



**Report on the monitoring of compliance
with environmental and social obligations
of
CNMC HuachinMabendeMining SA**

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Title: Report on the monitoring of compliance with environmental and social obligations of *CNMC Huachin Mabende Mining SA*.

Cover photo: One of the settling ponds built by *CNMC Huachin-Mabende SA* on the Mabende site (photo PremiCongo)

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Abbreviations and acronyms

CCCMC: China Chamber of Commerce of Metals, minerals and Chemical exporters

FPIC: Free Prior Informed Consent

CNMC: China Non-ferrous Metal Mining Corporation

CNSS: National Social Security Fund

Covid19: Coronavirus disease 2019

NFF: National Forestry Fund

Gécamines: Générale des carrières et des mines

NGO: Non-Governmental Organisation

RCI: Responsible Cobalt Initiative

DRC: Democratic Republic of Congo

SA: Public limited company

0. Introduction

0.1. The context

A few years ago, the China Chamber of Commerce of Metals, minerals and Chemical exporters (CCCMC) published guidelines for Chinese mining companies operating outside China. These are the "Guidelines on Corporate Social Responsibility for Chinese Overseas Mining Enterprises", the "Guidelines for Chinese Enterprises on Developing Responsible Mineral Supply Chains" and the "Responsible Cobalt Initiative" (RCI) respectively. These initiatives had been positively received by observers of the mining sector in the Democratic Republic of Congo (DRC) in general and in the region of the former Katanga province in particular, given the importance of the mining sector and the predominance of Chinese investment in their areas. These guidelines were seen as China's response to recurrent complaints from local communities about human rights violations by these new mining companies.

But some observers of the mining sector in the region had already wondered at the time what leverage the CCCMC would use to get its members in the DRC to apply these directives, given the governance deficit that currently characterises the mining sector in our country. PremiCongo was part of this category of actors, and for several years now, our organisation has been concerned about the violations of legal and normative provisions regarding environmental management and the observance of social obligations by Chinese mining companies established in Katanga¹. In 2018, we had already taken the initiative to carry out a new study on the behaviour of Chinese mining companies. This initiative was explained on the one hand by the concern to verify the effective application of these directives by these mining companies and on the other hand by the concern

to test the willingness of the Chinese regulatory bodies (among which the CCCMC) to bring these companies to apply the adopted directives. Thus, from 2017 onwards, we chose to work on a company that was growing in importance; *CNMC HuachineMabendeMining SA*, a subsidiary of the Chinese multinational CNMC (China Non ferrous Metal mining Corporation). After a little over a year of research, we published the report entitled: "*...Go and accuse us wherever you want*, human rights violations by Chinese mining companies in the Democratic Republic of Congo, the case of CNMC in Mabende". This report referred to non-compliance with the DRC's mining code and the CCCMC directives referred to above. It should also be noted that this publication was followed by a non-judicial complaint from the local community of Mabende to the CCCMC. Following the publication of this report, a constructive dialogue will be initiated between PremiCongo and the mining company (from June 2020). The aim of this dialogue is to define the best way for the company to integrate the provisions of the mining code and the CCCMC standards in the management of the environment and of the social impacts on the community surrounding the Mabende exploitation site. Since the establishment of this dialogue, PremiCongo has regularly carried out monitoring missions on the site and in the vicinity in order to follow the evolution of the implementation of the environmental and social safeguard plans in accordance with the DRC's mining code and the CCCMC's directives. This document constitutes a progress report on this monitoring.

¹PremiCongo (2013), Chinese mining investments and the plight of local communities, the case of Kalumbwe-Myunga Mining (KMK) and Huachin.

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0.2. Research and presentation methodology

To gather the information for this report, we used direct observation and interviews. As regards the presentation of the report, we opted for the simplest format; comparing achievements with the shortcomings noted in our 2018 report in the light of the CCCMC guidelines and the mining code in force in the DRC.

0.2.1. Research methodology

0.2.1.1. Direct observation

Between December 2020 and September 2021, the PremiCongo team visited the company's operating site and the surrounding villages on several occasions. These visits naturally focused primarily on the shortcomings identified in the 2018 report.

