



RESEARCH BRIEF

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Chinese Mining Companies and their Social License to Operate in Zambia

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Key Points:

- While the concept of Social License to Operate (SLO) as an informal, non-legally binding agreement and goodwill between mining companies and traditional authorities works alongside the law, if SLO fails to demonstrate measurable benefits, over time it might be necessary to codify it as a way to mandate compliance.
- There is insufficient research comparing Chinese mining companies to non-Chinese mining companies with respect to SLO, but public perception matters and negative sentiment can negatively affect business.
- For mining activity to be sustainable, companies must continuously engage and seek SLO by co-creating inclusive and sustainable economic opportunities with mining communities.

Introduction

China's¹ influence in Africa is growing, especially in the mining² sector. However, Chinese investment in the continent is also increasingly controversial because it is viewed as a new form of exploitation, taking advantage of African states' economic and legal vulnerabilities. The rhetoric of Chinese investment as a "win-win" for China and Africa has become arguable. As such, this Research Brief will examine China's mining investments in Zambia and how Chinese companies navigate their Social License to Operate (SLO) in the host state.

Beyond the regulatory obligations companies must fulfill, many in host states view companies as owing obligations to local communities, the public at large and other stakeholders affected by their operations. Thus, companies need to obtain SLO, a kind of goodwill and informal contract negotiated between the company and a wide range of stakeholders that gives a community enough trust in a company to let them mine. Although widely

¹ For the purposes of this Research Brief, no distinction is made between state owned enterprises and private Chinese mining companies.

² For the purposes of this Research Brief, mining broadly includes exploration, excavation, processing, and trading.

used in industry and rooted in social contract theory with links to corporate social responsibility (CSR), SLO remains an evolving concept with little research.³ SLO is achieved through engagement and creating trust, transparency about the mining operations, respect for cultural heritage, contributions to local economic development and so on versus CSR which tends to focus on a set of socially focused activities decided and carried out by a company for a community. That said, some companies engage communities to incorporate their priorities into CSR budgets and activities. A company can operate without a CSR plan, but can not without the SLO. One can conclude that SLO gives mining communities greater agency in their engagement with mining companies.

Mining in Zambia has primarily been in the Copperbelt. As mining expands beyond the Copperbelt, traditional authorities and their subjects have become increasingly important stakeholders for mining companies.⁴

Consequently, obtaining SLO is particularly important for several reasons.

First, traditional authorities own about 94% of Zambia's land.⁵ In many areas of the country, traditional authorities manage land administration meaning a company needs to obtain additional approvals to operate, besides licenses given by the government. Although there is no research documenting companies proactively engaging in traditional rituals for instance, one can deduce companies fulfill certain duties because otherwise traditional authorities might stall project approvals and commencement

or not assist with wider community engagement when problems arise. Second, SLO is a demonstration of a company's commitment to engaging in sustainable business by acknowledging the importance of traditional authorities' power and the cultural significance of land. Third, it gives the community agency with which to engage with a company to gain trust. By doing so, a company is able to potentially preempt negative sentiment towards the company that could result in damage to property or injury. Lastly, considering SLO is embedded in Sustainable Development Goal 11.3, which aims to enhance inclusive and sustainable urbanization and capacities for participatory, integrated and sustainable human settlement planning and management in all countries by 2030,⁶ it can shift a company's attitude towards CSR and contribution to national development goals allowing industry to set a unified agenda on obligations and benefits of cooperation and enabling a company the chance to operate beyond simply compliance.

There can be tension between the authority of the government and that of traditional rulers when it comes to giving the required permission to operate a mine. In Zambia, the Ministry of Mines and Minerals Development regulates the mining industry. While the Ministry issues mining related permits and licenses, Article 4(3) of the Lands Act of 1995 requires consultation of chiefs and the consideration of customary law. Government's power trumps that of chieftaincies where under Article 3(i) of the Lands Act of 1995 the President can make the final decision on mining rights.⁷

³ Joseph Conrad, *The Social License to Operate and Social Contract Theory Themes and Relations of Two Concepts—A Literature Analysis* (Sept. 5, 2018) *Thesis for Master of Arts Degree in Environment and Natural Resources*, <http://hdl.handle.net/1946/31718>.

⁴ Rohit Negi, *The Mining Boom, Capital, and Chiefs in the "New Copperbelt"*, in *ZAMBIA, MINING, AND NEOLIBERALISM. AFRICA CONNECTS* (Alistair Fraser & Miles Larmer, eds., 2010), https://doi.org/10.1057/9780230115590_8.

⁵ KPMG, *ZAMBIA COUNTRY MINING GUIDE 2013*, <https://assets.kpmg/content/dam/kpmg/pdf/2013/08/zambian-country-guide.pdf>.

