Addressing the Environmental and Social Governance Challenges of Chinese Mining Companies Operating in Africa:

A Comparative Study of OECD and Emerging Market Investor Behavior in Zambia's Copper Mining Industry

Photographs courtesy of Shannon Van Sant, 2009, Zambia

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List of Abbreviations

BMF	Bench Marks Foundation
BGRIMM	Beijing General Research Institute of Mining and Metallurgy
CEP	Copper Belt Environmental Project
CNMC	China Nonferrous Metal Mining (Group) Company
CSEZ	Chambishi Special Economic Zone
CSI	Corporate Social Investment
CSO	Civil Society Organization
CSR	Corporate Social Responsibility
CSRI	Corporate Social Responsibility Initiative (Harvard Kennedy School of Government)
DRC	Democratic Republic of Congo
ECC	Economic and Commercial Council (China)
ECZ	Environmental Council of Zambia
EDC	Export Development Canada
EIA	Environmental Impact Assessment
EITI	Extractive Industry Transparency Initiative
EMP	Environment Management Plan
EP	Equator Principles
EPF	Environment Protection Fund
EPPCA	Environmental Protection and Pollution Control Act No.12 of 1990 (Zambia)
ESG	Environmental and Social Governance
FEMP	Final Environment Management Plan
FSDP	Financial Sector Development Plan for Zambia
FOCAC	Forum on China-Africa Collaboration
FQM	First Quantum Minerals Ltd.
GCP	Green Credit Policy
GDP	Gross Domestic Product
GEI	Global Environmental Institute

GRI	Global Reporting Initiative
GRZ	Government of the Republic of Zambia
ICGLR	International Conference on the Great Lakes Region
IFC	International Finance Corporation (member of the World Bank)
ISO	International Standard Organization.
JSE	Johannesburg Stock Exchange
KCM	Konkola Copper Mines
LuSE	Lusaka Stock Exchange
MEP	Ministry for Environmental Protection of the People's Republic of China
MOFA	Ministry of Foreign Affairs of the People's Republic of China
MOFCOM	Ministry of Commerce of the People's Republic of China
NEPAD	New Partnership for Africa's Development
NFCA	Non Ferrous Company Africa
OECD	Organization for Economic Cooperation and Development
PRI	Principles for Responsible Investing
SADC	Southern African Development Community
SAIIA	South African Institute of International Affairs
SARW	Southern Africa Resources Watch
SASAC	State-owned Assets Supervision and Administration (China)
SEPA	State Environmental Planning Agency (China)
SOE	State Owned Enterprise
SSE	Shanghai Stock Exchange
TSX	Toronto Stock Exchange
UNEP- FI	United Nations Environmental Programme: Financial Institutions
UNEP	United Nations Environmental Programme
UNGC	United Nations Global Compact
ZCCM	Zambia Consolidated Copper Mines
ZCCM-IH	Zambia Consolidated Copper Mines –Investment Holdings
ZDA	Zambia Development Agency

Executive Summary

Over the past decade, China has overtaken the United States as the world's leading consumer of most base metals. This has been reflected in increased overseas engagement in mining activities, particularly in Africa. However there is growing concern with the environmental and social implications of China's overseas involvement in Africa, especially in environmentally-sensitive sectors such as mining and other extractive industries. In particular, Chinese firms are often perceived to be "the worst investors" in the African mining sector[1]. There is therefore an urgent need for China to more firmly tackle the issue of corporate responsibility by overseas enterprises in Africa, not only for the benefit of the populations in the host-countries concerned, but also in the economic interests of Chinese corporations themselves.

In many ways, Africa is a new testing ground not only for China, but for many other emerging-market investors. Similarly to the Chinese firms, these investors have little prior experience in facing the ethical and environmental management challenges that such expansion represents. These companies are not always aware of international ESG practices, and most are not signatories to global governance guidelines. The current study attempts to provide first steps for developing a more targeted framework that could help Chinese and other emerging-market companies to systemize their ESG management approaches in Africa's mining sector. With a focus on ESG standards, this paper firstly analyzes complementarities between: African countries' legal frameworks and initiatives, including at the regional level; international guidelines for multinational enterprises; and domestic management norms from emerging-market host countries. This comparison establishes a framework of analysis for country-specific case studies, focusing on copper mining in Zambia. The ESG behavior of three emerging-market companies (NFCA for China, Metorex for South Africa, and Vedanta Resources for India) is compared to that of a more 'traditional', OECD-originated investor (First Quantum Minerals, a Canadian company).

The broad cross-comparison of guidelines and these case studies yield several key findings. Firstly, international, host-country and country-of-origin guidelines for environmental and social governance are interdependent – none can be truly effective in isolation. The cross-comparison of norms also suggests that the growing number of overlapping international and national codes of conduct may itself be counter-productive. Additionally, there remains considerable space for greater collaboration and communication between NGOs based in host countries and governments from companies' countries of origin. The case studies, meanwhile, demonstrate that the firms investigated have incomplete understandings of corporate social responsibility, and often substitute social investment projects in the place of comprehensive ESG management systems. This is where the contrast between OECD and non-OECD investment is the greatest, as the three non-OECD investors studied tend to dangerously narrow CSR down to the notion of philanthropy. As a result, firms' ESG behavior is driven more by different understandings of CSR and managerial incentive structures than by guidelines from countries of origin or international agencies. The case-study of the Chinese company NFCA moreover suggests that a 'China difference' may persist in Zambia's mining sector, partially explaining NFCA's particularly poor ESG performance: relationships between the Zambian government and the NFCA are strongly politically embedded, which reduces incentives for Chinese managers to address local environmental concerns.

Based on these findings, recommendations for host country governments include reducing regulatory overlaps domestically and coordinating their national regulatory frameworks at the sub-regional level. Host-country ESG regulations should be made more stringent, and regulatory bodies would benefit from more independence from political influence. Introducing more transparency into the Government's negotiations with individual firms (including by clearly defining how ESG characteristics enter the criteria for project bids) would also reduce risks of political embeddedness of the sort observed with the Chinese firm NFCA. Recommendations for mining companies, meanwhile, include improving corporate wage structures and understandings of ESG so as to fully incorporate ESG into everyday management and operations. Mining companies can also minimize the reputational risks of their investments by complementing their ESG reports with external auditing and/or adherence to international codes of behavior. Companies should moreover take advantage of the substantial scope for learning across firms operating in the same sector, and expand communication and ESG cooperation with domestic NGOs, governmental bodies and international agencies as well. Lastly, governments from investors' countries of origin also have a role to play in encouraging sound ESG practices by their companies. Governments should firstly harmonize the network of ESG requirements imposed on multinationals operating overseas. Investing countries also need to strengthen and institutionalize a network for country-of-origin oversight of their companies' behavior in Africa. National authorities could moreover explicitly tie good ESG performance overseas to access to financing by national Export-Import banks. Lastly, all three sets of actors (host and country-of-origin governments as well as individual firms) should actively encourage constructive 'peer pressure' among multinational companies on the ESG front; rather than a 'race-to-the-bottom', this would enable competition among mining companies in Africa to become becomes a 'race-to-the-top' in terms of internalizing ESG management systems.

Situating the Research:

This form of comparison (focusing on the responsible business conduct of non-traditional investors operating in Africa) is recent and highly timely. The first doctoral-level study to compare mining practices in Zambia in this light was written in 2009 by Dan Haglund for the University of Bath's Department of Economics and International Development. The current study partially builds on Haglund's work and draws from his interviews (conducted in Zambia in 2007) for some of the case study analysis. This report is hoped to further extend the incipient body of research in this field, by adopting a more policy-based focus and by investigating not only the corporate cultures of specific companies in Zambia (as in Section III of the paper), but also how international and country-of-origin guidelines interact to influence the overseas behavior of multinational companies (Section II). In the context of research for the Beijing-based *Global Environmental Institute*, this study also differs from previous work by focusing exclusively on environmental and social governance (ESG, as a subset of CSR), and framing the analysis around the behavior and needs of Chinese multinationals in particular. In this respect, the current paper also draws guidance from a 2009 report by the *Corporate Social Responsibility Initiative* at the Harvard Kennedy School of Government (CSRI); this explores the understanding and practice of corporate social responsibility among Chinese companies engaging in Africa, based on interviews and discussions with senior executives of 22 companies operating on the continent.

SECTION I: Background and Motivation

1.1 Poor perceptions of Chinese overseas investment in Africa's extractive industries

Over the past decade, China has overtaken the United States as the world's leading consumer of most base metals. This has been reflected in increased overseas engagement in mining activities, particularly in Africa. In 2006 diamonds occupied the largest share of China's mineral imports from Africa (27%), followed by platinum (17%), copper (15%), cobalt (11%) and manganese (11%)[2]. Given this growing involvement in Africa's extractive industries – and also in terms of trade, aid, and diplomatic ties – multilateral and bilateral initiatives are emerging in an attempt to structure Sino-African economic and political relationships. Most notably, the *Forum on China-Africa Cooperation* (FOCAC) was established in 2000 as a platform for China-Africa dialogue. In 2006 the FOCAC launched the Beijing Action Plan (for 2007-2009), which among other bodies set up the China-Africa Development Fund (CADF). Managed by the China Development Bank, the CADF has now reached USD $5 billion; it selects projects (most of which are Chinese-African joint-ventures) at its own discretion, performs environmental assessments as part of its selection process, and claims to "monitor the social responsibilities of [funded] enterprises"[3]. Despite these encouraging efforts, there is however growing concern with the environmental and social implications of China's overseas involvement in Africa. Controversy is especially heated in environmentally-sensitive sectors such as mining and other extractive industries, particularly given China's policy of 'non-involvement' in the internal affairs of African governments, and Chinese investors' perceived laxity in terms of respecting strict standards of corporate social responsibility (CSR). As put by the OECD, "China's investment in Africa has invited the most intense debate on China's business conduct, in the light of Africa's weak governance capacity"[4].

The *Southern Africa Resource Watch* (SARW) notes that, "attention and pressure has been mostly put on Chinese companies to adhere to best standard business investment in the extractive industries", with much less criticism being leveled at other multinational companies despite uneven performance records[5]. Indeed, the Chinese are often perceived to be "the worst investors" in the African mining sector[6], and Chinese firms even became exclusive target of 'resource nationalism' in Zambia's 2006 presidential campaign, when they were ferociously criticized by the Patriotic Front's candidate Michael Sata[7]. According to the *Corporate Social Responsibility Initiative* at the Harvard Kennedy School of Government (CSRI), "a key difference between Chinese business leaders' and western business leaders' conception of CSR is the extent to which they are willing to consider whether business practices reinforce, or alternatively undermine, local judicial, legal and political institutions, particularly in institutionally weak countries"[8]. Chinese business practices are thus seen as being particularly prone to exacerbating local governance problems when investing in countries where host governments lack adequate capacity for regulation. Whether or not these perceptions are justified, they should be of serious concern to Chinese authorities and to the executives of Chinese companies operating overseas. The Chinese government, as well as several Chinese banks and enterprises themselves, are increasingly realizing that China and Chinese firms must rapidly formulate a coordinated approach and credibly commit to verifiable standards of environmental and social governance for their operations in Africa. Otherwise the poor behavior of a few Chinese firms may well become a liability for China's wider political and economic interests[9]. As the

CSRI summarizes, the reputational and political pressures placed on Chinese multinational enterprises in Africa today create a clear and pressing demand for more targeted research into "CSR with Chinese characteristics"[10].

1.2 Africa as the new testing ground for emerging-market investors

Other emerging-market economies besides China are also rapidly expanding their investments in Africa. Similarly to the Chinese firms, these investors have little prior experience in facing the ethical and environmental management challenges that such expansion represents. These companies are not always aware of international ESG practices, and most are not signatories to global governance guidelines (*see Section II below*). If they additionally lack guidance from their countries of origin, these firms come to rely exclusively on local risk assessments and local laws to guide their ESG behavior. When host-countries have a low capacity for monitoring and enforcing environmental regulations, however (as is the case in many African countries hosting mining activities), this reliance on locally-based ESG pressures presents significant risk to host-country communities and ecosystems. There is increasing international recognition for the fact that the 'new wave' of emerging-market investment into Africa therefore faces a specific set of ESG hurdles, which OECD-country investors with longer-term experience on the continent may not confront or may manage more easily. This points to a clear need for a more targeted framework that could help Chinese and other emerging-market companies to systemize their ESG management approaches in Africa's mining sector. A coordinated structure adapted to Chinese companies investing in Africa could draw on the similar ESG challenges faced by other emerging-market investors, and potentially be transferable across companies. According to the 2009 CSRI survey, there is indeed a call among interviewed Chinese executives for "sharing experiences" across companies and for "the development of a new generation of standards coming from emerging market economies"[11]. This paper aims to provide a first step towards answering this call: it analyses the behavior of both emerging-market and OECD investors operating in Zambia's copper industry, with a focus on how emerging-market (and especially Chinese) companies and governments can learn from these experiences and internalize the most applicable of existing international and domestic ESG norms.

1.3 Definition of ESG as a subset of Corporate Social Responsibility

Corporate Social Responsibility (CSR) covers a wide range of factors which companies must take into account so as to ensure that the impact of their operations on local communities and ecosystems is positive and contributes to social and economic development. These factors include financial transparency, respect for human rights and employment conditions, and sustainable environmental practice. Of these components, environmental behavior is often the one most frequently overlooked by host-country governments, as the effects of companies' environmental misconduct may be less visible in the short-term and are therefore seldom the primary electoral concern of local communities. Extractive firms themselves also often grant environmental standards the least attention as a subset of CSR: interviews of 22 Chinese MNCs in Africa led by the *Corporate Social Responsibility Initiative* in 2009 reveal that, while business leaders are generally aware of CSR risks immediately affecting their operations and profitability, they place

far less priority on broader political and social threats. Out of all CSR threats, CEOs make the least unprompted mentions of environmental risks (*Fig.1, Appendix 5.2*)[12].

The environmental impact of activities in the mining sector can be particularly severe, however: copper mining requires crushing copper ore to a powder and floating it in acids so as to separate the ore from the rocks in which it is found. The by-products of this process include toxic liquid effluents which create water pollution, and smoke from smelting that is heavy in sulphur-dioxide. Human respiratory illnesses, acid rain, silting of local rivers, and crop damage result[13]. Given the long-term consequences of environmental misconduct by extractive firms, there is currently a considerable gap between corporate awareness and responsibilities in this field. In an attempt to address this gap, the current paper will therefore focus on the environment-specific sub-component of corporate social responsibility: companies' Environmental and Social Governance (ESG). Chapter V of the *OECD Guidelines for Multinational Enterprises* lists several specific tools for fulfilling ESG responsibility: environment management systems, life-cycle Environmental Impact Assessment; contribution to the development of environmentally meaningful public policies; risk prevention and mitigation; and communication of information on environmental impacts to the public[14]. Sound ESG performance is therefore multi-faceted: it not only requires social investment measures, by which firms engage in biodiversity or energy-conservation projects in addition to their everyday operations, but also commits firms to considering the environmental impact of their actions at every step of the production process. As discussed in Section 3.4.1 below, the latter (more managerial) aspect of ESG is frequently overlooked by companies; it is nonetheless the cornerstone of adequate Environmental and Social Governance.

1.4 Structure of the report

In the *Guidelines on Fulfilling Social Responsibility by Central Enterprises* released by China's State-Owned Assets Supervision and Administration Commission (SASAC) in 2008, the Chinese Government notes the need for central enterprises to "communicate with international organizations and participate in activities for making international standards on social responsibility". The SASAC Guidelines also emphasize that "central enterprises shall learn from foreign companies' good practices and experiences on social responsibility" to "find out the gap" in their own behavior.[15] Sections II and III of this paper respectively attempt to cater to these two demands.

With a focus on ESG standards, this paper therefore firstly analyzes complementarities between: African countries' (and particularly Zambian) legal frameworks and initiatives, including at the regional level; international guidelines for multinational enterprises; and domestic management norms from host countries (with a slightly heavier focus on China). This comparison establishes a framework of analysis for individual case studies in the second part of the paper. The ESG behavior of four companies is investigated here, all of which operate in the mining sector in Zambia. Three emerging-market companies are compared to a more 'traditional', OECD-originated investor. As OECD investors benefit from lengthier experience in Africa and, unlike emerging-market investors, fully avail themselves of the international tools available for guiding ESG behavior, this comparison should prove highly instructive in terms of the comparative advantages of Chinese and non-Chinese ESG management systems.

