMINATION (EPU)

THEME: "Environmental pollution caused by the activities of Chinese companies on mining sites in the DRC: the case of water pollution".

BRIEF PRESENTATION OF THE ORGANIZATION

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PREAMBLE

1. China has already participated in three UPR sessions, in 2009, 2013 and 2018 respectively. The next evaluation is scheduled for 2024, but the various reports, including alternative reports, must be submitted by July 18, 2023;
2. At the end of its evaluation during the third UPR cycle in 2018, numerous recommendations were addressed to China and 7 porters (28.131, 28.135, 28.132, 28.134, 28.133, 28.130 and 28.242) on the implementation of the UN Guiding Principles on Business and Human Rights, due diligence, environmental protection, etc., were issued.
3. In this report, AFREWATCH would like to analyze the 7 recommendations made by Per, Kenya, the Republic of Korea, Haiti, Palestine, Ecuador and Congo and accepted by China during the 2018 assessment by focusing on the pollution of Chinese mining companies operating abroad particularly in the Democratic Republic of Congo (DRC);
4. This document is based mainly on reports published by AFREWATCH and other NGOs on cases of proven pollution by Chinese companies in the production of copper and cobalt in the DRC; it is also based on online research on China's commitments and efforts;

BACKGROUND

5. The exploitation of strategic minerals, including copper and cobalt, are among the most sought-after minerals in the production of batteries for electric vehicles as part of the energy transition, and are being extracted by major mining companies, most of them Chinese, in Lualaba and Haut-Katanga in the DRC.

Despite the 2022 revision of the Congolese mining code in 2018 and efforts by the Chinese Ministry of Commerce via the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters (CCCIMC), to implement the Guidelines on Social Responsibility for Overseas Investments, the activities of Chinese mining companies continue to have negative impacts on the environment in the DRC¹ ;

6. Article 204 of the Congolese Mining Code states that "any applicant for an exploitation permit, a discharge exploitation permit, a small mine exploitation permit or a quarry exploitation authorization is required to submit an environmental impact study accompanied by an environmental management plan for the project, and to obtain approval for its ESIA and ESMP, as well as to implement the ESMP...".
7. Article 25 octies of the Congolese mining regulations adds the following requirement: "Summaries of ESIA's, ESMPs and RAPs are published on the web list of the Technical Coordination and Mining Planning Unit (CTPCPM) and of the holder, if any.
8. According to AFREWATCH's documented field reports on environmental pollution, local communities around Chinese copper and cobalt mining operations are repeatedly victims of environmental pollution, with negative impacts on water, soil, flora and fauna.

LEGAL FRAMEWORK FOR ENVIRONMENTAL PROTECTION.

¹ <https://www.globalwitness.org/en/press-releases/de-nouvelles-directives-chinoises-permettent-aux-sociétés-minières-de-réduire-les-risques-de-conflit-et-de-corrupcion-et-de-bénéficier-aux-communautés-locales/>

In this section, we review the main national, regional and international legal instruments on environmental protection applicable to China and its companies:

1. Article 53 of the DRC Constitution of February 18, 2006 (²) stipulates the right to a healthy environment: "Everyone has the right to a healthy environment conducive to their full development. They have a duty to defend it. The State shall ensure the protection of the environment and the health of the population";
2. The Mining Code of the Democratic Republic of the Congo as amended to date (art 285 bis et ter)³ gives the right to a healthy environment, which states: Any holder of a mining and/or quarrying right is liable for damage caused to persons, property and the environment as a result of its mining activities, even in the absence of any fault or negligence. The holder of a mining and/or quarrying right is also liable in the event of direct or indirect contamination resulting from mining activities, which has an impact on human health and/or leads to environmental degradation, notably through the pollution of water, soil and the atmosphere, and causes damage to humans, fauna and flora.
3. Mining regulations (Appendix IV: EIA guidelines; Appendix VII: public consultation during preparation of the EIA and sustainable development plan).
4. Law number 11/009 of July 9, 2011 on the fundamental principles of environmental protection in articles 46 "Everyone has the right to a healthy environment conducive to his or her full development (...), 47 "Everyone has the right to breathe air that does not harm his or her health. Any emission into the air likely to inconvenience the population or to harm the environment and health (...) and 50 "Any activity likely to promote pollution, the risk of erosion and any other form of degradation of the soil and/or subsoil (...) is prohibited⁴.
5. The International Covenant on Economic, Social and Cultural Rights, Article 24 of which refers to the right to a healthy environment conducive to personal development.
6. The Universal Declaration of Human Rights, which speaks of the right to equal protection before the law.
7. Article 21 of the African Charter on Human and Peoples' Rights refers to the right to enjoy the riches of the subsoil.
8. The United Nations Guiding Principles on Business and Human Rights, 2011;
9. The Guidelines on Social Responsibility for Overseas Investments, 2014.