⁶ United Nations 2030 Sustainable Development Goals, *Goal 11: Sustainable Cities and Communities - SDG Tracker* (sdg-tracker.org).

⁷ Zambia Land Alliance, *Press Statement on the comments by Mines and Minerals Development Minister on the role of Chiefs in issuing out Consent Letters to Investors*,

Such pre-existing tensions mean an investor would need to find a way to gain favor with both the government and a chief before engaging the wider local community. Lastly, chieftaincies are not homogenous; each kingdom puts its interests first and such interests might be at odds with government priorities and the interests of other communities.

The Reality vs Perception of Chinese Investment in Zambia

China's investment in Zambia dates back to Zambia's independence in 1964. However, Chinese investment in the mining sector has grown substantially since the sector liberalized in the mid-1990s. Other factors that have contributed to increased Chinese investment in Zambia are China's growing need for copper and cobalt, the need to create a long-term mineral, especially critical mineral, supply chain, the availability of innovative and affordable financing mechanisms, and the Chinese-Zambian contribution to the Belt and Road Initiative.

The view that Chinese companies exploit Zambian workers persists and has led to growing resistance against the Chinese.⁸ It has become important to take all necessary steps to improve the public perception of Chinese as both employers and corporate citizens. According to research conducted by Human Rights Watch,

“Chinese-run copper mining companies in Zambia routinely flout labor laws and regulations designed to protect workers' safety and the right to organize.”⁹ Allegations of labor abuses are not unique to the mining sector. Since the publication of the Human Rights Watch report, tensions have arisen that have resulted in the assault and even murder of Chinese nationals¹⁰ in mines¹¹ and elsewhere. Concerted efforts to improve company-employee relations help develop the SLO as employees are usually members of mining communities where they operate. Improved employee relations also contribute to improving employees, environmental, social and governance (ESG) performance, a growing trend in the sector.¹²

Zambia, like other African countries which are reliant on the extractive sector, has, after decades of “boom and bust” cycles experienced increasing nationalistic sentiment accusing foreign mining companies of not doing enough to deliver inclusive economic progress. To appease an increasingly disgruntled voter base the government is taking policy action to try to increase the benefit of the mining sector and its supply chains to the broader economy. The government has codified local content requirement in the National Local Content Strategy 2018-2022¹³ as, “the extent of utilization of

<http://zla.org.zm/press-statement-on-the-comments-by-mines-and-minerals-development-minister-on-the-role-of-chiefs-in-issuing-out-consent-letters-to-investors/>.

⁸ Abu-Bakarr Jalloh & Fang Wan, *Resistance growing to Chinese presence in Zambia* DW (Sep. 4, 2019), <https://www.dw.com/en/resistance-growing-to-chinese-presence-in-zambia/a-47275927>.

⁹ Human Rights Watch, *Zambia: Workers Detail Abuse in Chinese-Owned Mines* (Nov. 3, 2011), <https://www.hrw.org/news/2011/11/03/zambia-workers-detail-abuse-chinese-owned-mines>.

¹⁰ Jenni Marsh & Chiwoyu Sinyangwe, *Three Chinese nationals were murdered and burned in Zambia, in a week when racial tensions were running high*, CNN (Jun. 6, 2020), <https://edition.cnn.com/2020/06/05/china/china-zambia-murder-intl-hnk/index.html>.

¹¹ Alexis Okeowo, *China, Zambia and a Clash in a Coal Mine*, THE NEW YORKER (Oct. 9, 2013), <https://www.newyorker.com/business/currency/china-zambia-and-a-clash-in-a-coal-mine>.

¹² First Mining DRC-Zambia, *Counting on ESG to ensure sustainability in mining post COVID-19* (Nov. 2, 2020), <https://www.fmdrc-zambia.com/counting-on-esg-to-ensure-sustainability-in-mining-post-covid-19/>.

¹³ MINISTRY OF COMMERCE, TRADE AND INDUSTRY, NATIONAL LOCAL CONTENT STRATEGY 2018-2022, https://www.mcti.gov.zm/?wpfb_dl=81.

local inputs and/or products in the production and provision of goods and services throughout the economy. To this effect, Government policy requires a minimum of 35% utilization of local inputs and/or products in the production and provision of goods and services throughout the economy". The government - through Zambia Consolidated Copper Mines Investment Holdings (ZCCM-IH), a diversified investment and operations business listed on stock exchanges in Zambia, the United Kingdom and France - is increasing its shareholding in the Zambian mining sector. This is evinced by the acquisition of the remaining 90% stake in Mopani Copper Mines,¹⁴ the forced take-over of Konkola Copper Mines, and an increase in other mining ventures, such as exploration companies. That said, the tension between foreign investors and local beneficiaries will only be resolved when there is transparency in investment contracts and tax proceeds are used to improve social welfare.