The 'emerging-market' companies studied originate from China, South Africa, and India. These three investors are quite representative of emerging-market engagement in Africa, and in Zambia in particular. South Africa is the largest investor in Southern Africa's extractive industries, while China was Zambia's third largest investor in terms of FDI stock by 2006 (following Great Britain and South Africa)[16]. Meanwhile, an online mining survey conducted in late 2009 for the African Mining Congress indentifies "the most important players in deciding the future of the African mining industry" to be "African governments, China and India"[17]. India is also often contrasted to China in terms of both economic performance and corporate practices, making a comparison including both of these rapidly growing Asian powers particularly timely. China, South Africa and India moreover occupy different positions along the corporate governance spectrum: in 2009, the US-based Social Investment Forum (SIF) found both Chinese and Indian companies to have the lowest levels of sustainability disclosure among emerging-market companies surveyed, while South African companies emerged as the overall leaders (the survey assessed 75 companies, including in the Metals and Mining sector, from China, India, South Africa, Brazil, Korea and Russia)[18]. The *Institute of Directors in Southern Africa* concurs that, "South African listed companies are regarded by foreign institutional investors as being among the best governed in the world's emerging economies"[19]. South Africa, China and India are therefore expected to hold their domestic and overseas companies to different standards and monitoring mechanisms. Alongside these 'new' investors, a Canadian firm was selected as the OECD comparator: Canada is known as a "mining superpower" and is the largest investor in the African mining industry outside of South Africa[20]. The total value of Canadian mining assets in Africa is estimated to reach $21 billion by late 2010, 9.9% of which are concentrated in Zambia[21]. Cross-comparing these four countries' ESG frameworks in Section II of this paper, followed by case-studies of their companies in Section III, can hopefully offer innovative and flexible solutions for filling gaps in the current international framework for emerging-market ESG governance in Africa.

SECTION II: Cross-comparison of available norms and incentives for good ESG behavior

The past few years have witnessed a proliferation in the number of norms and guidelines designed to encourage good corporate social responsibility, particularly at the international level. While these global codes of conduct are often wide in scope and do not exclusively focus on the environmental dimensions of CSR, many dedicate specific principles to ESG. Among these guidelines, one can distinguish the following functional sub-categories: guidelines for company performance and operational management; guidelines for ESG reporting; and guidelines for responsible financing. The first category for instance comprises the *UN Global Compact*, UNGC, under which companies can commit to ten Principles in the areas of human rights, labor, environment and anti-corruption; and the *ISO 14001* standard, which specifies requirements for an environmental management system and can be certified by an external certification authority. The second category, CSR reporting, includes the *Global Reporting Initiative*, GRI; in addition to core guidelines on sustainability reporting, the GRI provides Sector Supplements designed to "capture the unique set of sustainability issues faced by different sectors", including mining[22]. The third

category, pertaining to project financing, applies mostly to financial institutions and includes the *Equator Principles*, which apply performance standards on social and environmental sustainability to financing applications; and the 2006 *Principles for Responsible Investing*, PRI, a product of the *UNEP Financial Institutions* initiative which aims to make environmental and social governance part of investment analysis. *Please see Section 5.1 below for more details on the specific guidelines mentioned here.*

Yet other guidelines span all three of these functional sub-categories (performance, reporting, and financing) and provide all-encompassing CSR toolkits. Rather than codes of conduct that are directly subscribed to by individual businesses, these policy packages (such as the *OECD Guidelines for Multinational Enterprises*) tend to require adherence by governments themselves, which then promote their use by national corporations. Alternatively these codes of behavior can be open to both governments and individual businesses as signatories (as is the case for the *Extractive Industries Transparency Initiative*, EITI)[23]. As perhaps the most widely-referenced and recognized inter-governmentally agreed norm for responsible business practice, the *OECD Guidelines for MNEs* (of which Chapter V deals with environmental responsibilities) are particularly representative of the level of CSR awareness in the international community. The *Guidelines* are currently being renewed – a conference was held for this purpose on 30 June 2010 – with focus on their application in three areas, one of which is environment and climate change. There is thus growing recognition of the importance of ESG as a key component of CSR, and of a global need for greater guidance on this matter. 42 countries, including 12 non-OECD members, abide to the *OECD Guidelines*; however none of the 'emerging-market' investors included in this study are signatories as yet. In light of the current revision of the *Guidelines*, this makes contrasting the behavior of OECD and emerging-market investors particularly instructive.

2.2 Guidelines for ESG behavior from countries of origin

Most emerging-market economies (with the exception of Brazil, which is a signatory of the *OECD Guidelines*) have not yet subscribed to CSR norms that require governmental-level adherence. Yet awareness of a 'business case' for good corporate governance is on the rise. Abiding to CSR is shown to: increase productivity and quality through operational efficiency gains; encourage initiative and creativity among employees; reduce staff turnover; secure higher order retention from international customers; improve reputation and branding; and build mutual trust with the public and with host governments, thus enhancing companies' license to operate in local communities[24]. Given that an increasing number of international lending institutions are now subscribing to 'CSR-friendly' lending principles (over 35 international banks are signatory to the *Equator Principles*, accounting for about 85% of the global project finance market[25]), responsible firms are also more likely to obtain financial support and access to stable and lower-cost capital. Businesses that do not respect CSR norms may therefore be left "exposed to operational and productivity risks, as well as to reputation risks"[26]. Interest in CSR and ESG standards is accordingly growing worldwide. Governments are attempting to encourage responsible conduct by domestic firms using two main tools: publishing national ESG guidelines and legislation; and providing innovative financial incentives for domestic companies (including through the banking sector and through the stock market). These different domestic ESG strategies are discussed below, along with their application in Canada, China, South Africa and India.

2.2.1 National guidelines and legislation for domestic company behavior

There is variation among institutional frameworks for CSR even among OECD countries. The United States adopts a 'rules-based' approach which emphasizes regulatory enforcement and mandatory compliance with CSR-related legislation and stock exchange requirements. Canada, Australia and most European countries, on the other hand, adopt a 'principles-based' approach to CSR under which "companies are required to publicly disclose the extent of their compliance with the suggested 'best practices' and, where a firm's practices depart from such guidelines, to describe the procedures implemented to meet the same corporate governance objective"[27]. South Africa and the 56 states in the Commonwealth also adopt this 'comply or explain' framework for corporate governance[28]. For countries that adopt this latter, more voluntary and flexible basis for corporate governance, the potential guiding role of multinational CSR guidelines like those of the OECD is particularly important. Individual national governments are then expected to complement the OECD guidelines with their own norms; Industry Canada, the department of the Government of Canada responsible for regional economic development, for instance provides "*Governance for Sustainability Guidelines*" for Canadian corporations. This is a process-based tool for company boards to assess current CSR gaps, design a governance framework for their firms, and learn from national best-practices[29]. Industry Canada also uses Strategic Environmental Assessments for all of its own development projects and plans[30].

CSR interest is also on the rise among emerging-market countries. In 2009 the strongest growth in the number of signatories to the *UNEP Principles for Responsible Investing* (PRI) was thus from emerging markets[31]. Likewise a number of Chinese corporations have individually committed to voluntary international standards; the *UN Global Compact* for instance counted 139 Chinese members by 2009[32]. Certain Chinese firms have even implemented the UNGC-guided *Environmental Stewardship Strategy* as part of their integral company operations[33] (this includes China Minmetals Corporation; PetroChina, China Huadian Corporation, and Sinochem Group are also mentioned by the UNGC as "inspirational cases" of sound environmental protection[34]). In addition to this voluntary engagement with international codes of conduct at the level of individual firms, the Chinese Government is itself adopting national policies and frameworks to guide the behavior of domestic firms. The 2002 *Environmental Impact Assessment (EIA) Law* is "the main regulatory instrument for environmental protection in China" and makes EIA a requirement for all domestic development projects[35]. The Ministry for Environmental Protection (MEP) conducts nationwide checks on EIA implementation and publishes the results annually. Chinese authorities have also begun looking to international standards to complement these domestically-formulated requirements for local companies. In September 2005, China's Ministry of Commerce thus suggested that "the OECD and China co-operate on issues of CSR", and that the OECD "explain its Guidelines for Multinational Enterprises to Chinese companies"[36]. The Chinese Government also strongly encourages domestic enterprises to obtain ISO 14001 certification: an organizational and legislative basis for ISO 14001 implementation has been established, pilot projects are introducing its use, and local Environmental Protection Bureaus (EPBs) are urged to promote certification[37]. ISO 1400 certification is even a prerequisite for establishment in certain economic development zones[38]. Accompanying the

emergence of these ESG policies, China's *11th Five Year Plan* (2006-2010) places a strong focus on sound environmental management across the Chinese economy.

Among other emerging-market investors, South Africa has the strongest corporate governance framework: the *King Committee on Corporate Governance* was formed in 1992, and has published three *Codes of Governance for South Africa* (King I in 1994, King II in 2002, and King III in 2009)[39]. In line with the 'comply or explain' framework, these minimum standards have won international acclaim but have not been enacted into law[40]. In particular, the King framework emphasizes 'triple bottom-line reporting' (TBL), which combines economic, social and environmental performance when measuring a corporation's success and contribution to society. Several national Acts and Industry Charters moreover incorporate ESG practices into South African legislation. In line with these Acts, South African mining companies set annual targets for their waste management and water and energy consumption, and report on these in periodic environmental assessments[41]. Given this sound legislative and institutional framework for CSR, SARW argues that, "South African companies must expect to be held to higher standards than western and Chinese companies"[42] . Meanwhile, India's environmental impact assessment framework was first developed under the provisions of 1986 Environment (Protection) Act; EIA was then more formally introduced into Indian legislation in 1994. In 2001 the Ministry of Environment and Forests released a *Manual for EIA*, which provides recommendations for EIA methodology, reviewing EIA and EMP reports, and post-project monitoring[43]. Although this framework can assist regulatory authorities, it however provides little ESG guidance for private corporations and financial institutions. Governmental guidelines for corporate ESG are indeed relatively weak and very recent in India: only in January 2010 did India's Ministry of Corporate Affairs issue the first '*Voluntary Guidelines for Corporate Social Responsibility*', which outline six core elements for companies to address. Environmental recommendations cover cutting pollution emissions, recycling and managing waste, and adopting cleaner production methods[44]; however unlike the Chinese and South African frameworks they do not attempt to integrate ESG into companies' operational management and business plans. Despite its EIA legislation, India thus had the lowest ESG standards of the five emerging-market countries surveyed in a 2009 IFC-commissioned report[45]. As Section III of this study illustrates, these guidelines – or the lack of them – exert varying impacts on the concrete ESG behavior of firms operating overseas.

2.2.2 Financial incentives for domestic company behavior

2.2.2 (a) Banking support for domestically-operating companies

Given that voluntary norms alone are often of limited influence on profit-seeking companies, the most effective of ESG initiatives often take the form of financial incentives. Particularly in extractive industries which require heavy up-front investment and only generate financial rewards in the long-term, financial institutions and their accreditation criteria can play a key role in influencing firm behavior: in general, enterprises in the mining sector contribute about 30% of project funding, with bank loans contributing the remaining 70%[46]. China and South Africa have made significant use of their banking systems in order to encourage good ESG behavior domestically. In 2007, the State Environmental Planning Agency (SEPA) and the China Insurance Regulatory Commission (CIRC) issued a "green insurance policy" by

which insurance companies can monitor enterprises' environmental conduct. China's "Green Credit Policy" (GCP) was passed the same year, under which highly-polluting firms are black-listed and disqualified from obtaining loans from credit administration institutions, and companies can have pre-existing loans called in should they fail pollution checks or bypass environmental assessments. The Industrial and Commercial Bank of China (ICBC) issued its own GCP in September 2007, refusing to lend to projects in non-compliance with environmental policies[47]. Under its China Program, the International Finance Commission (IFC) supports China's GCP and provides advisory services to individual banks[48]. In 2008, SEPA followed these initiatives with a "green securities policy" which makes environmental audit a prerequisite for refinancing through the securities market for enterprises in thirteen heavily polluting industries. These policies have had limited impact as of yet[49]; in addition to the current punitive measures for companies (which mostly involve withholding loans), China's ESG policies could be complemented by positive incentives such as more easily-accessible credit for good performers.

Most South African banks, in turn, are already signatories of the *Equator Principles*, and certain banks (particularly Nedbank) adhere to the *Global Compact* and to the *UNEP: Financial Institutions* (UNEP:FI) principles as well[50]. While this makes South African banks leaders in terms of ESG, these international principles may have insufficient impact on borrowing companies. The Southern Africa Resources Watch (SARW) warns that adherence to the *Equator Principles* (EPs) does not necessarily mitigate the environmental impact of funded projects, as all South African lending institutions can also lend through an 'off-Balance-sheet mechanism'; in this case the borrower does not have to comply with EP regulations[51]. Moreover banks do not disclose the EIAs undertaken by those borrowers who are subject to EP requirements, and so far no borrowing companies have been penalized for poor ESG performance: according to the South African banks interviewed by SARW in 2010, clients "have all operated within strict good governance practice" [52]. The contrast between such glowing statements and bank's non-disclosure practices may point to certain loopholes in the *Equator Principles* and other international guidelines for project finance. These principles nonetheless provide a valuable "common framework for managing environmental and social risks in project finance" [53], which could be reinforced by stricter domestic requirements suited to each national context. South African banks have for moreover developed positive measures for good corporate conduct: NedBank's annual "Green Mining Awards" thus recognize "significant achievements by mining companies in the promotion of environmental and social responsibility in the mining sector across Africa"[54]. Such sector-specific awards can complement ad-hoc threats of fund-withdrawal when encouraging ESG performance, and are examples of positive financing measures that Chinese ESG policies could learn from.

2.2.2 (b) Banking support specific to overseas companies

Although overseas investors most frequently resort to international capital markets for financing, financing is also sometimes made available through national Export-Import banks. China's state-owned companies mostly rely on the China Export-Import Bank (African projects constituted 20% of the Bank's total business volume in 2007[55]) and the China Development Bank (CDB) for financing. These banks grant Chinese firms a distinct advantage over other multinational firms operating in Africa, as they provide 'soft loans' and relatively low-cost capital which can overcome the high risks associated with investment

projects in the continent[56]. China is not the only country to offer state-based support to overseas firms: Indian overseas investors can draw funds from the Export-Import Bank of India, and financial support to Canadian overseas investment is granted by Export Development Canada (EDC), which by 2007 had supported USD $22 billion worth of exports and investments in the extractive sector[57]. South African overseas investment, by contrast, is mostly funded by private banks. Export-Import banks are subject to different degrees of state control, which at times raises concerns that companies resorting to Exim financing face more lenient constraints in terms of ESG performance: as they are not subject to the stringent listing requirements or shareholder oversight imposed by international capital markets, companies may access capital easily despite sub-standard environmental performance[58]. The Export-Import Bank of India has a very vague approach to ESG: its 2009-2010 Annual Report only mentions environmental concerns once, in the context of a loan agreement with the European Investment Bank that supports projects contributing to climate change mitigation[59]. By contrast, both China's Exim Bank and the Canadian EDC have fully integrated ESG verification into their lending requirements in recognition of the potential ESG risks of state-supported financing.

To incorporate environmental risk assessment into its officially-supported export credits, the EDC has adopted and implemented the "*OECD Recommendation on Common Approaches on Environment*", as well as the *Equator Principles* in October 2007. Since 2005 EDC's Environmental Policy also emphasizes environmental review of projects, and is committed to "monitor[ing] changes in internationally accepted environmental and disclosure practices and to advocat[ing] the adoption of international best practices"[60]. China's Export Import Bank, meanwhile, has made its own code of environmental conduct publicly available since 2007; this emphasizes environmental monitoring and management before, during and after project implementation[61]. Funded projects must undertake environmental impact studies and obtain approval from the host country environmental administration. Moreover companies must "take immediate remedial or preventive measures" should "any unacceptable negative environmental impacts result during the project implementation", in the absence of which financial support will be discontinued[62]. The Chinese Exim Bank has also signed a Memorandum of Understanding with the IFC to provide "capacity building on [its] environmental and social risk management policy and practices for overseas investment, particularly in the Africa region"[63]. Besides the Exim Bank, Chinese overseas investors also have access to local branches of the state-owned Bank of China (BOC); since 1997 the BOC's two African branches have been established in South Africa and Zambia[64]. The BOC's commitments in terms of environmental conduct differ from those of the Exim Bank; rather than emphasizing environmental impact studies of funded projects, it subscribes to a green credit policy, restricting credit to highly-polluting or energy-intensive industries. The BOC is also currently "studying guidelines such as the *Equator Principles* for sustainable development in the financial industry"[65]. Similarly in 2008, SEPA signed an agreement with the IFC to introduce the EPs in China for use by domestic banks[66]. Such evidence of cooperation between state-owned financial institutions and international agencies like the IFC demonstrates that emerging-market governments are increasingly eager to learn from international bodies and to glean best-practices in terms of ESG performance.