REPEATED POLLUTION

10. Tenke Fungurume Mining (TFM), in which China Molybdenum Company (CMOC) Limited is the majority shareholder, has been accused by the local community of Kabombwa village of polluting the environment. AFREWATCH initiated an investigation and published a report investigating the impacts of the new lime plant on the community's health and environment. The report underlines that since the launch of activities in the said plant, communities have been complaining, among other things, about the whitish dust which is said to be the cause of coughing, suffocation, water and air pollution, which is also said to be the cause of skin rashes, tickling and various infections suffered by almost all sections of the community, especially children.⁵
11. Société Sino Congolaise des Mines (SICOMINES), in which Chinese companies hold a majority stake including Sinohydro, China Railway Engineering Corporation (CREC), China

² <https://www.leganet.cd/Legislation/JO/2011/JOS.05.02.2011.pdf>

³ <https://www.leganet.cd/Legislation/JO/2018/JOS.28.03.2018.pdf>

⁴ <https://www.leganet.cd/Legislation/Droit%20administratif/Environnement/JOS.16.07.2011.pdf>

⁵ <https://afrewatch.org/exploitation-dangereuse-de-la-chaux-par-tfm-enquetes-sur-limpact-de-lusine-a-chaux-de-tenke-fungurume-mining-sur-la-vie-de-la-communaute-locale-du-village-kabombwa/>

Railway Group Ltd and Huayou Cobalt Co, has also been accused of pollution by residents of the villages of Yenge and Kapanga. In addition to making contact with the local communities affected, the field surveys enabled water, soil and sheet metal samples to be taken and analyzed in order to assess the degree of toxicity of SICOMINES' discharges into the environment, and to determine the impact this could have on health and the environment in the villages of Yenge and Kapanga.⁶ The study confirms the company's pollution of water and soil.

12. Since 2015, several studies carried out by CSOs have shown that the populations of the town of Kolwezi and its surroundings are regularly exposed to the impacts of mining company activities, notably the destruction of livelihoods such as waterways and soil, vegetable gardens and fields by the dumping of acid solutions or acid, the destruction of houses and roads by the effects of mining, the destruction of health by air pollution, etc. Since 2017, people living around the mining company Congo Dongfang Mining (CDM), owned by Huayou Cobalt Co, and particularly residents of the Kasapa, Kamatete and Kamisepe neighborhoods, have complained about the company's failure to meet its environmental obligations. AFREWATCH's report confirms the pollution.⁷
13. Ruashi Mining, majority-owned by Jinchuan Group International resources col td, has been accused by local residents of human rights violations, including the destruction of their fields by effluent overflowing from tailings ponds, and the regular destruction of other houses by vibrations caused by mine explosions. Negative impacts also include at least one loss of life due to mismanagement of the explosives used in the mine. The report co-published by AFREWATCH and other organizations confirms the facts⁸
14. The mining operations of the Chinese company COMMUS, majority-owned by Zhjiang Huayou Cobalt Co, are a major concern for the future of the town of Kolwezi, capital of Lualaba province. In fact, only an estimated distance of 40 meters separates the town of Kolwezi from the company's concession. The company is accused of polluting the water, air and soil⁹.

RECOMMENDATIONS :

15. Please ensure strict compliance with environmental standards and procedures for Chinese companies operating overseas;
16. Demand that China takes into account practical measures to implement its obligations under Congolese national legislation and international environmental protection provisions ratified by the DRC;
17. Ensure that Chinese investments comply with the laws of the countries in which they invest, mainly in the Democratic Republic of Congo;
18. Regularly assess the environmental impact of Chinese mining projects in the Democratic Republic of Congo;
19. Invite China to take action against Chinese companies operating abroad that do not respect its national and international commitments;
20. Call on China to require its overseas companies to repair all damage caused to local communities, individuals and the environment;

⁶ <https://afrewatch.org/la-vie-intenable-aux-villages-yenge-et-kapanga-les-problemes-socio-environnementaux-causes-par-exploitation-mini%C3%A8re-de-sicomines-au-lualaba/>

⁷ <https://afrewatch.org/exploitation-mini%C3%A8re-de-l'entreprise-congo-dongfang-international-mining-cdm-et-ses-impacts-sur-l'environnement-et-la-sant%C3%A9-des-communaut%C3%A9s-des-quartiers-kasapa-kamatete/>

⁸ <https://afrewatch.org/les-strat%C3%A9gies-utilis%C3%A9es-par-l'entreprise-ruashi-mining/>

⁹ <https://afrewatch.org/exploitation-mini%C3%A8re-de-la-soci%C3%A9te-commus-inqui%C3%A9te-long-afrewatch-sur-l'avenir-de-la-ville-de-kolwezi/>

21. Take stock of the environmental pollution caused by mining activities, and ensure that communities whose health has been destroyed by these negative effects are taken care of.