While in 2010, Chinese FDI in Africa equaled US\$2.11 million compared to US\$3.17 million in 2004¹⁵, in 2020, Zambia's debt to China was about US\$3 billion.¹⁶ This demonstrates how heavily invested China is in Zambia. Over the years, the Chinese government has perceived Zambia as having a strong mining investment environment.¹⁷ For instance, by 2019, China Non-Ferrous Metals Construction Group (CNMC) had more than eight mining ventures, with over 2,500 employees and an investment of US\$200 million in Zambia.

¹⁴ Nkombo Kachemba & Priscilla Mwila, *Mopani takeover: Just what Zambia needed*, ZAMBIA DAILY MAIL (Jan. 26, 2021), <http://www.daily-mail.co.zm/mopani-takeover-just-what-zambia-needed/>.

¹⁵ Tomasz Michalowski, *China's Economic Activities in Africa: Trade, Foreign Direct Investment and Aid*, INTERNATIONAL JOURNAL OF EMERGING AND TRANSITION ECONOMIES 3(1) 2010.

¹⁶ Joe Bavier & Karin Strohecker, *An Election, a Mine Deal and China Loom over Zambia's IMF talks*, REUTERS (Feb. 11, 2021) <https://www.reuters.com/article/uk-zambia-debt-imf-idUSKBN2AB0F3>.

CNMC has more investments in the pipeline such as the continued development of the Chambishi Copper Mine.¹⁸

Chinese mining ventures in Zambia demonstrate that China's contribution to economic development and compliance with local laws depends on Zambia's ability to enforce its laws and conditions granted by mining licenses, including any requirements on EESG performance, and respect for SLO. As the Chinese government and its state-owned enterprises continue to commit to environmental targets such as achieving net zero greenhouse gas emissions by 2050, countries like Zambia have the opportunity now to demand that Chinese companies operating in Zambia also reach such standards since Zambia has not yet set such targets. Due to the high number of Chinese state-owned mining companies, the push for CSR as a means to achieve the SLO as well as the compliance with higher environmental targets will need to come from the Chinese government. The hope is that private companies would feel pressure to follow suit over time. "Nevertheless, issues such as CSR are being addressed by the Chinese government, perhaps not as quickly and with the degree of enforcement power that some critics wish to see, but still with testable outcomes and evidence of improved CSR behavior and reporting."¹⁹ With increased global pressure on companies for improved EESG performance, Chinese companies will not be the exception.

¹⁷ Jenny Zhang, *Zambia Has the Best Mining Investment Environment in Southern Africa*, ENERGY INDUSTRY REVIEW (Dec. 11, 2019), [https://energyindustryreview.com/metals-mining/zambia-has-the-best-mining-investment-environment-in-southern-africa/#:~:text=The%20Zambia%20Chambishi%20copper%20mine%20recovery%20project%20is,Metals%20Group\)%20and%20Zanguo%20United%20Copper%20Mine%20Company](https://energyindustryreview.com/metals-mining/zambia-has-the-best-mining-investment-environment-in-southern-africa/#:~:text=The%20Zambia%20Chambishi%20copper%20mine%20recovery%20project%20is,Metals%20Group)%20and%20Zanguo%20United%20Copper%20Mine%20Company).

¹⁸ *Id.*

¹⁹ Neil Renwick, Jing Gu & Song Hong, *China and African Governance in the Extractive Industries*, INTERNATIONAL DEVELOPMENT POLICY, Article 10.1 2018, <https://journals.openedition.org/poldev/2547>.

While there are times when diplomatic intervention can be used to negotiate, typically commercial ventures operate independently of political interference. That said, how Zambia balances its interests versus those of investors by creating a strong business environment will determine how much the country will gain from investments. Besides public governance of the mining sector, corporate governance of Chinese firms is important. Compliance with laws is essential for sustainability of operations, just as is the SLO.

One of the ways in which China has gotten such a strong foothold in mining is through the resources for infrastructure financing mechanisms. This is a contractual arrangement in which a Chinese entity contracts to deliver infrastructure in exchange for mining concessions or other public infrastructure. While this is a legitimate financing structure, there are ongoing concerns in Zambia because of the claims, despite government refusal, that Chinese entities have ownership claims over Zambia's state-owned airport, public broadcaster, and primary utilities company²⁰ resulting from government failure to repay debt. The resultant public sentiment has been negative as these concerns perpetuate the view of the Chinese colonization of the country.