2.2.2(c) Stock-market incentives for listed companies (both domestic and overseas)

Global
Environmental Institute

Stock markets have also been a growing avenue for encouraging good ESG behavior by corporations. Canada's Toronto Stock Exchange (TSX) is "a principal source of global mining financing today", and listed 55% of the world's publicly traded mining companies in 2008[67]. Since 2004, all firms listed on the TSX are subject to various corporate governance requirements, including National Instruments for Disclosure of Corporate Governance Practices (NI 58-101) and for Corporate Governance Guidelines (NP 58-201)[68]. The TSX also mandates listed mining companies to set allocations aside to a 'Closure Fund', in view of future plant de-commissioning[69]. Despite these measures the TSX nonetheless remains surprisingly lax on the ESG front: in light of its weak reporting requirements for listed firms, it has even been described as, "one of the more permissive stock exchanges in the world"[70]. Emerging-market stock exchanges have been more active on this front, and have even developed ESG-specific indices. The Social Responsibility Index of China's Shenzhen Stock Exchange (SSE) was released in August 2009[71], and the equivalent on the Johannesburg Stock Exchange (the JSE SRI) is available since 2004[72]. The Shenzhen Stock Exchange also published a set of social and environmental listing requirements for companies in 2006. The ESG-specific requirements demand that listed companies: "formulate environmental protection policies" (Article 27); "allocate dedicated human resources for regular inspection of implementation of environmental protection policies" (Art.31); and "report to and file with the competent authorities regarding pollutant discharge", "pay[ing] a fee in accordance with the State regulations should their discharge levels exceed national or regional standards" (Art.30)[73]. The SSE has since been training listed companies on how to apply these standards. The ESG requirements of firms trading on the Johannesburg Stock Exchange (JSE), in turn, request that companies' annual reports include a statement of how they complied with the principles set out in King *II* (*see above*)[74]. These measures may already be positively influencing company behavior: the *Emerging Market Disclosure Project* indeed acknowledges that the "improved level of [ESG] reporting" by South African firms "can likely be traced to the Johannesburg Stock Exchange listing requirements that mandate use of the GRI"[75]. India, meanwhile, has developed no ESG-specific indices itself, but the international rating agency Standard & Poor's released an "ESG index for India" in 2008; this includes India's top 50 ESG performers, drawn from the largest 500 companies listed on the National Stock Exchange of India[76]. Such externally-introduced indices may also provide promising means of incentivizing firms towards sound ESG management. In India as in South Africa and China, however, most companies currently listed in these highly selective indices do not operate in resource-intensive industries: it remains necessary to design more targeted incentives for companies involved in the mining sector.

2.2.3 The Governance Gap: challenges in applying domestic incentives to overseas enterprises

Most of the domestic guidelines and incentives mentioned above (*with the exception of section 2.2.2(b)*) apply only to firms operating within national borders. Art.30 of the Shenzhen Stock Exchange listing requirements thus merely asks companies to behave "in accordance with State regulations" within China[77]. The recent SEPA policy for the Chinese banking system's adoption of the *Equator Principles* does not yet extend to overseas projects either, and as of 2008 "there have been no indications that China's Exim Bank intends to join other banks in adopting EPs"[78]. Similarly, while South African banks' loan approval procedures incorporate "some the best international principles and standards" for ESG risk

assessment, SARW reports that these banks "have not been concerned with how South African companies behave outside [the country]"[79]. India's '*Voluntary Guidelines for CSR*' meanwhile explicitly recognize that, although "enterprises that have a trans-national presence would benefit from using [them] for their overseas operations", the guidelines "have been prepared for the Indian context" [80]. Countries of origin thus deploy few means for monitoring the behavior of overseas firms; in most cases companies are merely expected to adhere to the requirements of the host countries in which they operate. China's Exim Bank thus leaves the onus of ESG enforcement and regulation on host governments: its 2007 *Code of Conduct* requires that projects to comply with host country policies regarding environmental assessment and consultation, rather than with international or domestic Chinese standards[81]. Likewise China's Economic and Commercial Councils (ECCs, which operate as local arms of China's Ministry of Commerce in overseeing Chinese companies within each host country) state that, "Chinese companies must simply follow local laws"; an official of Zambia's ECC interviewed by Dan Haglund in 2007 indeed explicitly states that, "responsibility for identification and sanctioning of non-compliance should rest with the Zambian government"[82]. In contexts where host country governance or enforcement capacity is weak, this may mean that Chinese and other overseas companies enjoy significant leeway in their adherence to appropriate ESG standards.

2.2.3(a) The Governance Gap in the context of weak host-country governance

The ESG challenges of investment in weak-governance areas apply to all overseas companies. According to SARW, South Africa's "strong rights-based constitution" creates high expectations that South African companies "will adhere to globally accepted environmental and human rights standards . . . even in fragile states where regulation is difficult to implement and monitor"[83]. However, the South African government has no explicit or unified set of policies for companies investing overseas, and a 2010 SARW review of South African corporate behaviour in the mining sector in Mozambique, Namibia, Zambia and Zimbabwe indeed suggests that these high standards often fail to be upheld[84]. Even in Canada, "the argument over how to close the governance gap between the global reach of corporations and the limited reach of national law is at least a decade old" [85]. Many critics believe that companies' voluntary participation in global and domestic initiatives provides insufficient control over Canadian overseas companies and their respect of CSR[86]. This gap points to the important role that investing countries' National Contact Points (NCPs) can potentially play in Africa. As discussed in Section 5.1, establishing NCPs is an obligation under the *OECD Guidelines for MNEs*; NCPs oversee the behavior of national companies abroad and can serve as a mediation platform among the host government, civil society, and multinational companies. African authorities and NGOs should make full use of country-of-origin NCPs, when these exist; in fact the Canadian NCP was appealed to in 2001 following poor ESG conduct by a Canadian mining company in Zambia (*see below*). However only adherents the *OECD Guidelines* are required to set up NCPs. China, by contrast to Canada, does not subscribe to such voluntary international norms; moreover China has no internationally-acclaimed equivalent of South Africa's 'King Report' framework. The reputational risks of poor ESG performance are therefore particularly high in the Chinese case. The OECD *2008 Investment Policy Review of China* thus reports widespread concern over "Chinese investors' seeming ignorance of codes and principles set in international instruments [such as the OECD Guidelines and the

EITI]"[87]. The anti-Chinese political campaigns in Zambia in 2006, as well as violent demonstrations against Chinese firms' labor practices in both Equatorial Guinea and Zambia in 2008, are evidence of the threat that poor ESG performance by a few companies poses to the activities of all Chinese firms operating in Africa. There is an urgent need for bridging the "governance gap" when investing in low-capacity countries – particularly for emerging-market investors, which are more frequently exposed to hasty judgment by the international community in light of their relatively new position on the world stage.

2.2.3(b) Tackling overseas implementation: efforts by China and Canada

Canada and China have both recently adopted both ministerial guidelines and financial incentives to more actively tackle this gap between domestic and overseas firm performance. In Canada a 2007 report to the Government suggested that a reporting mechanism and standards be developed for companies "on their economic, environmental and social performance abroad"; this would have included establishing an independent ombudsman to advise and monitor Canadian firms overseas, and, in case of non-compliance, withdrawing government support from the offending company[88]. While this attempt to move beyond the 'comply-or-disclose' framework was rejected in March 2009, there is currently debate over the adoption of Bill C-300. This bill recommends that ministerial guidelines on international environmental best practices be issued to Canadian firms conducting mining, oil or gas operations abroad, and that non-compliance with these entail the withdrawal of consular support, of funding by Export Development Canada (EDC), and of investment by the Canadian Pension Plan Investment Board (CPP) in the company's shares[89]. The Bill would also allow any individual with a grievance against a company to file a complaint, requiring subsequent government investigation. Bill C-300 had passed through several parliamentary hearings by mid-June 2010, and is expected to go to third reading and a final vote in Fall 2010. It has raised vicious opposition on behalf of mining companies, for whom the Bill represents the Parliament of Canada's loss of confidence in Canadian mining companies[90]. On the contrary however, creating a regulatory back-up at the national level for existing international guidelines like those of the OECD may well enhance host-country confidence in the performance of Canadian firms, and set a leading example for other countries engaged in mining overseas.

The Chinese government has in turn issued a series of guidelines for overseas investment over the past four years, in response both to international criticism of firm behavior and to the recent anti-Chinese demonstrations in Africa. Performance-related guidelines include: the *Nine Principles on Encouraging and Standardizing Foreign Investment*, issued by the State Council in October 2006, which emphasize companies' obligations to "pay attention to environmental resource protection" [91]; and the *Guidelines on Fulfilling Social Responsibility by Central State-Owned Enterprises* (CSOEs), issued in January 2008 by the State-owned Assets Supervision and Administration. The SASAC Guidelines were released in direct reaction to the strikes in Africa that year, and note that, "CSOEs should be a model . . . and become the backbone of China not only in economy but also in CSR"[92]. In addition to suggestions for firm performance in terms of environmental protection, pollution discharge, and clean energy, these guidelines also recommend that CSOEs establish independent departments and a statistical index for measuring their performance, so as to fully incorporate ESG into business strategies. By the end of 2008, 11 SOEs had published CSR reports[93]. Financial performance has also been addressed by the Government – among the

policy guidelines released by the Ministry of Commerce in August 2006, five apply to "government agencies that authorize overseas projects" [94]. Six more suggestions apply to overseas enterprises themselves, requesting that "subsidiaries abroad to report to home government . . . on any risks or issues that increase the potential for economic or social conflict"[95]. While these recommendations are non-binding, they can place significant pressure on overseas companies: as put by Haglund, "such pronouncements have real implications for Chinese managers", as they pose a credible "threat of replacement or other sanctions through the political process"[96] in the case of environmental and social mismanagement.

Progress has also been made in addressing the behavior of Chinese overseas companies in the non-governmental sector: the *Global Environmental Institute* (GEI), a Chinese NGO established in 2004, is developing an *Integrated Policy Package for Overseas Chinese Enterprises* (IPP) since 2007. The IPP has been approved and supported by the Ministry of Environmental Protection (MEP) and the Ministry of Commerce (MOFCOM), and aims to "investigate the environmental and social impacts caused by the overseas investment of Chinese enterprises, from the standpoint of existing policies, laws, and regulations both at home and abroad" so as to "develop a set of norms for the environmental behavior" of these enterprises, including a financial and credit guide. Following the implementation of an IPP pilot project in the Lao PDR (*see Box 4, section 5.1*), GEI now hopes to "select project demonstration sites in Southeast Asia and Africa" for further extension of the IPP[97]. As part of the IPP, GEI has released *A Guide on Sustainable Silviculture for Overseas Chinese Enterprises* in 2008, followed by *Environmental Policies on China's Investment Overseas* in 2010. These publications have attracted the attention not only of government ministries, but also of financing institutions: the launch event of the latest set of guidelines (on July 8 2010) hosted participants and presentations from both China's Export-Import Bank and the International Finance Corporation. These participants placed emphasis on the disconnect between the environmental standards upheld by companies within China, and their behavior when operating in weaker governance settings overseas[98]. This constructive communication across stakeholders in the field (including not only governmental agencies and domestic financing institutions, but also Chinese NGOs and international bodies such as the IFC) is highly promising. Such broad dialogue could provide the bases for a coherent platform which China and other emerging-market countries could build on when developing a harmonized national approach to good ESG conduct by companies operating overseas.

The profusion of guidelines mentioned above, both addressing firm performance and the lending behavior of financial institutions, is clear evidence of China's heightened need for a coherent ESG framework for companies to follow. However the Chinese government's approaches are poorly coordinated, which hinders communication of ESG expectations to Chinese companies. Various sets of CSR guidelines are being developed by different branches of government (such as the SASAC and MOFCOM) as well as by financial institutions like the China Export Import Bank[99]. Moreover provincial governments have also begun to issue their own ESG requirements for provincially-owned companies operating both overseas and abroad[100]. These guidelines have not been harmonized, and each concentrates on different areas of responsibility. Further complicating matters, the oversight of Chinese operations abroad is partially delegated to region-specific desks within several ministries. MOFCOM's 'Department for West

Asia and African Affairs' and 'Department of Foreign Economic Cooperation' both contribute to regulating the activities of Chinese companies abroad; MOFCOM also deploys an Economic and Commercial Council (ECC) in each host country for the oversight of Chinese companies[101]. Meanwhile the Ministry of Foreign Affairs (MOFA) provides political support to the investment bids of Chinese corporations through two departments (the 'West Asia and North Africa Affairs' and 'Sub-Saharan Africa' desks). As all of these departments "develop their own policies separately and according to their particular agendas", companies operating on the ground are often faced with a set of unclear and duplicative requirements[102]. These guidelines can moreover be mutually incompatible, and may be particularly difficult to align with international standards. As the OECD warns, "more effective 'whole of government' co-ordination is needed": even before adopting international codes of behavior is considered, rationalizing China's domestic ESG guidelines is highly necessary[103].

2.3 Host-country guidelines for ESG behavior

As highlighted by the above discussion, both international and country-specific overseas guidelines remain voluntary – their existence far from guarantees their application in all cases of investment overseas. Moreover they are not specific to the African context, where local governance frameworks may allow for loopholes in the adherence to these standards. Crucially, respect of ESG norms depends not only on the supply of standards by the international community and investing companies, but also on *demand* for good ESG performance by 'host country' partners. When putting forward the SASAC guidelines, China's 2008 Minister of Commerce Chen Deming indeed recommended that local governments take on more responsibilities in regulating companies themselves[104]. Host-country ESG policies can potentially exert considerable influence on companies' ESG behavior. In view of this, the *Global Environmental Institute* is for instance undertaking a cooperation project with the Lao PDR; this project attempts to improve overseas behavior by Chinese companies operating in Laos, both by raising ESG awareness on the company side and by addressing the specific capacity-building needs of the host-country government (*see Section 5.1, Box 4 for more details*). Given the crucial role of host-countries in shaping company behavior, relevant policies in the Southern African Development Community (SADC) and within Zambia are investigated below to identify to what extent existing frameworks can complement country-of-origin initiatives. Zambia's broad policy approach to ESG is described here, while regulations and institutions specific to the mining sector are reviewed in Sections 3.2 and 3.4.1 below.

2.3.1 Zambian guidelines for ESG behavior: financial and legislative

While Zambia does not adhere to the OECD Guidelines, it is an EITI candidate country and a member of the International Conference on the Great Lakes Region (ICGLR) to address the illegal exploitation of natural resources[105]. Of the policies available to host-country governments to encourage and support responsible business conduct by companies, the most frequently-used include financial and non-financial disclosure requirements, and law-making (resorting to the national legal and institutional framework)[106]. Zambia relies on three key disclosure mechanisms to encourage CSR: the *Financial Sector Development Plan* (FSDP) for Zambia, issued in 2004 as a comprehensive strategy to address corporate financial disclosure; the Lusaka Stock Exchange (LuSE), which in 2005 issued a *Corporate Governance Code*

for companies; and the *Corporate Governance Guidelines for banks and non-bank financial institutions*, released by the Bank of Zambia in 2006[107]. Also under the FSDP, the Bank of Zambia released a draft *Corporate Governance Code for SMEs and Large Non-Listed Companies* in April 2007. The effectiveness of these codes and guidelines is however questionable, as they all remain voluntary and place very little emphasis on environmental performance. The 2006 *Guidelines for banks and non-bank financial institutions* thus mostly address issues of transparency, financial auditing and board structure; the only ESG-relevant clause is Article 17.1, which requests that financing institutions “include in their annual report the nature and extent of their social transformation, ethical, safety, health and environmental management policies”[108]. These guidelines do not mention the possibility of making funding conditional on borrowers’ ESG performance, as is the case for loans from Export Development Canada, large South African banks, or the China Export-Import Bank. Moreover, these financing codes may be mostly applicable to domestic companies alone: most foreign investors have access to foreign banks for financing and are listed in overseas stock markets rather than on the Zambian LuSE (indeed, even African companies often prefer to be listed in South Africa or Nigeria, which together concentrate roughly 90% of Africa’s capital markets). Given that Zambia’s financial CSR incentives have little purchase on multinational mining companies, the importance of the second host-country tool for monitoring ESG behavior (a well-designed regulatory and legislative framework) is paramount.

The basis of Zambia’s CSR legislation is the Companies Act of 1994, which enshrined elements of good governance into law and is currently being amended by the Ministry of Commerce, Trade and Industry (MCTI) so as to incorporate more CSR best practices[109]. In terms of legal frameworks more specific to environmental protection, the Ministry of Tourism, Environment and Natural Resources was established in 2002 to compile a comprehensive Environment Policy and to coordinate Zambia’s complex legal framework (which includes laws that “spread over 30 Acts and over more than 20 international treaties”[110]). Zambia’s most important environment related law is the *Environmental Protection and Pollution Control Act* No.12 of 1990 (EPPCA), which established the Environmental Council of Zambia (ECZ). Amended in 1999, the EPPCA provides for the protection of the environment and the control of pollution. Companies in Zambia are required to report their environmental performance to the ECZ by law, and must obtain ECZ authorization before following through with projects outside of the service sector. Compared to many of its neighbors, Zambia thus has a well-developed legislative framework for overseeing the environmental effects of overseas investment. However when it comes to enforcement, Zambia displays “significant shortfalls in institutional capacity, weak reporting and accountability, and pervasive political interference”[111]. These weaknesses are evaluated in detail, with particular reference to the mining sector, in Section 3.4.2 below.