0.2.1.2. The interviews

We had several interviews with officials of *CNMC HuachinMabendeMining SA*, in particular those in charge of environmental management and social issues. Our research also took us to the Caisse Nationale de Sécurité Sociale (CNSS) where we interviewed a number of officials. Finally, we interviewed members of the community living near the mine site.

0.2.1.3. Information provided by the local community.

Since 2017, the chiefs of the villages bordering the mining site as well as community leaders

have been sending us regular reports on the impacts of the company's activities as well as their relations with the mining company. Their contributions have also been taken into account in the preparation of this report.

0.2.2. Methodology for the presentation of the report

We said above that our research was inspired by the CCCMC's publication of guidelines for Chinese overseas mining companies. In the first report published in 2018, we analysed the company's behaviour in relation to the provisions of the "Guidelines on Social Responsibility for Chinese Overseas Mining Investments" (which we refer to simply as the *CCCMC Guidelines on Social Responsibilities*) and the "Guidelines for Chinese Companies to Develop Responsible Mineral Supply Chains" (which we refer to as the *CCCMC Guidelines on Due Diligence*).

The first chapter of this report is devoted to the CCCMC's guidelines on corporate responsibility and the second to the CCCMC's guidelines on due diligence. For each chapter, we first review the content of the guideline. Then we look at the negative findings from 2018 before concluding with either the improvements we found during our research, the responses of the company or other stakeholders, or the remaining gaps.

In the conclusion, we make recommendations for future steps after a few words about the CCCMC ROI Directive.

Chapter 1: CCCMC Guidelines on the Social Responsibilities of Chinese Overseas Mining Companies

The 2018 report criticizes the company on several points concerning the content of the CCCMC guidelines on social responsibilities; freedom of movement, environmental management, the right to consultation and participation, the right of access to drinking water, the contribution to community development, as well as the right to freedom of association and social security. After a reminder of the content of the directives on each of these points, we briefly recall the shortcomings noted in the 2018 report before expanding on the current state of affairs and the company's explanations for persistent shortcomings.

1.1. Freedom of movement

Guideline 2.1.5 of the CCCMC's Corporate Social Responsibility Guidelines outlines the mining company's obligation to identify stakeholders, seek their input and expectations and proactively respond to them. Stakeholders here include local communities, NGOs and any group or individual who may influence or be influenced by the mining operation.

In the 2018 report, we note that the complaints made by the local community regarding freedom of movement are a consequence of the company's failure to comply with this directive. As a reminder, the community of Mabende criticized the erection of "checkpoints" between the village of Mabende and the village "45" located on the national road N°1 between Lubumbashi and Likasi. For the members of the local community of Mabende, these barriers limited their freedom of movement and prevented them from carrying out their economic activities, particularly the sale of agricultural products. The chief of Mabende village also emphasised that he was the one who laid out the road, long before the company arrived. Our 2018 report therefore criticised the

company for having unilaterally taken the initiative to place these barriers, thus violating the requirements of guideline 2.1.5. of the CCCMC guidelines on social responsibilities.

CNMC HuachinMabende SA responded by explaining the need for it to protect its site against incursions by clandestine artisanal miners who steal minerals from its embankments. In this regard, PremiCongo's research team had found clandestine miners at work during a raid on the *CNMC HuachinMabendeMining SA* mining site on 30 December 2021. Nevertheless, in response to the complaint of the Mabende community, the company undertook to construct a 'bypass road' in April and May 2021 which now allows community members to come and go without the inconvenience of passing through checkpoints on the main road to the mine site. The bypass road is just over 6 kilometres long. It runs from Kasereka village to Mabende village.

All the people we met in the villages bordering the Mabende mining site said they welcomed this initiative by the company with relief. Although the bypass road is a little longer than the first one, it allows them to evacuate their products in peace and quiet and to move from one village to another without 'feeling the stress' of the controls at the barriers.



Figure 1: The bypass road to be built in 2021 to open up the villages surrounding the mine site

1.2. Environmental management

Guideline 2.7.12 establishes the promotion of conservation and protection of biodiversity and the environment, as well as the promotion of infrastructure through integrated land-use planning throughout the life cycle and chain of mining.