Recommendations

For Chinese mining companies to operate sustainably in Zambia, a strong SLO is required. Companies' respect for SLO has proven to be valuable so far. Should companies fail to respect SLO, community led, multi stakeholder engagement should take place in order to figure out how to improve the system. It is important to

note that due to differences in traditional authorities and community needs, the outcomes might vary. Should communities fail to allow companies to operate because of their failure to meaningfully contribute to development, government can consider codification of more aspects of economic development needs based on community and government (provincial and local) needs. Setting such minimum standards however, might discourage companies from being innovative, contributing more than is required while only focusing on compliance. While government regulation of company-community interactions is an option, it should be the last option if companies fail to effectively engage and support community leads. The challenge is that there is currently a weak legal enforcement framework and any additional requirement might further burden regulators. Additionally, codification might not avoid community disenchantment even if a company delivers on legal requirements. That said, the increased formality would provide an additional layer of transparency, creating the option for parties to resort to legal recourse, and the decreased likelihood of confusion about responsibilities before, during and after the life of a mine. The following recommendations are potential considerations for Chinese mining companies and the Zambian government:

- Zambia could create a framework such as that developed by the Queensland (Australian) Government in terms of its guidelines for preparing a social impact management plan (SIMP), a framework that defines the shared responsibilities of industry and government.²¹

²⁰ Tracey Hancock, *Chinese investment underpins Africa's mining sector*; MINING WEEKLY (Sept. 13, 2019), <https://www.miningweekly.com/article/chinese-investment-underpins-africas-mining-especially-in-zambia-2019-08-28>.

²¹ Justine Lacey, *Can you Legislate a Social Licence to Operate?* THE CONVERSATION (Feb. 26, 2019),

<https://theconversation.com/can-you-legislate-a-social-licence-to-operate-10948#:~:text=The%20concept%20of%20a%20%E2%80%99social%20licence%20to%20operate%E2%80%99,community%20extends%20to%20a%20mining%20operation%20or%20development>.

- As the European Union has done, Zambia could model a draft SLO guideline with voluntary tools to be used for the full lifecycle of the mine.²²
- Use a strong SLO to create contractual obligations between relevant stakeholders. An example worth understanding and trying to replicate is Rio Tinto's Richards Bay Minerals' Procurement Principles Agreement that was created between the local host community led by various chieftains, the local government and the company to create an increased amount of procurement opportunities to local businesses, especially previously marginalized businesses, such as women-owned businesses.²³
- Considering the fact that COVID-19 continues to limit social engagement, mining companies need to reassess how they engage local communities. For example, there are opportunities to provide free wifi to communities near the mine to increase connectivity which can bring broader advantages to the community such as access to education and job opportunities, but also the ability of local communities to work with the company to build greater business links, and therefore economic benefit.
- For mining companies operating in Multi-Facility Economic Zones (MFEZ) such as those in the China Non-Ferrous Mining Group's Chambishi MFEZ, it is importance to set annual job, local procurement and trade targets.²⁴ This could help change the perception that the MFEZs only provide tax

relief for investors while minimally benefiting the local economy.

Conclusion

China's continuing investments in Africa demonstrate its interest in being engaged long term, or at least a long as the lives of the mines they acquire. So far, China has demonstrated that it is willing to work with the necessary stakeholders needed to commence and grow mining operations in Zambia, including traditional authorities. However, remaining compliant with the law and SLO is an ongoing challenge companies are trying to figure out. The desired step after engagement is truly achieving win-win strategies in which mining communities benefit from mining investments and longer-term local economic development as a result of the mine. Attaining and maintaining SLO is an ongoing requirement throughout the life of a mine, which means it is important to continue to improve the relationship and progress towards goals that demonstrate commitment to what is socially acceptable and to show true leadership in meeting societal demands, especially as they change. What is not clear is how Chinese companies will continue to develop, manage and measure the SLO, including replicating good models in other countries.

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²² Mining and Metalurgy Regions of the EU, *Social License to Operate* <https://mireu.eu/tags/social-license-operate>

²³ Tasmeen Bulbulia, *RBM, Traditional Authorities Sign Procurement Principles Agreement for Zulti South*, CREAMER MEDIA'S ENGINEERING NEWS (Aug. 30, 2019), <https://www.engineeringnews.co.za/article/rbm-traditional->

[authorities-sign-procurement-principles-agreement-for-zulti-south-2019-08-30](https://www.engineeringnews.co.za/article/rbm-traditional-authorities-sign-procurement-principles-agreement-for-zulti-south-2019-08-30).

²⁴ Louise Granath & Marika Larsson, *Chinese Foreign Direct Investments in the Zambian Mining Sector*, 2012, Bachelor Thesis, University of Gothenburg, https://gupea.ub.gu.se/bitstream/2077/31773/1/gupea_2077_31773_1.pdf.