2.3.2 Regional and sub-regional initiatives for encouraging ESG in Africa’s mining sector

Beyond the national level, African countries’ policies towards extractive industry investment would considerably benefit from regional and sub-regional harmonization. This would give host countries more clout in negotiations and contract design. Governments could thus avoid the spiral of increasingly lax environmental and social regulations, or ‘race-to-the-bottom’, that developing countries are often subjected to when competing to attract foreign investors. Joint development of CSR norms at the regional

or sectoral levels can moreover cater to the specificities of certain industries or regions, to an extent that international standards cannot[112]. Progress in this domain is gathering momentum Africa. At the regional level, CSR is broadly addressed by the *African Peer Review Mechanism* (APRM), developed under the African Union's *New Economic Partnership for African Development* (NEPAD, recently renamed). One of the five 'pillars' of this multilateral Mechanism highlights the importance of CSR; yet this is not a precise policy directive and merely provides general principles for companies. To improve on this vague framework, the African Union is currently developing the *Africa Mining Vision* (AMV), a process which has drawn on substantial consultation with civil society organizations (CSOs). In February 2010, CSOs from Tanzania, Zambia and Southern Africa compiled a document for input into the latest *Meeting of African Ministers in Mining*, which actively discussed the *Africa Mining Vision*. One of the first steps of this *Vision* will be the creation of an *African Union Blueprint on Mining and Natural Resources Extraction*; this blueprint will require that all African Union member states cooperate in developing common legislation, policies and programs for application throughout the continent's mining sector[113]. One of the four key areas covered by the *Africa Mining Vision* is corporate social responsibility, especially in terms of the environmental impacts of mining[114].

At the sub-regional level, in 1997 an SADC Protocol on Mining was signed by 12 of the 15 SADC states, including South Africa. However according to the Southern Africa Resource Watch "there is no evidence that the SADC protocol has been operationalized to give effect to either policy or good practice"[115]. The Bench Marks Foundation for Southern Africa (BMF) deplores that, "the different approaches to CSR in the SADC region has [instead] brought into collision the interests of governments, mining companies and the surrounding communities"[116]. In an effort to improve on this situation, since 2003 the BMF is engaged in a long-term, multi-phased study to "compare the effectiveness of different approaches to CSR" (focusing on legislation and policies in the extractive industries) in Zambia, Angola, the DRC, Mozambique, Malawi, and South Africa[117]. Similarly, since May 2010 the SADC is attempting to create uniform mining codes and legislation to regulate mining and extractive industries[118]. These are extremely necessary steps to take, although it remains too early to tell what outcome such processes will have. On the more corporate front, South Africa annually hosts the *African Mining Congress*, which brings together miners, investors, financiers, regulators, stock exchanges, and other stakeholders to discuss recent developments and best practices across Africa. The most recent congress (26-28 July 2010) notably discussed means for "translating international multilateral agreements [on corporate sustainability] into national legislation in Africa"[119]. Technical and legal assistance from international institutions and investing countries, as well as input from mining companies themselves and members of civil society, would be extremely helpful to the development of these several recent endeavors.

As this investigation of host-country, country-of-origin, and international norms suggests, companies investing in Africa's mining sector are not operating in an institutional or regulatory void: a significant number of guidelines and frameworks are available to structure corporate behavior. Yet it is unclear which norms take precedence for different companies: several observers, including Haglund, strongly advocate that overseas Chinese firms adopt the *Equator Principles* as an effective disciplinary measure; on the contrary however, a speaker at GEI's press conference in July 2010 noted that the EPs

were too weak, and that Chinese regulations, if adequately extended overseas, could well surpass them in terms of encouraging good ESG performance[120]. Compounding this uncertainty, these many multi-level norms have not been rationalized; their multiplicity may even undermine their final effectiveness, by overburdening companies with different and perhaps incompatible reporting requirements. It is often unclear what concrete impact this complex multi-tiered framework exerts on companies on the ground; this calls for case-studies of individual companies. Investigating individual company performance and adherence to these various codes of conduct can grant insights as to which regulations take precedence for firm managers, and can also shed light on how OECD and emerging-market investors differ in terms of taking advantage of existing guidelines and best practices.

SECTION III: Case-studies – the mining sector in Zambia

Copper mining has been described as the "lifeblood of the Zambian economy"[121]: the mining industry accounts for approximately 70% of Zambia's foreign exchange, generating 4% of GDP [122]. Zambia is quite representative of other African countries in terms of its governance standards: the World Bank's 'Governance Matters' series places Zambia close to the median among the 53 African countries surveyed in 2007[123]. Moreover unlike in Angola or the Democratic Republic of Congo, where Chinese investment is part of a strategic assistance package and stands out because of its distinctive 'infrastructure-for-resources' approach (known as the 'Angola model'), in Zambia the Chinese company (NFCA) operates much as the non-Chinese companies do[124]. Focusing on Zambia alone therefore minimizes the number of intervening variables in the current comparison: the different companies studied below all face similar conditions within the country, and all mines are located in the same geographical region (Zambia's 'copper belt')[125]. Moreover insights into operating in the Zambian context may be of particular relevance to Chinese investors, given that in 2006 the Chinese government chose to locate the first of its five African Special Economic Zones for preferential trade and investment in Zambia[126]. In 2007, the Chambishi Special Economic Zone (CSEZ) was thus established under the management of the China Non-ferrous Metals Company and its subsidiary the NFCA.

3.1 Institutional framework for mining companies in Zambia

(Note: for a synopsis of this section, please see Matrix 2 in Section 5.2 below)

Zambia's Ministry of Mines and Minerals Development (MMMD) centralizes responsibilities over the mining sector; of the MMMD's four sub-ministries, the Mines Safety Department (MSD) is mandated with monitoring and enforcing company compliance with the *Mines and Minerals Environmental Regulations*. The environmental conduct of all companies in Zambia is also overseen by the Environmental Council of Zambia (ECZ), which was established as an independent regulatory agency in 1992[127]. The MSD and ECZ regulatory mandates overlap in many areas, which often leads to duplication of work and increases compliance costs for companies[128]. According to ECZ regulations, "it is mandatory for companies that are likely to impact on the environment to carry out environmental impact assessments before starting the business project"; in the mining sector, companies must additionally develop corporate environmental policies in the form of a Final Environmental Management Plan (FEMP). Under the 1997

Environmental Protection and Pollution Control Regulations, the ECZ specifies key steps for project preparation: first, a project brief is submitted to the Director of Mines Safety describing the project site, proposed activities and their potential environmental impact; the brief is then forwarded to the ECZ, recommending one of: project rejection, acceptance after submission of a full Environmental Impact Statement (EIS), or immediate clearance and approval of the project; if called for, this EIS is then prepared and submitted first to the Director of Mines Safety, and next to the ECZ which makes the final authorization decision. Companies then base their Environment Management Plans on the conclusions of their EIS. The EIS is to be updated annually or within fifteen months of the first statement, and by law companies' EMPs must be audited every three years[129]. Companies are also required to self-report on their environmental management semi-annually. Given this detailed institutional framework, the *African Labour Network* argues that "in the case of Zambia the government has not joined the 'race to the bottom' by lowering its environmental and labor standards to attract and prevent loss of investment"[130]. Nonetheless, these satisfactory environmental regulations must also be met with sufficiently strong monitoring and enforcement mechanisms – as the case studies further below illustrate, this has not always been the case in the past.

3.2 History of privatization in Zambia: the Development Agreements

Fluctuations in copper prices have historically placed a heavy burden on the GRZ in managing its mining sector. Prior to its extremely rapid privatization process over 1997-2000, Zambian mining was undertaken by the nationally-owned ZCCM (Zambia Consolidated Copper Mines). ZCCM was then split up into several units that were bought by seven multinational mining companies; to incentivize these purchases, in 1995 the *Mines and Minerals Act* of 1972 was replaced by a new Act granting multinationals very low mineral royalty rates (3%) and company tax rates (pegged at 25%)[131]. However by 2002 low copper prices forced several of these initial investors to pull out of Zambia (including Anglo-American, which owned 65% of Zambia's largest mine, Konkola Copper Mine). This low-price juncture (*see Fig.2 below*) was crucial in setting the stage for Zambia's subsequent institutional and contractual arrangements in the mining sector: desperate to find new investors, the Government of the Republic of Zambia (GRZ) sold its mines at very low prices, under conditions that gave investors extreme discretion in terms of operational management. In particular, the government negotiated Development Agreements with companies on a case-by-case basis; these Agreements were largely "one-sided deals" that charged multinationals even lower royalty rates (0.6%), and allowed them to move goods in and out of the country with minimal controls. The Agreements were moreover granted "Stability Periods", lasting 15 to 20 years, during which they could not be contradicted by future legislation. This arrangement has often given companies the upper hand, particularly in terms of tax and royalty benefits.

Yet the dramatic rise in copper prices between 2004 and 2008 (to USD $8 900 per ton in 2008) bolstered the public outcry that mining multinationals were 'milking the country', and put rising pressure on the GRZ to renegotiate these agreements so as to better share mining profits with the Zambian population. In response to demands from civil society organizations, late President Mwanawasa unilaterally changed some Agreement clauses. In April 2008, the DAs were abrogated by the introduction of a new mining fiscal regime; this included higher corporate royalty rates, a variable profit tax, and

especially a windfall tax on companies' production value when world copper prices exceeded USD $5,516 per ton. In January 2009 (under the subsequent government of Rupiya Banda), further changes were

***Fig.2:* Copper Grade A USD price, London Metal Exchange, 1 Jan 2000 – 6 July 2010**[132]

Source: London Metal Exchange, http://www.lme.co.uk/copper.asp

introduced that reinstated some original clauses, removed the windfall tax, and maintained some of the recent changes[133]. The DAs are still in effect officially, as some mining companies have invoked their dispute resolution provisions in attempts to enforce the government's previous commitments and to insulate themselves against the new fiscal regime. The exact status of the Development Agreements is therefore currently unknown – they remain secret documents, and their original 1998 versions have only made publicly available since 2006 thanks to the efforts of the CSO *Mine Watch Zambia*[134]. Yet given that the Development Agreement debates were sparked in the context of the 2006 presidential political campaigns, they have had an electoral focus. As expressed by the then-PS of the Ministry of Mines, given "the cry from the general public", "we don't think there are other issues to be revisited"[135] in the Agreements beyond increasing companies' royalties. The prevailing assumption is therefore that "what changed are simply the clauses affecting the fiscal regime"[136].

While there has been no official statement as to the rest of the clauses in the modified agreements, this setting suggests that the environmental requirements for multinational companies have probably remained unchanged since privatization. As part of their unequal structure, these initial Agreements exempted the companies from most of ZCCM's environmental liabilities and obligations[137]. ZCCM was for instance held to government targets to limit water and air pollution from mining, and was

charged fines by the ECZ if these targets were overrun; under the Development Agreements, by contrast, companies were not held responsible for pollution so long as their emissions did not exceed the levels previously discharged by ZCCM – regardless of whether this behavior was previously finable (hence illegal) or not[138]. Moreover the Agreements allowed firms to shoulder responsibility only for clean-ups caused by 'current pollution'; responsibilities for clean-up, rehabilitation after mine closure, and long-term environmental management were left with the Government.

Although slight improvements have recently been made in this field (developers of large-scale mining projects must now contribute to an Environmental Protection Fund, EPF, for rehabilitation purposes following mine closure[139]), the Zambian government did not take sufficient advantage of the window of opportunity created by the rising price of copper over 2004-2008. The Agreements could indeed have been more fully renegotiated so as to make them more stringent in terms of environmental management. Instead, the Environment Management Plans that firms had designed prior to 2008 are still quite accurate representations of their ESG commitments in Zambia. While the copper price bubble burst after 2008 with the global economic downturn, prices have been rising again since the recession (reaching USD $6 439 per ton as of July 2010, *see Fig.2*[140]). There may therefore soon be renewed opportunities for making ESG-relevant modifications to the Agreements. This heightens the importance of learning from past company performance in this field. Moreover, the case of Zambia's Development Agreements is not unique: under its 1998 Mining Act, Tanzania also established strictly confidential Mining Development Agreements (MDAs) that gave mining companies similar preferential rights, including tax incentives and stabilization clauses[141]. Zambia, Tanzania, and several other countries in the region would gain from exposing such Agreements to public scrutiny, and from adopting ESG policies that are consistent across neighboring countries or aligned on a coherent 'whole-of-SADC' approach.

3.3 ESG behavior by the four companies: OECD versus Emerging Market practices

(Note: for a synopsis of this section, please see Matrix 3 in Section 5.2 below)

Because the ZCCM privatization allowed for the entry of seven different multinationals into Zambia within just a few years, these companies are naturally often compared to one-another, and the CSR debate is particularly heated within Zambia. Chinese investment has had a particularly bad reputation for environmental and social practices in the country, particularly following the explosion at the Beijing General Research Institute of Mining and Metallurgy (BGRIMM) plant in 2005, which killed almost 50 Zambian workers[142]. This was followed by an attack on Chinese management by some 500 Zambian workers constructing the Chambishi Copper Smelter in March 2008, over stalls in wage negotiations[143]. The Chinese-run Chambishi mine has in fact been targeted not only as a poor ESG performer when compared to other multinationals operating in Zambia, but even as a worst-case example of Chinese investment throughout Africa. Barry Sautman and Yan Hairong thus point out that although "there are about a thousand significant Chinese enterprises in Africa", the media discourse "focuses . . . particularly on one investment, the NFCA Chambishi copper mine in Zambia"[144]. In a comprehensive study of mining company behavior in Zambia (conducted for *Mine Watch Zambia* in 2006, and based on numerous interviews with local staff, members of civil society, and company executives), Fraser and Lungu thus

report that foreign investors were commonly ranked "on a ladder of shame of abusing the workforce, ignoring local businesses and labour, and showing little interest in environmental protection". At one end of this ladder, Chinese companies were "commonly claimed to be 'the worst investors', usually one step ahead of 'the Indians'", while "Swiss, British, South African, Canadian and other Western investors . . . [were] assumed to have a more sympathetic style of management"[145]. This particularly pointed criticism of Chinese corporate behavior highlights the importance of contrasting different companies' ESG practices more closely, to investigate whether such perceptions are well-grounded or remain accurate today. For this purpose, the Chinese firm analyzed in this study is the **Non-Ferrous Company-Africa (NFCA)**, a subsidiary of the state-owned China Nonferrous Metal Mining Company (CNMC), which operates **Chambishi Mines PLC**; the South African company is **Metorex**, which operates **Chibuluma Mines PLC**; and the Indian firm is **Vedanta Resources**, operating **Konkola Copper Mines PLC** (KCM). Meanwhile the OECD-country investor analyzed is the Canadian-owned **First Quantum Minerals Ltd**, which operates **Kanshanshi Mine PLC** among other concessions.

Companies worldwide resort to a wide range and combination of strategies for improving their environmental governance systems; Fig.3 (*see Appendix*) illustrates the popularity of these different measures, according to an international survey of signatories to the UNGC conducted in 2009. Among these diverse strategies, four broad categories of ESG tools can be distinguished. According to the OECD, good ESG performers are firstly expected to "develop policies, codes of conduct, management systems or due diligence processes to ensure that they act responsibly", and to integrate these actions are into their mainstream decision-making. Secondly, firms should publicly disclose their ESG policies and codes of conduct, as well as the environmental impact of their activities. Thirdly, the extent to which companies subscribe to private-sector ESG initiatives, or to international initiatives such as the UN Global Compact, can exert some disciplinary influence on their ESG performance. Finally, firm ESG compliance should be independently assessed by rating agencies or other accountability mechanisms, and efforts should be made to develop ESG measures in consultation with civil society partners[146]. These four measures are helpful for assessing the depth of a company's ESG commitments. The comparisons of individual company behavior below rely on the first three of these criteria (compliance with international and private-sector initiatives, impact disclosure, and management systems). The fourth criterion (independent performance assessment) is addressed in Section 3.4.

3.3.1 South Africa: Chibuluma Mine and Metorex

The first mine to be privatized, Chibuluma Mine, was sold to the South African company Metorex in October 1997. Metorex is currently the only South African mining company operating in Zambia – while Teal and BHP Billiton are both engaged in exploration activities, they are not yet operative. This makes Metorex "an effective representative of South African mining capital in Zambia"[147].

Private-sector initiatives and international guidelines: established in 1975, Metorex is a public liability company listed on both the Johannesburg Securities Exchange and the London Stock Exchange. It endorses the code of corporate governance as set out in South Africa's King II Report, as well as in the Listing Requirements of the JSE. However Metorex is not yet certified under the ISO14001 standard.

Impact disclosure: The mine conducts fortnightly safety and environmental checks and specifies its water quality, air quality and dust count in accessible reports. In 2008 all of these counts were in compliance with national regulations[148]. According to the President of the Mine Workers' Union of Zambia (MUZ), "Chibuluma mine [also] has the best safety record among the mining companies on the Copperbelt"[149]. In 2009 Chibuluma Mine's environmental reporting system was still under development, and new steps included weekly sampling of effluent discharges, installing trail dust suppression sprays on one of the mine's crushers, and rehabilitating the Chibuluma South tailings dam. No environmental incidents were reported for 2009[150].