Guideline 2.7.5. Assess and regularly mitigate the negative impacts of mining on land, air and water

Guideline 2.7.9:

- *Comply with legal requirements for chemicals and toxic substances*
- *Avoid contamination of groundwater or surface water from acid rock soil and leaching from mining.*

The 2018 report therefore highlighted the poor management of the environment; large-scale deforestation without compensation, lack of settling ponds and discharge of effluent into the forest; destruction of whole parts of the forest by spreading acids on the ground and no system in place to protect endemic species.

Deforestation

In the 2018 report, we focused on the large-scale deforestation to build infrastructure; embankments, roads, the processing plant, the base camp, wells.... Agents from the provincial environmental coordination who had been involved in the research had criticised the fact that the company did not pay fair compensation to the National Forest Fund (FFN).

In response to this concern, the management of *CNMC Huachin-Mabende SA* states that it does not intend to reforest. The company points to the regular payment of the deforestation tax to the government department in charge (FFN). It is therefore up to the FFN to carry out reforestation and the company does not have to take on activities that are not included in its corporate name.

The company also points to the measures taken to keep parts of the forest standing where it had not been necessary to clear. The environmental department explains that they only allow logging when absolutely necessary.

PremiCongo suggests, however, that the company could also initiate reforestation actions with the impacted communities, for example orchards that would also bring other sources of income to local communities. The reforestation of springs and water tables can also help to preserve freshwater reservoirs in the region.

Lack of settling ponds

The 2018 report described poor environmental management, characterised by the spreading of acids on the ground and the lack of a system to protect endemic species on the site. The team's attention was also drawn to the discharge of effluent from the treatment plant (which uses the leaching method) into the forest without prior treatment in settling ponds. This was highlighted by the existence of a sizeable area with a desolate appearance of dead trees, cracked soil and acid roasted vegetation. The team also found evidence of acid spills in many places, which had destroyed significant proportions of the forest.

During the last raids, PremiCongo's researchers observed a great progress in the treatment of effluents; indeed, contrary to what was observed in 2018, many settling ponds equipped with geomembranes to protect the soil from pollution have been built by the company and are already operational.



Figure 2: Functional settling pond at the Mabende operation site

On the other hand, the PremiCongo team found that the site with the cracked and bare ground that was photographed in 2018 is now regenerating; grasses and shrubs are already growing there.



Figure 3: Vegetation reclaims the site where wastewater was discharged from a laundry in 2018

In order to protect the Lwembe River (located on the road between village 45 and the company's site), a section of the road in the valley above the river was concreted to protect it from the risk of accidental spillage of acids or other toxic products on the ground.



Figure 4: The concreted section of road in the Lwembe Valley

However, there is still an important point for improvement to which we draw the company's attention: the protection of endemic species (flora and fauna) of the exploitation site. In addition, *CNMC HuachinMabendeMining SA* should also, beyond the concern of respecting the legislation, multiply initiatives to prevent pollution (like what has been done on the

Lwembe River) initiate reforestation or soil restoration activities in the villages, etc.).

1.3. The right to consultation and participation of the local community of Mabende

This right is enshrined in two directives; **Guideline 2.4.5** which provides for the right to free, prior and informed consent (FPIC) of local communities (and indigenous peoples) and **Guideline 2.8.4** which refers to the establishment of an appeal mechanism for Community problems with the participation of a third party.

Both guidelines enshrine the company's obligation to develop arrangements to cooperate with local communities to ensure their FPIC and to compensate through legitimate processes for those who have suffered adverse human rights impacts.

In 2018, PremiCongo's research concluded that *CNMC HuachinMabende SA* had not set up a structure (department) responsible for relations with other stakeholders. The report found that the company did not work with NGOs or local community representatives. Nor did it take into account the views of the provincial political authorities.

In its response, the company referred to the difficulty it had in working with the local community because of its complex configuration. It explained that for it, this community did not correspond to the one defined in the DRC's mining code, i.e. a community made up of people linked by custom and attached to a specific area. For the company, therefore, the Mabende community was a mixed bag: those who had come to settle near the company to develop their economic activities (catering, trade, etc.) and those who had come to exploit the minerals in an artisanal way by smuggling themselves into the company's concession rubbed shoulders with the original population, who were essentially engaged in subsistence farming.