Management systems: Upon obtaining the mine, Metorex undertook to "conduct rehabilitation relating to previous and current mining operations identified in the Environmental Impact Statement and to conduct an Environmental Management Plan". This Plan included: minimizing cover dust and water pollution by re-vegetating disturbed areas and by control of storm water; implementing a monitoring program for water flow and quality; rehabilitation of the concentrator site prior to re-vegetation; and monitoring surface caving[151]. Despite being free from clean-up and mine closure liabilities under its Development Agreement, Metorex has also established a rehabilitation trust fund with Lombard Insurance; this fund has a provision of 25 million Rands to cover environmental liabilities due to Metorex's mining operations worldwide[152]. As further evidence of 'internalizing' CSR, in May 2009 Metorex established the Safety, Health, Environmental and Communities ("SHEC") Board sub-committee; this body places a new focus on sustainability and is mandated to develop the framework, policies and guidelines for Metorex's SHEC management. Based on the recommendations of the latest SHEC Board audit, Metorex is now advancing an "all-inclusive ESG process" which will begin with the review of baseline risk assessments for the SHEC-related aspects of all of its operations[153].

Caveats and analysis: Overall, the ESG performance of Metorex in Zambia appears to be quite commendable. Nonetheless this cannot be generalized to all South African mining companies operating in Africa, nor even to operations of the same company in other countries or in other sectors of CSR. Indeed a SARW investigation of the Ruashi Mine in the DRC's Katanga Province (also operated by Metorex) reveals that "Ruashi Mining is notorious for resisting compliance with environmental legal requirements in Katanga", and has been accused of discharging waste directly into nearby local rivers[154]. These discrepancies clearly highlight that the specific host-country governance context of mining investments can considerably affect companies' behavior; in the absence of stronger South African guidelines for monitoring its own companies overseas, current international guidelines and stock-market listing (such as the JSE) do not appear to be sufficiently disciplinary.

3.3.2 India: Konkola Copper Mines and Vedanta Resources

The Indian-British firm Vedanta Resources owns a wide range of mining operations, principally in India, Australia and Zambia; Vedanta has won an impressive number of awards for energy and environmental management, particularly for its Indian operations. Examples in 2008 include the *Environment, Social Awareness and Excellence Award* by the Federation of Indian Mineral Industries, and the *Asian Mining Environmental Sustainability Award*. KCM, in turn, has made particular efforts in the field

of health and safety: in 2009 it was the first mining company in Africa to attempt a 'Combined Five Star and OHSAS 18001 Certification', a combined audit developed by the British Safety Council in the field of health and safety management systems[155]. KCM also won an *International Golden Peacock Award* in 2008. These awards are granted by the UK-based World Council for Corporate Governance to Indian companies (operating both domestically and globally) for excellence in corporate social responsibility, particularly in terms of ESG[156]. KCM is by far the largest mining operation in Zambia, which makes it the second largest employer in the country after the government[157].

Private-sector initiatives and international guidelines: The majority of Vedanta sites are ISO14001 certified, including KCM which was recently seeking accreditation[158]. Vedanta is now striving for ISO 14001 certification for KCM's subsidiary Integrated Business Units as well (at Nchanga, Nkana and Nampundwe) and is implementing Environmental Management Systems at each of these[159].

Impact disclosure: Vedanta develops its annual sustainability reports using the *Global Reporting Initiative*'s *G3 Sustainability Reporting Guidelines*. The 2009 report includes 46 G3 core indicators, and is also aligned on the IFC's *Guidelines & Performance Standards on Social & Environmental Sustainability for the Metals and Mining sector*, as well as on the principles of UNGC[160]. Given the global spread of Vedanta's operations, these annual sustainability reports however make little mention of individual company behavior. It is therefore unclear to what extent these indicators are fully relevant to the operations of KCM specifically: there is a risk that poor performers remain free from scrutiny by free-riding on the good performance of other subsidiaries. For instance ACTSA (*Action for Southern Africa*) notes that Vedanta's annual reports "provide no detail of the levels of sulphur dioxide emitted by [KCM's] smelter", and that although "KCM is meant to include information [on its sulphur dioxide emissions] in its annual statutory reports to the ECZ", this information remains difficult to access[161].

Management systems: KCM complies with Zambian legislation and has prepared social and environmental management plans since privatization[162]: an interim EMP was released in 1999, and a Final EMP was approved by the ECZ in May 2001. The FEMP involved both an environmental assessment and an environmental action plan; these cover air quality, surface and groundwater quality, infrastructural degradation, soil contamination, waste management, archaeological sites, land use, deforestation and timber use, and ecosystems[163]. Specific deadlines for the management of these action plans are included. As part of its stated "environmental objectives", KCM also commits to complying with "all applicable environmental regulations [in Zambia] as enshrined in the EPPCA of 1990 and the Mines & Minerals Act of 1995". KCM has also developed a Safety, Health, Environment and Quality (SHEQ) policy, and voluntarily sets itself several quantitative targets to ensure environmental stability, including: water recycling to reduce fresh water intake; reducing Total Suspended Solids levels in mine water and effluents; reducing the consumption of indigenous timber by using plantation timber for 75% of operational needs; and increasing its sulphur-dioxide capture target to 75%[164]. Concrete efforts have already been made to meet the latter target: KCM has several sulphur-dioxide capture installations, which convert the gas into sulphuric acid that is later used in mineral processing[165]. Upon investigating the sulphur-capture installation at KCM's Nkana smelter, a report commissioned by the UK Department for International Development (DFID) concluded that "there were adequate environmental and social management

systems in place"[166]. As further evidence of better integration of ESG standards into the mainstream decision-making process, KCM also has a code of conduct for all KCM contractors[167].

Caveats and analysis: Vedanta obtained 51% of interests in KCM in 2004 following the pull-out by Anglo-American due to low copper prices; Vedanta's early management behavior is therefore frequently contrasted to that of the previous company. In 2006 local environmental activists interviewed by *Mine Watch Zambia* complained that, "Anglo was like a leading company in terms of environmental performance, but now KCM is one of the worst culprits"[168]. Sedimentation and silt from KCM's operations is claimed to have inflicted crop losses on local farmers of about 100,300,000 Zambian Kwacha (USD $19,550) in 2005 alone[169]. In particular, Vedanta has been heavily criticized for the pollution of the Kafue River in November 2006, which according to the ECZ's official inquiry was the result of "gross negligence" by KCM management[170] (despite having run out of lime for neutralization, KCM continued discharging acidic tailings into its pipelines, thus corroding them and causing the acid leak[171]). The resulting water pollution is believed to have inflicted long-term health hazards on the local population. KCM's annual report lists several remedial measures (totaling USD $6.135 million) taken following the spill; nonetheless ACTSA notes that many of these measures were not fully implemented, or undertaken with considerable delay[172]. As KCM's increasing number of ESG management and biodiversity initiatives suggest, there have been improvements in governance more recently (particularly since April 2008, when Vedanta increased its majority stake in KCM to 79.4%, thus allowing KCM to operate as its subsidiary[173]). Nonetheless KCM's reputation remains tarred by its past malpractice, and further efforts remain necessary before Vedanta can move upwards in the "ladder" of CSR in Zambia.

3.3.3 Canada: Kansanshi Mine and First Quantum Minerals Ltd

First Quantum Minerals has ownership stakes in several operations in Zambia: the Bwana Mkubwa solvent extraction and electrowinning ("SX/EW") facility (100% owned), a 16.9% stake in Mopani Copper Mines (with majority ownership by another Canadian company, Glencore), and the Kansanshi Copper Mine (80% owned)[174]. While First Quantum also has operations in the DRC and in Mali, most of its copper output (over 80% in 2007) is concentrated in Zambia[175]. This makes Kansanshi the world's eighth largest copper mine. First Quantum is listed on the Toronto Stock Exchange in Canada and on the London Stock Exchange.

Private-sector initiatives and international guidelines: First Quantum ensures that the management systems at each of its operations comply with ISO 14001 requirements. As an investor from an OECD country, First Quantum is also held to the *OECD Guidelines for Multinational Enterprises*; as such, it is subject to oversight from Canada's National Contact Point (*see below*). While it is not yet an EITI signatory, First Quantum has also been "preemptively aligning [its] reporting with the EITI, to reduce negative reputational effects" of its operations[176].

Impact disclosure: First Quantum publishes both an annual Carbon Disclosure Report and a Sustainability Report. The company notably reports on energy efficiency: due to hydroelectricity usage at its DRC and Zambia operations, First Quantum for instance reported a 47% renewable energy footprint in 2009[177].

Management systems: Relative to its operations in Zambia, the company asserts that it has "expended significant resources, both financial and managerial, to comply with governmental and environmental regulations"[178]. First Quantum has environmental management systems in place at each of its operations, and prepares annually-reviewed closure plans. In addition to legislative compliance, the company is also involved in voluntary biodiversity investment: it has set up a game management area within the Kansanshi concession, and is planting Jatropha trees in the context of a biodiesel initiative. Thanks to both these managerial and investment-based ESG initiatives, an FQM representative interviewed by Haglund notes, ""if you talk to . . . Copperbelt Ministers [about] which company is doing most CSR", First Quantum "will always come up"[179]. However since 2008 Kansanshi is in a dispute with the GRZ with respect to tax legislation aiming to increase government revenues above the terms set in the Development Agreements[180]. This may place a strain on future investor-government relations, including in the field of ESG.

Caveats and analysis: First Quantum has faced several problems with its environmental management in the past: heavy metal effluents being discharged into rivers that supply drinking water posed a problem particularly at the Mopani concession (MCM), which is jointly-owned with Glencore (also Canadian). As a result MCM have committed to developing acid plants at both of their smelters. First Quantum also came under criticism for MCM's relocation of the local population in the vicinity of one of its mines; this dispute was settled in 2001 with the use of the conciliation facility provided by the *OECD Guidelines for MNEs*. Oxfam Canada and the Zambian NGO DECOP jointly submitted First Quantum's operations to the Canadian National Contact Point (NCP), reporting that this relocation violated Chapters II and V of the Guidelines (dealing with industrial relations and environmental governance respectively)[181]. In response, the NCP organized meetings with the NGOs concerned, First Quantum, and local leaders of the Zambian community. The resolution reached in February 2002 included assurances that evictions would stop, that First Quantum would cooperate with local CSOs in working towards resettling the squatters, and that Mopani would maintain open dialogue with civil society[182]. While there is mixed evidence as to whether Mopani has fully respected the terms of this resolution (indeed, certain evictions were resumed in 2006[183]), this is an example of the OECD framework providing more than mere operational guidance: it can in fact offer an institutional structure for mediating and expressing civil society's complaints. NCPs can in this way provide a conciliation facility to monitor the behavior of mining firms. This can prove particularly valuable in cases where host-country governments themselves lack the capacity to adequately monitor firms' ESG behavior and hold them accountable for it.

3.3.4 China: Chambishi Mine and NFCA (China Non-Ferrous Metal Mining Group Corporation Limited)

Founded in 1983, the China Nonferrous Metal Mining Company (CMMC) is a state-owned enterprise under the management of SASAC. Two of CMMC's subsidiaries (NFC and OTIC) are listed in China. Analyzing behavior of the CNMC and of its subsidiary the NFCA (Non-Ferrous Company Africa) is particularly relevant to understanding Chinese corporate behavior overseas, as CNMC "has been a pioneer among Chinese enterprises to implement the 'going abroad' strategy" adopted by the government since 2001. CNMC is indeed "the Chinese enterprise that has carried out the most investment cooperation in overseas nonferrous metal mining industry"[184], and the NFCA's USD $150-million investment in the

Chambishi Mine is China's largest copper mining investment[185]. Other Chinese companies are also involved in Zambia's extractive sector, yet these are mostly sub-contractors of CNMC that operate under the CNMC-NFCA umbrella[186] (such as BGRIMM explosives or Sino-Metals). CNMC in fact manages the Chambishi Special Economic Zone (CSEZ) established between China and Zambia in 2007, and thus coordinates most recent investment operations in Zambia's mining sector (among others, this includes Chambishi Metals, Chambishi copper smeltery, Chambishi Leach Plant, and Chambishi Sulfuric Acid Plant).

Private-sector initiatives and international guidelines: NFCA's ESG governance efforts do not extend far beyond the national Zambian requirements: unlike Vedanta and First Quantum, CNMC does not subscribe to ISO 14001 standards; nor, like Metorex, does it possess an equivalent of South Africa's internationally-acclaimed King Report framework for CSR. However there is scope for more linkage between the Chinese and the Zambian regulatory authorities through better use of Zambia's Economic and Commercial Council: while Zambia's ECC has very low capacity (counting only 8 staff in 2008[187]), this local extension of China's Ministry of Commerce could serve as a platform to institutionalize a credible 'Chinese equivalent' for holding firms to account in terms of their ESG performance.

Impact disclosure: As required by Zambian regulations, NFCA submitted a draft Environmental Impact Statement (EIS) to the ECZ in 2006. This document was highly critical of the company's practices, yet its conclusions do not appear to have been internalized by NFCA's managers. As the OECD notes, the CSR reports and impact assessments of many large Chinese firms are indeed often "designed primarily to demonstrate compliance to external stakeholders such as foreign customers or the Chinese government", and are not accurate reflections of whether ESG standards have been "built into the enterprise's operating strategy"[188]. Unlike for the other multinationals studied, the CNMC website moreover provides no annual ESG reports for NFCA's operations. NFCA has thus maintained a poor CSR reporting record since acquiring Chambishi Mine – not only on the environmental front, but also in terms of financial disclosure. Of the five international mining companies operating in Zambia which released annual financial statements over 2002-2005, only NFCA's accounts received repeated auditor qualifications; Deloitte & Touche cited unavailability of information for their refusal to sign off NFCA's account[189].

Management systems: Like Zambia's other multinational mining companies, NFCA has submitted an Environmental Management Plan (EMP) to the Environmental Council of Zambia. However this EMP was provided almost eight years after it should have been adopted – NFCA's Development Agreement committed it to implementing an EMP by 30 December 1998. Such delay has allowed the company to "avoid effective environmental control" for almost a decade[190]. The Plan now available proposes a timetable, lasting to July 2008, for implementing explicit policies and monitoring mechanisms. Fraser and Lungu note that this document is "brutally honest about the wide range of problems at NFCA, identifying a crisis in the companies' working practices on environment, employment and provision of social services". However, they also point out that solutions suggested in the draft Plan are vague "paper policies" that are likely to entail more delay and ineffective implementation[191]. The draft Plan has also been criticized for having been written "almost entirely by a team of external consultants"; as put by *Mine Watch Zambia*, "given the variance between the policies proposed in the EMP and those currently operated by NFCA . . . it is hard not to wonder whether the policy is there [just] to appease Government and critics"[192]. Indeed

while NFCA does place officers in charge of health, safety and the environment, these are often junior staff and "are not mandated to influence the decision making in the company"[193]. According to NFCA workers and Zambian civil society representatives interviewed by Haglund in 2007, the company's management continues to demonstrate "a strong preference to minimize costs", at the expense of environmental mitigation or maintenance[194]. These views have been confirmed by more recent interviews with Chambishi miners, managers and labor union representatives, conducted by Shannon Van Sant in November 2009[195]. These elements suggest that NFCA's ESG approach involves mostly superficial commitments – ESG is far from internalized by company managers at the present time.

Caveats and analysis: NFCA's baseline commitment in its Environmental Management Plan is that the company "will at least come into compliance with the national legal framework"[196]; the stringency of the Zambian regulatory framework thus clearly determines the extent of the corporation's ESG behavior. While a 2009 report by the *African Labor Network* states that, "so far there has not been any complaint against any Chinese FDI for environmental breach or violation"[197], the frame of reference against which such conclusions are measured may well be too lax. Moreover since the commencement of copper production in 2003, the Chinese government "no longer provides financial assistance and the company is expected to be financially self-reliant"[198]. While the China Export-Import Bank had funded the rehabilitation of Chambishi Mine pre-2003, NFCA is therefore no longer financially accountable to the Bank – nor, therefore, is it subject to the environmental requirements of its loans. As a state-owned company, NFCA remains constrained only by governmental guidelines, in particular the 2008 SASAC Guidelines and the *Nine Principles on Encouraging and Standardising Foreign Investment* issued by the State Council in 2006. According to a Deputy CEO of NFCA interviewed by Haglund, since 2006 managers have thus been made aware that they can easily be replaced should environmental or safety accidents arise in their operations[199]. Nonetheless, these Principles remain voluntary. Moreover, such external monitoring is once again mostly punitive and ad-hoc; it does not provide particular incentives to ensure that NFCA explicitly incorporates environmental governance into its daily business systems.

3.4 Cross-comparison: what can we learn from these cases?

Investigating the ESG behavior of these four companies in terms of compliance with international and private-sector initiatives, impact disclosure, and management systems, reveals that behavior has varied not only among companies, but also within companies over time. While all companies have been engaged in different degrees of environmental misconduct in the past, it seems that cooperation between the ECZ and each company is improving and that companies themselves are increasingly taking the initiative to engage in emission-reduction and biodiversity-conservation projects. This is particularly the case for KCM, which in a few years appears to have moved from being one of the worst to one of the best performers on ESG. By contrast NFCA has consistently maintained lower standards than other firms, in all three sub-categories of ESG investigated. The fourth category, independent performance auditing, is no exception: NFCA is the only company to engage in no widely-publicized external auditing and to adhere to no specific ESG certification standards (such as the ISO system or an equivalent of South Africa's reporting framework). Vedanta's concessions, on the other hand, are subject to regular internal and external audits[200], and KCM's receipt of a highly competitive and transparent *International Golden Peacock Award*

for good ESG behavior in 2008 further corroborates the laudatory observations of its performance reports[201]. Likewise, since 2009 Metorex's Safety, Health, Environmental and Communities (SHEC) Board sub-committee is mandated to independently "approve the SHEC content of the Company's annual report"[202]. Independent auditing – either by external consultants, or by local regulatory agencies like the Environmental Council of Zambia – is a crucial component of ESG management. As put by SARW, "there can [otherwise] be a considerable gap between the proclaimed commitments of a company and actual implementation[203]: self-reporting by companies, if not complemented by audits, can easily be a means for firms to embellish the extent of their ESG measures. Given NFCA's particularly poor ESG performance when compared to its two other emerging-market counterparts, this suggests that both more frequent ESG reporting and independent performance audits would play a valuable role in encouraging sound ESG conduct by the company.

The cross-comparison of these four multinationals illustrates that there is indeed wide variance in ESG behavior across Zambia's Copper Belt. Yet it remains unclear what drives these differences: since the 2006 Kafue river spill KCM has for instance improved its ESG conduct largely on its own initiative – independently of pressure or guidelines from the Indian government, which as yet has a particularly weak CSR framework. KCM's or Metorex's improved performances cannot therefore simply be tied to their origin as 'Indian' or 'South African' companies. In order to clarify the influences behind companies' varying ESG performances, three potential drivers of poor ESG behavior will be analyzed below: firstly, two shortcomings on the company side (incomplete understandings of ESG, and weak company incentive structures); secondly, the poor enforcement capacity of the Zambian government itself; and finally, the particular structure of relationships between the Zambian government and the Chinese NFCA, which may itself allow for the persistence of a 'China difference' in terms of ESG compliance.

3.4.1 Drivers of ESG behavior on the company side

Multinational companies have fallen short of international and country-of-origin standards throughout the history of private mining in Zambia. A report by the Southern African *Bench Marks Foundation* (BMF) notes that this is not solely the case for emerging-market investors: even among OECD investors, "some companies in the Copperbelt are operating with lower standards compared to their parent companies in developed countries"[204]. While poor firm behavior can result from intentional malpractice, it can also simply be caused by inadequate understandings of what ESG and CSR entail, and from a poor incentive structure at the managerial and employee level.

3.4.1(a) Driver 1: Different understandings of what ESG entails

Looking into the corporate cultures of the four investor countries concerned suggests that most of them have somewhat incomplete understandings of CSR. As the BMF notes, "although the idea of CSR is gaining some importance within policy debates in Zambia, it is not applied widely and is usually associated only with philanthropy"[205]. Especially in the South African and Chinese cases, CSR is thus understood not as an all-encompassing mode of management and business operations, but is narrowed down merely to firm-sponsored investment in specific environmental or social projects (such as building schools or funding

tree-planting). Within South Africa, "a region-specific understanding of CSR has developed"[206]. CSR is locally known as "Corporate Social Investment" (CSI), a concept that has strongly been influenced by the government's post-apartheid policies of historical compensation: businesses are encouraged to address CSI mostly in the context of the 'Black Economic Empowerment Act' (BEEA), which encourages various projects in the aim of integrating previously disadvantaged Black entrepreneurs into corporate structures[207]. The Chinese corporate culture places a similarly heavy emphasis on social projects and philanthropy, as the *Corporate Social Responsibility Initiative*'s interviews of Chinese business executives in Africa suggests: CSR is "typically understood not to relate to employment, procurement or environmental practices of the companies, but instead is conceived of in terms of support to local community sports and development projects"[208]. The annual reports of large Chinese firms unsurprisingly place a heavy accent on philanthropy and, as the OECD remarks, also "include achievements which it is not recognized international practice to cite as CSR", such as job creation and contribution to GDP growth[209].

While local community projects are certainly helpful, CSI is however only a subset of available CSR strategies. It is a more 'external' form of CSR, and often has limited long-term impact as it is not internalized into a company's operational structure; as put by the BMF, such CSR initiatives "primarily play an ameliorative role" [210] rather than fundamentally affecting management systems. Moreover as social projects are frequently undertaken in an ad-hoc manner, they do not include preventive measures – particularly for environmental degradation – that should form a part of a comprehensive ESG framework. An exclusive focus on CSI means that preventive ESG policies are rare and, as noted by Haglund in the case of NFCA, "learning processes appear to be reactive rather than proactive"[211]. Nonetheless these CSI projects are an easy way of providing visible evidence of CSR efforts, and are often central to companies' CSR reports. The CSR section of KCM's *2010 Investor Update* thus includes no details on internal environmental management systems at all, and only covers philanthropic projects such as school-building, sports development, and infrastructure support[212]. Although the current wave of global interest in CSR and ESG is clearly highly encouraging, there is a risk that this trend will lead to a competitive over-proliferation of philanthropic projects as companies eagerly strive to build images as good corporate citizens; this may come at the cost of less visible ESG measures that could be integrated into companies' management and operational structures. As the BMF recommends, "although CSI is often the starting point of companies' involvement", it is crucial that companies rely no longer exclusively on the philanthropic approach and "move on to the natural second step of CSR"[213].

3.4.1(b) Driver 2: Poor company incentive structures and the gap between ESG principles and implementation

Insufficient awareness of ESG by companies is exacerbated by poor incentive structures at the operational level. This may result in ambitious ESG principles being designed by MNC executives at headquarters, but not implemented by local staff in light of a weak regulatory context domestically. SARW indeed points to a wide gap "between the goals set by head office and the difficulties of operational management balancing their achievement with profitability"[214]. In these cases restructuring company wage and incentive mechanisms may be the most feasible means of improving ESG performance on the

ground. Currently South African mining corporations "tie executive compensation to performance, determined by market and shareholder interests", and exclude community and environmental concerns from compensation structures[215]. Likewise the Chinese firms surveyed by the *Corporate Social Responsibility Initiative* in 2009 "prioritized speed and cost above all when measuring staff performance"[216]. Moreover at NFCA, Chinese managers are generally replaced every three years (in contrast to First Quantum for instance, which has retained some managers and staff since the late 1990s)[217]; this high turnover is likely to further exacerbate an emphasis on short-term profits. Haglund notes that the way in which Chinese SOEs are governed by the Chinese state (mostly through informal guidance and ad-hoc, discretionary enforcement) moreover increases managers' uncertainty and their reliance on short-term management strategies[218]. To reduce the gap between headquarter guidance and local-level implementation, ESG measures would need to be incorporated into wage structures, operating practices, and training or management systems. This would create a "scientific CSR management system" capable of "both quantifying and qualifying [corporate] performance"[219]. Such systems would be crucial in order for firms to better internalize an adequate understanding of ESG performance and effectively "move onto the second step" of comprehensive CSR.

3.4.2 Poor capacity on the Zambian side

Poor ESG awareness and inappropriate incentive structures cannot alone explain the full extent of poor ESG behavior by mining companies in Zambia. As NFCA Management recognizes, "part of the reason they bend the rules is that they are not enforced and the company believes that it can get away with challenging Government policies"[220]. Clearly, characteristics of host-country governments also have an important influence on the behavior of multinationals. According the BMF and to ACTSA, "the ECZ is a good example of where a host country government is unable to regulate multinational companies on its territory"[221]. ACTSA highlights two challenges faced by Zambian authorities when regulating the behavior of powerful mining companies: "the weak regulatory framework in place and the minimal legal constraints that apply to mining companies", and the Zambian government's "own limited capacity to monitor and enforce even these weak regulations"[222]. These two constraints can be examined in turn.

3.4.2(a) Weak regulatory framework

Firstly, many ESG regulations imposed on companies are indeed too weak, as illustrated by the lax terms of the Development Agreements. Companies' Environmental Management Plan requirements on air pollution were for instance designed primarily to cater to company needs rather than based on minimum safety standards: since no companies could meet stringent air regulations at the time the EMPs were first designed, a phased approach was chosen under which firms were expected to progressively reduce sulphur-dioxide emissions from a baseline of their initial level of pollution. As ACTSA summarizes, this amounts to "taking as its starting point not the level of emissions acceptable for public health, but the level acceptable to mining companies". Indeed, the baseline level of emissions used exceeds the legal limits of pollution under the nationalized ZCCM era, and is "25 times more than the level recommended by the World Health Organization (WHO)"[223]. ECZ regulations are also outdated: even where the ECZ does locate malpractice and impose fines, these are so minimal that they are ineffective deterrents for the

companies concerned. The average on-the-spot ECZ fine in 2007 was only K140,000 (USD $27), with the result that the ECZ for instance fined Chinese investors "all the time" in 2007, with little change in corporate behavior[224]. Given the current recovering demand in world copper prices following the global economic downturn (*see Fig.2 above*), Zambian authorities could now make their regulations more stringent with little risk of losing foreign investors. As there have been significant new mining investments in Zambia (notably by KCM and CNMC, *see Section IV*), these companies must moreover remain in Zambia so as to recuperate their financial inputs. Were the GRZ to pass firmer ESG legislation, including more stringent acceptable pollution levels and higher fines for non-compliance, it is therefore unlikely that any of the currently operating firms would pull out of the country[225].

3.4.2(b) Capacity constraints on monitoring and enforcement

Capacity seems to pose the most severe obstacle to effective regulation. Noncompliance even with the lax EMPs and with the terms of the Development Agreements has been widespread, and existing legislations are not appropriately implemented. Construction on several mining concessions has for instance begun prior to receiving approval from the ECZ; this includes KCM's smelter in Chingola[226], as well as its Nchanga smelter (for which construction was scheduled to start even prior to submission of the project's EIA to the ECZ)[227].There have, of course, been some examples of intervention by the government in response to poor company performance: immediately following KCM's 2006 spill in the Kafue River, the ECZ for instance "suspended KCM's pollution control licenses to discharge effluent into the aquatic environment until remedial action had been taken"[228]. However, despite ECZ reports accusing KCM of managerial negligence and recommending prosecution for the company's violation of the EPPCA, KCM has not been prosecuted thus far[229]. Likewise follow-up on the NFCA BGRIMM explosion was largely incomplete; Haglund notes that this may result not only from poor capacity, but also from more deliberate "political interference" and "brokerage" between individual companies and the GRZ[230]. Indeed, ESG-related regulatory bodies are vulnerable to political interference: Ministry posts are periodically reshuffled by the President, preventing the accumulation of institutional memory, and certain clauses of the Environmental Act allow the Minister of Tourism, Environment and Natural Resources to overrule ECZ recommendations[231]. Moreover while companies' EMPs commit them to monitoring their pollution levels, most of this takes the form of self-monitoring since the ECZ cannot spare the resources to double-check companies' assessments. Self-reporting is difficult to coherently regulate and allows companies to take advantage of a lack of common investment standards and reporting formats[232]. Finally, salaries in the Ministry of Mines and ECZ remain particularly low and uncompetitive, making it "difficult for regulatory bodies to hire and retain skilled inspectors" and opening avenues for bribery and fine evasion[233].

In recognition of these many shortcomings, the Zambian government has recently embarked on the *Copper Belt Environmental Project* (CEP), with support from the World Bank and the Nordic Development Fund. CEP projects notably cover: strengthening the institutional capacity of the ECZ, the Mines Safety Department, and delegated authorizing agencies in reviewing environmental impact assessments; and establishing an Environmental Mitigation Fund (EMF), which would finance procedures for screening and implementing Environmental Assessments, and for preparing resettlement action plans[234]. Proposals for reforming Zambia's environmental regulatory framework under the CEP include:

simplifying how the ECZ works and how emission licenses are granted to companies; revising outdated legislation; and reinforcing the ECZ's regulatory autonomy by changing the EPPCA provision that allows the Minister of Environment to overrule ECZ decisions. Reforms would also seek to make the Mines Safety Department more independent from the Ministry of Mines in terms of monitoring and enforcement[235]. To complement these efforts, Zambia could also reap benefits from fully engaging in the SADC's search for a harmonized mining code; this could grant government regulators more institutional support at the sub-regional level.

3.4.3 A 'China difference' in relations with the GRZ

As the above analysis suggests, ESG conduct by mining companies in the Copper Belt varies both according to firms' understandings of CSR and their operational incentives, and according to the regulatory and capacity constraints of the GRZ. However these explanations may not suffice to explain the particularly poor ESG behavior of NFCA. Of all the companies studied, NFCA's corporate culture can most clearly be traced back to its country of origin: NFCA's status as a Chinese state-owned company has granted it more operational discretion than other firms vis-à-vis the GRZ and its ESG requirements. For Haglund, Chinese investment thus "presents a special case" among all multinational mining companies operating in Zambia[236]. Given its role in the management of China's Chambishi Special Economic Zone, NFCA has developed unique relational networks with the Zambian government, and has often relied on the GRZ to "broker the company's relationships with local actors" [237]. As a result of this reliance, NFCA's ESG management decisions have at times followed politically-influenced mechanisms that are "clandestine rather than transparent and formalized"[238], and NFCA has been less responsive than necessary to the needs of stakeholders on the ground. This in turn has curtailed the company's ESG learning process[239]. This situation, which Haglund dubs "political embeddedness"[240], may have freed NFCA from most pressure for good ESG management on behalf of the Zambian government. A 'China difference' therefore persists in Zambia's mining sector. GRZ and civil society respondents interviewed by Haglund did point out improvements in NFCA performance in 2007, especially concerning the company's engagement with stakeholders and compliance with ECZ and Mines Safety Department regulations[241]; yet Van Sant's interviews in 2009 strongly suggest that local discontent and worker protests over NFCA's malpractice, rather than official pressure either from the ECZ or from international observers, have been the driving factors behind these improvements[242]. Local civil society thus appears to be the primary source of pressure on NFCA for good ESG performance; as CSOs cannot effectively shoulder this responsibility alone, this is a potentially dangerous situation both for NFCA's reputation and for Copper Belt residents and workers. There is clearly a crucial need for increased transparency in NFCA-GRZ relationships, and also for closer and stricter oversight of NFCA's operations by China's local Economic and Commercial Council and by the State-owned Assets Supervision and Administration (SASAC). The state-owned nature of Chinese companies should indeed be an advantage in terms of ESG – rather than a source of greater operational discretion vis-à-vis host governments, state-ownership should subject firms to more structured and efficient monitoring by their country-of-origin.

SECTION IV: Conclusion and return to a cross-comparison of international norms

The analysis of the above companies' behavior is particularly important given that their investment in Zambia is set to grow further. Following its submission of an environmental assessment document to Zambian authorities in 2009, First Quantum is planning to begin operations in the Fishtie mine in central Zambia[243]. In 2005, KCM in turn launched the completion of the first phase of the Konkola Deep Mining Project (KDMP) at its Nchanga Smelter[244], and since 2009 the company has also commissioned a new smelter in Nchanga and a concentrator in Konkola[245]. Moreover KCM is currently "looking for expansion projects in other African countries" post-2011[246]. Likewise, the China Nonferrous Metal Mining Company recently acquired Luanshya Copper Mine (LCM), after the original owners pulled out in January 2009. Interestingly, CNMC was chosen from among four bidders for the contract, one of which was Vedanta Resources[247]; while this may be an encouraging sign of recent progress by NFCA on the ESG front, given the above discussion it may simply demonstrate that the Zambian government placed insufficient weight on environmental performance during the bidding process (indeed, "the handling of the LCM sale was kept secret" and the government's bid assessment process did not involve consultants[248]). In light of companies' differing ESG practices and of the operational constraints outlined above, a return to Section II's cross-comparison of international, host-country and country-of-origin guidelines for ESG corporate behavior is in order. This can highlight certain gaps in existing guidelines, and point out to where there is more corporate demand for guidance – in particular from emerging-market investors. This also aims to identify what existing cross-national incentives and norms Chinese investors can most fruitfully take advantage of when operating in Africa's mining sector.

4.1 Potential for the extension of international and domestic guidelines for ESG

The cross-comparison of norms and guidelines in Section II clearly suggests that there are complementarities across these initiatives. Many emerging-market countries have drawn on international guidelines while formulating their own standards (the Shenzhen Stock Exchange thus developed its listing requirements with reference to the *OECD Guidelines* and the *Global Reporting Initiative*[249]). Moreover certain mechanisms operating at the domestic level appear to be particularly effective in regulating firms' ESG behavior and would clearly deserve to be extended overseas. This especially includes financial incentives, such as China's 'green credit policy' and South Africa's application of strict EIA prerequisites for lending from its domestic banks. National-level complements to international guidelines, such as the Bill C-300 currently under discussion in Canada, could also be an effective means of combining ministerial policy requirements with financing incentives. China's evolving framework of corporate governance guidelines could indeed take guidance from Bill C-300: in addition to harmonizing their multiple codes of behavior, Chinese authorities could explicitly tie these to financing by the Export Import Bank. This would give the Exim Bank political support in conducting its EIAs for loan applications, and may also make these EIA requirements more stringent than they are currently (for instance by aligning them on domestic Chinese standards rather than on the minimum environmental requirements of host countries). The successful record of the Johannesburg Stock Exchange in encouraging improved ESG performance also suggests that

capital market listing requirements should place more pressure on firms for sound behavior; developing listing requirements that are more applicable to mining companies (or strengthening the requirements of the Toronto Stock Exchange, given its popularity among mining companies) would also be of use. China's use of Economic and Commercial Councils (ECC) within host countries also has potential for extended application; strengthening a locally-based network for firmer country-of-origin oversight of companies' behavior overseas could partially palliate China's lack of internationally accepted ESG management norms - particularly if these local bodies can develop strong linkages with host country regulatory agencies and civil society organizations. Yet beyond these regulatory guidelines, given the particularly heavy influence of local contexts on the CSR behavior of multinational firms operating in Africa, considerably more attention must also be granted to what the CSRI describes as 'soft' components of CSR. Notably, placing more focus on restructuring incentive structures within companies and on improving understandings of ESG responsibilities is necessary to address the gap between ESG principles and implementation.