The company notes that the population of the region has increased more than tenfold, with the result that the legitimacy of its representatives is being questioned. As an illustration of their claims, the company's officials point to a village called 'Dallas'. This village was built a few years ago by illegal artisanal miners who, according to corroborating sources, came from the neighbouring province of Lualaba from where they had been expelled from sites belonging to mining companies. The company's managers therefore point the finger at these "diggers" who regularly enter the *Huachin-Mabende SA* site to seize minerals by digging on the embankments.

PremiCongo proposes (and the company seems to agree) that the company should consult the traditional Kyembe chief on whose land the company's exploitation site is located so that the latter can indicate the lineages and families with which the company will legitimately have to deal. However, this does not imply the exclusion of other groups from the dialogue: the company should therefore include in the resolutions of the consultations (negotiations on the terms of reference), the opinions of those who have come for the economic opportunities as well as those of the illegal diggers; this is necessary for the tranquillity required for the development of its activities.

CNMCHuachinMabendeMining SA also agrees with our proposal to create a department responsible for relations with local communities to ensure the participation of these communities in environmental impact studies and the implementation of its social policy.

1.4. The right of access to safe drinking water

To address the issue of access to safe drinking water for the villagers of Mabende and the surrounding area, we have highlighted guideline 2.4.1.

Guideline 2.4.1

Ensures strict compliance with the UN Guiding Principles on Business and Human Rights throughout the life cycle of the mining project.

As access to water has been a human right since 2010, the 2018 report noted that the issue of access to drinking water is one of the key complaints of the local community of Mabende, which blamed *CNMC HuachinMabendeMining SA* for restricting its access to water by diverting the Mabende River from its bed to supply its factory. In return, the company installed a single tap in the village that did not satisfy the inhabitants either in quantity or quality (non-drinking water).

In response to this claim, the company proposes to drill groundwater into the village and increase the number of taps. The village should commit to maintaining and repairing the infrastructure. In addition, to demonstrate its commitment to facilitating the community's access to clean water, the company has set up water catchment facilities for its installations half a dozen kilometres from Mabende village. The catchment system was designed so as not to diminish the flow of the river and to allow it to follow its normal course.



Figure 5: CNMC HuachinMabende SA's new water catchment site

1.5. Contribution to community development

The guidelines (points 2.8.6.; 2.8.7.; 2.8.9 & 2.8.10.) ask companies to contribute to community development by implementing

community development plans with local stakeholders. They also encourage companies to support the development of small and medium-sized enterprises in local communities as well as philanthropic-type actions.

In the 2018 report, *CNMC HuachinMabendeMining* was criticised for not taking initiatives in favour of the local community of Mabende. At the time, the community expressed several priority needs in the areas of education, health, access to water, etc. The company was also accused of not awarding subcontracts to members of the local community despite their potential for supplying agricultural products.

In response to these various remarks, the company undertook to negotiate with the representatives of the local community and the traditional chief Kyembe, a set of specifications in accordance with the DRC's mining code.

The project to build a school has already been acquired. The construction site is located halfway between village 45 and the farm site, next to the main road. According to the company's management, the start of the work has been delayed due to the covid 19 pandemic, as the start of the work was initially planned for the end of 2020.

PremiCongo recommends that the company make every effort to identify the legitimate interlocutors of the community in order to start negotiations on the terms of reference. It is important to note, however, that this approach

does not mean excluding those who came to the site later in search of opportunities. It is up to the company to find the right balance of representation so that the community lives in harmony.

1.6. Unfair dismissals and violation of social security rights

Guideline 2.8.7 states that the company should ensure job creation in the communities where mining will take place and support local economic development.

The content of the 2018 report includes some of the negative points that former workers of *CNMC HuachinMabendeMining SA* reproach the company for; these are cases of unfair dismissal. In addition, the dismissed workers also accuse the company of assigning their national insurance numbers to new workers, thus depriving them of the right to benefit from the fruits of their contributions in retirement.