Learning and communication across companies and countries of origin on these different ESG tools could stimulate constructive 'peer-pressure' among investors. Such healthy competition could moreover generate convergence in operating standards, which as Haglund notes would simplify the task of host-country regulators[250]. Encouragingly, the multiplicity of companies involved in Zambia's mining industry today and their sustained interest in investing in the sector suggests that there is potential for companies to compete on ESG grounds. The Zambian Government itself can also take an active stance in encouraging and channeling inter-company competition. Under the *Copper Belt Environmental Project* (CEP) the GRZ is thus placing increasing demands on multinational companies for assistance in terms of environmental management and clean-up[251]. Managed by the Ministry of Mines, since April 2010 the CEP's Environmental Protection Fund (EPF) for instance requests yearly financial support from multinational companies over 2008-2012; these contributions are determined by audits, and are to be held in a trust until mine closure, for later use in environmental rehabilitation. As of 2010 Vedanta is the leading contributor to the EPF, having pledged USD $68 million for its KCM operation for the first five years; meanwhile First Quantum has pledged $10 million, and NFCA $5 million[252]. Further steps by the GRZ could include clarifying and emphasizing the importance that it attaches to good ESG behavior when selecting project bids. In cases of joint investment or ownership of companies, this would ensure that the norms from the country-of-origin with the highest ESG standards are adopted for the whole joint-venture. It is moreover crucial that more transparency be introduced into the GRZ's negotiations with NFCA, as preferential treatment toward Chinese investment may otherwise make NFCA managers impermeable to the 'peer pressure' of other mining companies. Such steps would ensure that, rather than a 'race-to-the-bottom', competition among mining companies in Zambia becomes a 'race-to-the-top' in terms of implementing best-practices and internalizing ESG management systems.

4.2 A few caveats to implementation: company size and origin

The rise in environmental awareness of behalf of both OECD and non-OECD governments is certainly promising. Moreover, many incentives that currently operate only on the domestic level could potentially be scaled up. Nonetheless, it must be pointed out that the four companies investigated in this case study are not the only ones operating in Zambia; while it is hoped that their behavior is

representative of the corporate culture of each country of origin (precisely because of their large size), there are therefore limits as to how easily this study's conclusions can be generalized. As the *South African Institute of International Affairs* (SAIIA) notes, for instance, "attention surrounding NFCA has overshadowed the complexities of Chinese investment in the Zambian mining sector": NFCA is in fact the largest of eight Chinese mining companies operating in Zambia[253]. Aside from copper, several Chinese firms also operate in the nickel sector – however they maintain a lower profile and their operations are partially overlooked by regulatory agencies and the international community[254]. These firms are also less likely to adhere to international guidelines for corporate behavior. The current paper has scrutinized the behavior of only a few large investors in the interests of data and simplicity; however the fact that such an exclusive focus is also often adopted by regulatory agencies in host-countries should be of significant concern. In particular, the impact of ESG codes of behavior and financial incentives is likely to differ based on the size and specific origin of multinational companies.

Company size, firstly, may alter the effectiveness of ESG guidelines and legislation: while large multinational corporations (or state-owned enterprises, in the Chinese case) would be effectively held to account, smaller companies – especially those involved in exploration or small-scale mining – may remain free from monitoring. Size would for instance affect the potential effectiveness of Canada's Bill C-300: small-scale Canadian exploration activities that do not draw on funds from Export Development Canada, nor receive investments from the Canadian Pension Plan Investment Board, would not be affected by the Bill if it is passed[255]. Additionally, CSR awareness is generally lower among smaller extractive companies: the CSRI's 2009 survey of Chinese firms investing in Africa suggests that, while several large multinational firms have undertaken environmental protection or resource-efficiency measures and are even implementing integrated environmental management systems, smaller companies that have only recently begun international operations in Africa (and which generally operate only on the continent and are more often privately-owned) rely mostly on local security risk assessments to manage ESG[256]. Interestingly in the Zambian case, since the establishment of the Chambishi Special Economic Zone NFCA has been playing a key role in "providing support for new entrants" in the Zone, particularly through its networked organizational structure; as a result, many newer Chinese companies in the sector (such as Chambishi Foundry, Sino-Acid, and Sino-Metals) base their practices and performance on NFCA's experience. NFCA is thus described as "a form of gatekeeper for these smaller Chinese businesses"[257]; the fact that NFCA's poor ESG performance can ironically serve as a model for newer Chinese investors in Zambia is highly preoccupying, and emphasizes the vital importance of providing these smaller firms with adequate external guidance and monitoring.

The specific origin and ownership structure of these companies also affects ESG governance: in the Chinese case, in addition to national state-owned companies, investment by provincially-owned SOEs is on the rise. As the most recent newcomers on the African market, these small provincial businesses are not yet incorporated into China's overseas management structures: they "usually operate on their own, choosing to maintain no or few contacts with the Chinese embassies in the African countries and local governments at home"[258]. These firms therefore have little guidance in their operations, and frequently spend few resources on ESG because they are actively competing with each-other in bidding and investing.

Due to their small size they are often also overlooked by host-country monitoring bodies. It is therefore crucial that China's provincial and local governments coordinate their investment in Africa and "develop mechanisms to track the business activities of local private companies in Africa and provide guidance and training programs"[259]. In recognition of these needs, a national conference was recently held by MOFCOM and MOFA, in the aim of "creating a management system composed of the functional ministries of the central government, embassies overseas, local governments and the various enterprises to ensure that all the investment or construction projects in Africa are under comprehensive supervision"[260].The fact that Chinese firms differ in both origin and size, and that their ESG behavior varies accordingly, poses a risk and need that is often overlooked by international observers. These nuances should be carefully taken into consideration when developing an ESG toolkit for Chinese firms to follow. Indeed, a framework for "CSR with Chinese characteristics" may have to be differentiated according to the size and international spread of the concerned companies.

4.4 Conclusion

4.4.1 Main Findings

1. International, host-country and country-of-origin guidelines for environmental and social governance are interdependent – none can be truly effective in isolation.

- **Inadequacy of host-country policies:** The BMF describes Zambia's mining legislative framework as "well-structured, comprehensive and thorough"[261]. Yet as the Zambian case illustrates, even in countries with a sound governance framework, host-country requirements often have little purchase on multinational investors. Indeed, Haglund reports the following comment from an environmental manager at First Quantum Minerals: "the only difference between the Equator Principles and the Environmental Impact Assessment legislation in Zambia is that the former is enforced"[262]. This clearly demonstrates that international ESG standards such as the Equator Principles "hold potential for complementing local regulations" [263].
- **Insufficiency of international norms:** International principles alone are not context-specific, and may fall prey to several loopholes according to the different countries in which they are implemented. Moreover these global standards do not cater to the particularities of emerging-market companies, which may face different corporate and organizational structures from OECD multinationals. As the CSRI notes for Chinese firms, in certain cases "ESG issues and drivers of performance faced by companies . . . are neither answered adequately by Western CSR standards, nor by traditional reliance on philanthropy and local laws"[264]. Particularly for China, where many multinational companies are still state-owned, there is therefore great potential for stronger involvement by the country of origin in encouraging good ESG behavior by its overseas companies.
- **Poor extension of country-of-origin regulations:** There is a wide 'governance gap' separating the oversight of domestically-operating firms from that of companies operating overseas - particularly in Africa. While companies' corporate practices remain influenced by the corporate cultures of their countries of origin, none have sufficient regulatory backing or monitoring from their governments. As the contrast between KCM and NFCA illustrates, individual companies' behavior thus varies more

based on their voluntary adherence to international guidelines and host-country regulations than according to their specific 'emerging market' or 'OECD country' backgrounds.

2. The growing number of overlapping international and national codes of conduct may itself be counter-productive. These overlaps occur at the international level (among similar initiatives such as the *Equator Principles* and the *UNEP:PFI*), but also at the country-of-origin and host-country levels. The OECD for instance notes that China's "lack of a set of nationally-recommended standards of corporate conduct and of effective reporting systems at enterprise level" could pose practical problems for many companies[265]. Similarly in host countries, the duplication of efforts between Zambia's Mines Security Department and the Environmental Council of Zambia illustrates the risk of regulatory overlap, which duplicates enforcement costs for the public sector as well as increasing compliance costs for companies. Host-country regulatory frameworks would also benefit from coordination at the sub-regional level. Rather than a profusion of different and at times contradictory guidelines, emerging-market mining companies would need access to a 'one-stop' set of norms to guide their involvement in Africa.

3. The firms investigated have incomplete understandings of corporate social responsibility, and often substitute social investment projects in the place of comprehensive ESG management systems. This is where the contrast between OECD and non-OECD investment is the greatest, as the three non-OECD investors studied tend to dangerously narrow CSR down to the notion of philanthropy. These different understandings of CSR result in a disparity in multinational companies' reporting standards and forms of ESG management. As Haglund warns, this diversity in business practices makes host-country monitoring more cumbersome. This thus risks "undermining effective mining sector regulation" by "fragmenting state-firm relationships" across the different firms operating in the industry[266].

4. Guidelines from countries of origin or international agencies are not the core drivers behind differences in ESG behavior. Rather, firm behavior is driven by more nuanced variables: different understandings of CSR and managerial incentive structures. Diverse understandings of CSR and firm-specific managerial incentive structures can durably shape companies' ESG management routines. These various routines affect the ease with which companies are able to comply with host-country regulations: having aligned its reporting on the EITI, First Quantum for instance easily meets the requirements of Zambian regulations, while dual reporting structures at NFCA makes alignment with Zambian regulations more costly and encourages noncompliance. As put by Haglund, "institutions [thus] affect firm behavior in a way that relies on firm-specific characteristics"[267]. The same global and local guidelines or regulations can therefore affect different companies to different extents; the size and origin of investing companies also impacts the likelihood of their adherence to CSR principles.

5. The "political embeddedness" of NFCA and its reliance on the GRZ for playing a "brokering role" with local stakeholders may partially explain NFCA's enduring poor ESG performance. The ad-hoc, informal negotiation patterns between NFCA and the GRZ may grant NFCA too much operational discretion; this subjects the company to insufficient pressure from the host government, and curtails the learning processes that would result from engaging with local stakeholders. This 'China difference' is particularly

concerning in so far as it reduces the positive influence that competing firms, local legislation, and international norms can exert on the company for improving its ESG management.

6. There remains considerable space for greater collaboration and communication between NGOs based in host countries and governments from companies' countries of origin. As Oxfam Canada's referral to the Canadian National Contact Point (NCP) in 2001 illustrates, the 'governance gap' in company oversight can be minimized by creating strong monitoring networks in which civil society observers can actively take part. CSOs such as SARW or *Mine Watch Zambia* are well-placed for monitoring the implementation of ESG norms on the ground. External monitoring by civil society should also be facilitated by firms; currently, most EIA reports have limited impact since they "are yet to be explained in the languages the local people will understand"[268]. Given the Chinese Government's direct ability to influence SOEs, collaboration between countries of origin and African NGOs may be especially effective in the case of China. This could ensure that local grievances are directly reported back to Chinese authorities, mitigating the risks of poor host-country monitoring. The Chinese government would clearly have a strong political and economic interest in strengthening such a framework.

4.4.2 Recommendations

1. For host-country governments (and Zambia in particular):

- Host countries should seek to reduce regulatory overlaps domestically (such as the duplication of efforts between Zambia's MSD and ECZ), and coordinate their national regulatory frameworks at the sub-regional level. The SADC's attempts to create a uniform mining code and its current development of the *African Mining Vision* (AMV) may considerably facilitate such coordination.
- The regulatory framework for ESG behavior should be made more stringent. Further modifying the Development Agreements in terms of ESG behavior, and making monitoring more credible and punitive – for instance by increasing the amount of fines and the independence of the ECZ – may be possible first steps.
- More transparency should be introduced into the Copper Belt operations. In particular, the current framework of political embeddedness with respect to the operations of NFCA should be restructured: NFCA should be encouraged to engage directly with local stakeholders rather than relying on the GRZ's 'brokering role'. This would make NFCA more responsive to external pressures to improve its ESG standards, and may reduce the size of the existing 'China difference' in terms of ESG performance. Publicly disclosing all negotiations with mining companies, as well as all Development Agreements, would moreover allow civil society to assist and advise the ECZ in its enforcement efforts.
- In addition to capacity-building and harmonization, regulatory bodies such as the ECZ and MSD would also benefit from more independence from political influence; as put by Haglund, given the current possibilities for high-level officials to intervene in monitoring and enforcement of firms' ESG behavior, "enforcement activities – and expected costs of non-compliance – are less easily predictable"[269]. This discretion significantly undermines firm incentives for ESG compliance, and may discourage even good performers with a complete understanding of CSR.

- Regulation of mining companies would also be facilitated by promoting constructive competition among multinational firms, both in business practices and reporting standards. The GRZ could establish a system of ESG rewards for best performers, and clearly define how ESG characteristics enter the criteria for project bids. Given the spread of many mining multinationals in neighboring countries such as the DRC, there is scope for sub-regional coordination with the SADC on this front.

2. For multinational companies:

- Companies must improve their wage structures and corporate cultures so as to increase the importance of ESG in everyday management and operations. In particular, training programs could help clarify the distinction between complete CSR and the narrower form of 'corporate social investment'. Restructuring incentives (for instance by tying employee compensation to ESG measures and not only to lowest-cost productivity) could moreover enhance the internalization of ESG behavior on the ground.
- CSR reporting must be complemented by external auditing and/or adherence to international codes of behavior. Given the scope for discrepancy between self-reported ESG behavior and concrete company performance, it is in companies' interests to report and audit their ESG performance as credibly as possible. In particular for firms like NFCA which face very high reputational risks, managers could gain by 'tying their hands' and abiding to voluntary international codes or – at minimum – frequently reporting independent audit results.
- There is substantial scope for learning across companies operating in the same sector: the China Nonferrous Metal Mining Group and its subsidiary the NFCA could for instance learn from China MinMetals Corporation, which has received UNGC recognition for the successful integration of ESG standards into its management system[270]. Companies should actively engage in and encourage competition and constructive peer pressure in terms of ESG standards.
- Coordinating learning and communication across corporations, domestic NGOs, governmental bodies and international agencies (as the Global Environmental Institute's *Integrated Policy Package for Overseas Chinese Enterprises* for instance attempts to do) may also provide a particularly promising framework for bridging the 'governance gap' between CSR principles and their implementation by companies overseas.

3. For governments of countries of origin:

- Governments should firstly harmonize the network of ESG requirements imposed on companies operating overseas (including aligning provincial and national regulations for state-owned companies, in the Chinese case). Country-of-origin governments could also seek to make their CSR recommendations compatible with those of Africa's Regional Economic Communities. Such harmonization would require active consultation with both multinational corporations and civil society organizations from host and investor countries.
- In addition to harmonization, national authorities could explicitly tie good ESG performance overseas to access to financing by national banks (such as China's Export Import Bank, or Export Development Canada). In particular the EIA requirements attached to these banks' loans should be aligned on country-of-origin ESG standards (for instance, on China's EIA law) rather than on the minimum environmental requirements of host countries.

- Investing countries need to strengthen and/or institutionalize a network for country-of-origin oversight of their companies' behavior overseas. In the case of China, China's own 'contact points' (the Economic and Commercial Councils) should be strengthened and their linkages with civil society should be more formally institutionalized. The state-owned nature of companies should subject them to greater oversight – not, as has been the case for NFCA, grant them greater operational discretion vis-à-vis host governments.
- Such frameworks for overseas monitoring should not only cover the operations of large companies, but also of smaller (private or provincial) entities. The particularity of China's 'special economic zones' in Africa and the umbrella role of companies such as NFCA suggests that the oversight of smaller companies could follow two strategies: either directly improving monitoring of these smaller firms, or working with larger companies in the aims of generating a form of ESG "trickle down" effect. Countries of origin and the international community at large must also gain a better understanding of the operations of less well-documented companies, and avoid sidelining them in ESG accountability frameworks.