These assertions were rejected outright by the company, through the officials with whom PremiCongo researchers had discussions. As for the officials of the National Social Security Fund (CNSS), they stated that it was not possible to carry out such fraudulent practices since the new worker had to take over the identity of the one who had been dismissed. PremiCongo therefore considers that this is an aspect that can only be investigated further if the dismissed workers provide evidence of these accusations.

Chapter Two: Guidance for Chinese companies on developing responsible mineral supply chains and the Responsible Cobalt Initiative (RCI)

The second part of our report concerns due diligence. To this end, the CCCMC has issued a specific guideline, the Responsible Mineral Supply Chain Guideline. These guidelines focus on the integrity of the mineral supply chain. The ICR was designed and published to provide particular reassurance about the integrity of the cobalt supply chain, especially with the soaring price of cobalt and its increased importance in the global market. In its response to our concerns, *CNMC HuachinMabendeMining SA*, explained that it does not produce cobalt, and that because the rock at Mabende contains almost no cobalt, the company could not build a cobalt processing plant. Therefore, *CNMC HuachinMabendeMining SA* said it was not affected by the ROI.

2.1. The flaws identified in the 2018 report

In the 2018 report, we expressed two concerns with regard to duty of care. The first is the risk of the company sourcing from the artisanal sector, thus including fraudulently produced minerals. The second is the operation of the Mbola mine (in Luisha) by *CNMC HuachinMabendeMining SA*.

The craftsmen's counters

During its many research trips in the area, the PremiCongo team had noticed an intense traffic of trucks loaded with raw minerals which were being transported to the company's exploitation site in Mabende. One thing leading to another, the researchers were able to establish that these trucks, which travelled daily and hourly along the road linking village 45 to Mabende village, came from the town of Luisha. In Luisha, *CNMC HuachinMabendeMining S.A.* had two sources of supply: the artisanal trading posts and the mine at Mbola.

These comptoirs were run by traders who bought products from the diggers, who themselves often obtained them illegally, by digging or buying up clandestinely in concessions belonging to cooperatives or mining companies. This is the case of the Kansonga concession or the Katekete concession.

Mbola's website

In Mbola, *CNMC HuachinMabendeMining SA* had taken over the artisanal mine. The mine is made up of backfill from former Gécamines waste. The company had entrusted the exploitation of the quarry to individuals who had informed our researchers that they did not have the status of company workers.

Our 2018 report therefore raised concerns about the possible fraudulent provenance of these minerals, as well as the status of the people working at Mbola.

2.2. Response from CNMC HuachinMabendeMining

CNMC HuachinMabendeMining S.A. states that it never buys from artisanal miners. It has a mine in its mining area from which it supplies its factory.

On the other hand, the company admits to having extracted minerals from the Mbola quarry, which had been acquired from Gécamines by way of lease (it is now closed). As for the people who worked there, *CNMC HuachinMabendeMining SA* claims that they were its own workers who were subsequently reassigned to Mabende after the Mbola quarry was closed.

In conclusion, PremiCongo considers that since the company no longer sources its minerals from outside its own mining site, it is no longer possible to determine whether or not the company had sourced minerals from artisanal

miners in Luisha in the past. However, we recommend that the company should be more careful in the future, whenever it may need to source from outside its own operations; both the provenance of the minerals and the quality of those involved in their extraction should be

taken into account in order to comply with the Responsible Mineral Supply Chain Guidelines and the ROI.

Conclusion - Recommendations

In conclusion, we note that there is a clear positive development in relation to the recommendations we made in 2018;

- The construction of the bypass road that opens up Mabende and the neighbouring villages.
- The construction of several settling ponds
- Forest restoration in the area that was destroyed in 2018.
- The concreting of the road over the bridge over the Lwembe River.
- The commitment of the company's management to create a department responsible for relations with the local community and to negotiate the specifications.

But we also point out that the company will also have to make improvements;

- Make provisions for the protection of endemic plant species;
- Initiate reforestation actions (e.g. creation of orchards) with neighbouring villages to compensate for deforestation.
- To effectively create the local community relations department.
- Work diligently to identify legitimate community contacts and negotiate the terms of reference.