4.4.3 Final Remarks: the crucial importance of ESG guidance following the economic downturn

Ensuring that multinational companies share an internalized and complete understanding of what ESG entails is particularly important today, in the aftermath of the global economic downturn. Indeed, absent a sound understanding of the importance of ESG (including as a business case), environmental measures may be sacrificed when profits drop. The economic crisis temporarily dampened commitment to environmental protection even by the Chinese Government: the Government "backpedaled on environmental restraints", relaxing environmental standards in favor of industrial output. In particular, "in the rush to invest USD $585 billion in stimulus spending to revive flagging industrial production", a "green passage policy" was put in place in late 2008. This policy accelerated the approval of industrial projects by reducing the number of days required for Environmental Impact Assessments, from a maximum of 60 to a minimum of 5. The strategy was first implemented by the MEP, and was then replicated and reportedly abused by provincial EPBs[271]. While the situation may since have improved, this is clear evidence of the threat that economic distress poses to sound environmental governance, both on corporate and governmental agendas. On the international level, it fortunately appears that many large multinationals have upheld their ESG commitments: the *2009 Global Compact Annual Review* finds that "corporate responsibility remains high on the business agenda despite the economic downturn"[272]. When asked whether the recent financial market turmoil had changed their ESG approach, most signatories to the *UNEP Principles for Responsible Investing* (PRI) likewise replied that it had either had no impact, or that the crisis had in fact "helped confirm the materiality of ESG issues to business operations"[273]. This recognition of ESG as a crucial component of firms' business strategies, even in the face of economic hardship, may not be shared by newer investors in Africa for whom the concept is more recent. The current global economic context therefore makes tailoring international codes of ESG conduct to the needs and specificities of emerging-market companies particularly urgent.

Anti-Chinese sentiment is growing on the African continent as a consequence of Chinese investors' poor ESG track record. In 2006 *Mine Watch Zambia* noted that the Zambian Government was "tiring of the

embarrassments caused by NFCA", particularly in view of the company's prolonged mismanagement and noncompliance with ECZ regulations [274]. Shannon Van Sant's interviews with Chambishi workers in 2009 reveal that NFCA unequivocally remains viewed as the "worst investor" in the Copper Belt, just as it was in 2006: Chinese presence continues to trigger tremendous resentment and anger in the local community. China's reputation is unlikely to remain unscathed in the upcoming 2011 Zambian presidential elections, in which the opposition candidate Michael Sata is once again expected to expound his anti-Chinese platform[275]. As the violent protests in several African countries over the past four years have demonstrated, the reputational consequences of poor ESG performance by Chinese investors are non-trivial. The NGO AccountAbility and the Development Research Center (DRC) of China's State Council both warn that, given China's position as a relatively recent investor in Africa, ESG malpractice moreover "creates the grounds for more overt protectionism and moralizing by the global community"[276]. As noted by SAIIA, as a result, "China is recognizing for the first time the political risks of its broader exposure to the African environment"[277]. International agencies, Chinese corporations, and both Chinese and African NGOs should take full advantage of this rising awareness on behalf of the Chinese government, and engage in a better-coordinated approach to develop a framework for "CSR with Chinese characteristics". In doing so, engagement with other emerging-market countries would be particularly useful. Indeed, civil society organizations and multinational companies from India, South Africa, and other fast-growing economic powers offer a vast pool of knowledge that is still waiting to be tapped.

SECTION V: Appendices

5.1 International Guidelines for Environmental and Social Governance

Box 1: Guidelines for Project Finance

Equator Principles: a set of voluntary principles on project finance created in 2002, stewarded by the International Finance Corporation (IFC). Under the EPs, projects are assigned ratings of A, B or C (high, medium, low) based on their potential environmental and social impact. This rating takes into account host country law, environmental impact, impact upon indigenous communities, and alternative environmental and social approaches. For A and B projects, the borrower must undertake an Environmental Impact Assessment (EIA) to address issues that were identified in the screening process, and create an Environmental Management Plan (EMP) based on conclusions from the EIA. Category C projects require no further assessment. The IFC also applies *Performance Standards on Social and Environmental Sustainability* to its financing applications; these are currently being reviewed and will be used in future as part of the Equator Principles.
To date over 35 banks have adopted the Equator Principles, accounting for approximately 90 percent of total global project finance. Participation is voluntary and is not subject to official implementation.

UNEP FI (**United Nations Environmental Programme: Financial Institutions**)**:** seeks to promote best environmental and sustainability practices at all levels of financial institutions' operations. This includes supporting projects that promote sustainable production and consumption patterns, environmentally sound technologies, and poverty reduction. UNEP FI focuses on six main activities, including promoting stable and sustainable investment in emerging markets, and providing environmental and sustainability training services for financial institutions in developing countries. Members include banks, insurers, asset managers, pension funds, and other categories of financial institutions, aiming to understand the links between sustainable development considerations and financial services[278].
The Finance Initiative has more than 170 participating financial institutions, including banks and insurers from over 50 countries.

Principles for Responsible Investing (PRI): This is a 2006 initiative under the UNEP FI above, which seeks to make environmental and social governance a part of investment analysis. The Principles are a set of voluntary best-practice standards that asset owners and asset managers pledge to uphold. Companies use disclosure to accelerate innovation, identify waste, and drive more efficient investment. ESG engagement programs cover environmental management (such as setting environmental standards along the supply chain, or pollution control), as well as ecosystem services (including biodiversity management), and climate change projects (such as emissions management and reporting)[279].
As of July 2010 the PRI included 769 signatories, including two Indian institutions, 28 South African participants, and 32 Canadian agencies[280] . China Investment Corp and China Banking Corp are also PRI signatories[281]. Brazil is a leader among emerging-market economies in this field, counting 42 signatories (however Brazilian signatories are noted to have faced 'considerable difficulties in implementing the Principles' and in achieving high self-assessment scores[282]).

Box 2: Guidelines for Environmental Management

The UN Global Compact: Ten Principles in the areas of human rights, labour, environment and anti-corruption; these can be subscribed to directly by businesses. The three principles relevant to the environment ask that businesses "support a precautionary approach to environmental challenges", "promote greater environmental responsibility", and "encourage the development and diffusion of environmentally friendly technologies"[283]. The UN Global Compact has also developed an *Environmental Stewardship Strategy*, which tackles four facets of ESG: embedding environmental stewardship into all facets of the organization; balancing short-term targets and long-term goals that are both critical to performance and environmental stewardship; diffusing best practices throughout value chains and business networks; and translating best practices into processes that are applicable in the diverse geographies in which firms operate[284].

By 2009, the UNGC counted 139 Chinese members, and involvement from China is on the rise. In August 2010 the UNGC is holding the "Global Compact High Level Forum China", and the "Forum on Corporate Responsibility in US and China Business Communities" (aimed at discussing best and emerging environmental protection practices by US and Chinese companies). Numerous Indian, South African and Canadian firms are also signatories. As of 30 June 2010, the UNGC counted 6,066 business participants[285].

OECD Guidelines for Multinational Enterprises: an international, inter-governmentally agreed norm on responsible business practice. These are adhered to by governments who agree to promote their use by businesses. Chapter V of the Guidelines deals with environmental management. The Guidelines are currently being renewed the Guidelines now, with a focus on their application in three areas: supply chains, human rights, and environment and climate change. Adhering countries are obligated to set up a National Contact Point (NCP) in their respective countries[286]. The NCP is a government office responsible for encouraging observance of the Guidelines in a national context; it gathers information on national experiences with the Guidelines, handles enquiries, and offers a forum for discussion and assistance to the business community. NCPs can also provide conciliation or mediation facilities[287].

Adhering countries include all 30 OECD member countries and 12 non-member countries (Argentina, Brazil, Chile, Egypt, Estonia, Israel, Latvia, Lithuania, Morocco, Peru, Romania and Slovenia).

The **OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones** has been developed following repeated concern within the OECD Investment Committee over implementing the OECD *Guidelines* in weak governance contexts. This Tool encourages due diligence for responsible supply chain management of minerals from conflict-affected and high-risk areas; currently a Pilot Project on the Tool's application in the mining sector is being conducted in the Democratic Republic of Congo (draft guidance is expected by the second half of 2010). The Tool "does not create new obligations on companies", but should be "used by companies in the context of their own assessment procedures"[288]. Therefore it cannot substitute for a strong disciplinary mechanism for CSR by enterprises in Africa.

Performance-based toolkits: besides these international codes of conduct for corporate management, several private-sector or public initiatives supply companies with performance-based toolkits that can particularly helpful for addressing more technical aspects of ESG behavior. Such toolkits include the Global Compact's *Environmental Principles Training Package*, the step-by-step ESG evaluation framework provided by Industry Canada's *Governance for Sustainability Guidelines*, or the *Planning for Integrated Mine Closure Toolkit* provided by the International Council on Mining & Metals (ICMM)[289].

Box 3: Guidelines for Reporting Standards

The **Global Reporting Initiative** (GRI): guidelines for corporate reporting on sustainable development issues. The cornerstone of the framework is the *Sustainability Reporting Guidelines*. The third version of the Guidelines (the G3 Guidelines) was published in 2006. These provide guidance for organizations to disclose their sustainability performance in terms of reporting principles (report content and quality), and in terms of what standard disclosures to include (company strategy and profile, management approach, and performance Indicators)[290].
In May 2010 the GRI signed an agreement with the *UN Global Compact* so as to harmonize their approaches. Under the terms of the agreement, the GRI will centrally integrate the Global Compact's ten principles in the next issue of its *Sustainability Reporting Guidelines*[291].

ISO 14000: a series of f international standards on environmental management. It provides a framework for the development of both the system and the supporting audit program. The ISO 14001 is the "Environmental Management Standard", and specifies the actual requirements for an environmental management system that can be certified by an external certification authority. ISO 14001applies to environmental aspects over which an organization has control and which it can be expected to influence. The standard is applicable to any organization seeking to: implement, maintain and improve an environmental management system; demonstrate conformance or ensure compliance with environmental laws and regulations; or seek certification of its environmental management system by an external third party organization[292].

The **Extractive Industries Transparency Initiative:** since its inaugural launch in 2005, the EITI promotes transparency on the revenue side of budget systems so as to facilitate more effective use of extractive industry revenues (especially in weak governance host countries). The EITI aims to set a global standard for transparency in oil, gas and mining; it is a "standard for companies to publish what they pay and for governments to disclose what they receive"[293]. The EITI requires that a public, financially sustainable work plan for such reporting is developed by the host government, including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints. This approach is extended to all companies including state-owned enterprises[294]. Since 2006 the EITI includes a Validation process for measuring the progress of both countries Candidate countries (which have not fully implemented EITI yet), and for Compliant countries. The initiative is open to both business and government participation.
50 of the world's largest oil, gas and mining companies support and actively participate in the EITI process. A number of governments (including Australia, Belgium, Canada, Denmark, Finland, France, Germany, Italy, the Netherlands, Norway, Qatar, Spain, Sweden, the United Kingdom and the United States) also support the EITI. South Africa, India and China have not yet demonstrated support at the national level.

Box 4: Application of the Global Environmental Institute's Integrated Policy Package in the Lao PDR

Over the last several years, the Global Environmental Institute (GEI) has focused on providing policy suggestions to the Chinese government on environmental protection and sustainable development. Following on GEI's demonstrable success in these efforts, since 2008 the NGO is undertaking a project on "Incentivizing Biodiversity Conservation and Climate Change Adaptation in Lao PDR" in cooperation with the government of the Lao PDR. This project aims both to help the Lao government improve its land and resources management capacity and realize sustainable development, and also to encourage positive change in China's overseas aid and investment. The project therefore addresses both sides of the 'ESG problem' covered in the current report: capacity-building on the host government side, as well as awareness-raising and sound environmental management practices on the company side.

More specifically, GEI's cooperation project seeks to promote GEI's Integrated Policy Package (IPP) in an effort to support biodiversity conservation and climate change mitigation in the Lao PDR. The IPP is "an integrated policy toolkit of market-linked mechanisms and planning tools" for environmental and social governance; these tools include: integrated resource planning; strategic Environmental Impact Assessments; Conservation Concessions Agreements; Payments for Ecosystem Services (PES); and Reducing Emissions from Deforestation and Forest Degradation (REDD). The primary purpose of the project is to expand the knowledge and capacity of government agencies concerning environmental governance through the policy tools in the IPP. GEI is currently assisting the Lao PDR in improving its land management and land concession legislation and enforcement, through introducing PES schemes and through the establishment of land exchange markets in three pilot sites. Capacity-building activities include seminars and workshops directed at the NLMA, WREA, MPI and other Lao government ministries.

On the company side, meanwhile, GEI aims to identify pilot project opportunities to improve the environmental behaviors of Chinese enterprises in Lao PDR. The pilot project currently underway investigates the involvement of Chinese companies in the Lao hydropower sector. The Nam Ngum 5 hydro project has been selected as a potential pilot; starting in November 2009 and built on a timeframe of 24 months, GEI will work closely with one or two Chinese hydropower enterprises (Sino-Hydropower or CWE) operating in Lao PDR as a pilot to improve understanding of the PES framework in Lao. Under the pilot project the hydropower companies will also sign an MOU with GEI, and collaborate with local communities to develop rural clean energy programs. This pilot project hopes to serve as a case study for GEI's Integrated Policy Package for Overseas Chinese Enterprises; this would provide a concrete foundation for GEI's work on "Guidelines on Environmental Behavior for Overseas Chinese Enterprises".

Particularly once GEI begins extending its IPP pilot projects to extractive industries in Africa, insights gained from the project in the Lao PDR are likely to provide guidance both for Chinese companies operating elsewhere overseas, and for host governments in the countries concerned.

Sources: *Global Environmental Institute 2008 Annual Report, "Environmental Governance Program"; and "Incentivizing Biodiversity Conservation and Climate Change Adaptation in Lao PDR: Project Executive Summary" (GEI, 2009).*

5.2 Graphs and figures

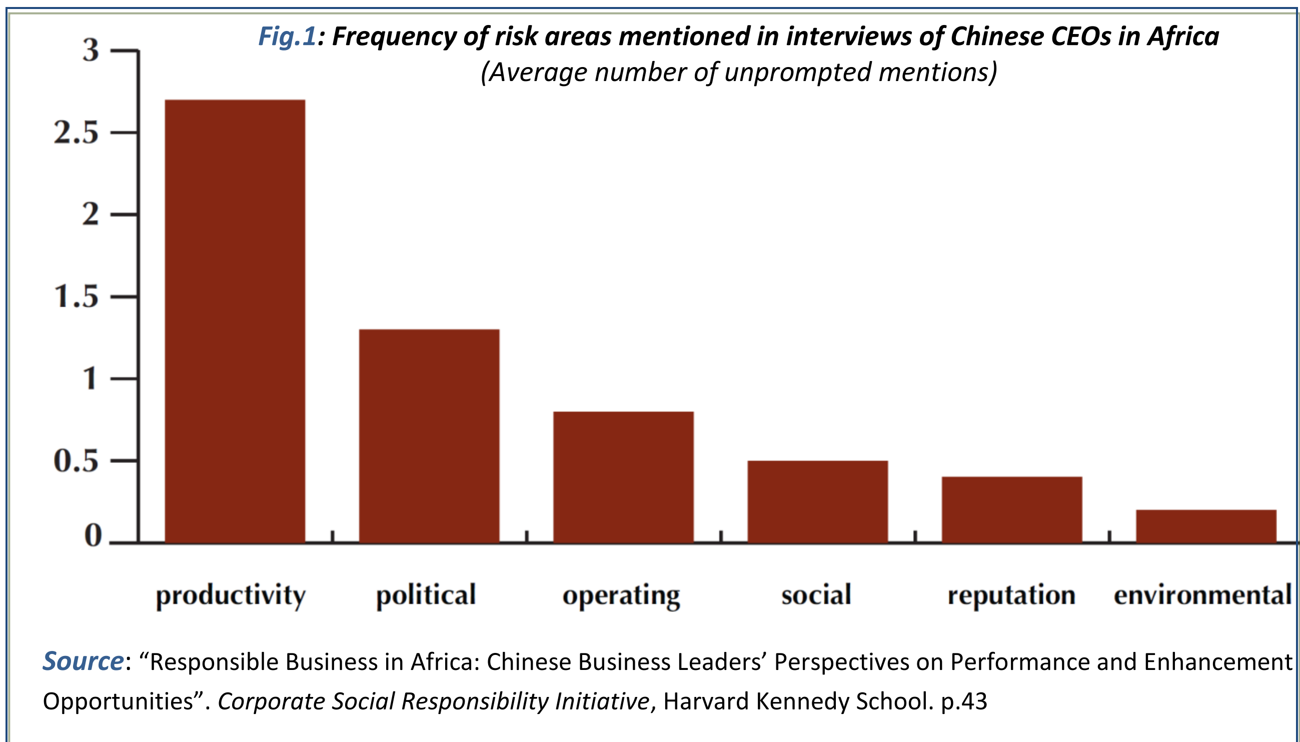

***Fig.1*: Frequency of risk areas mentioned in interviews of Chinese CEOs in Africa**
(Average number of unprompted mentions)

Source: "Responsible Business in Africa: Chinese Business Leaders' Perspectives on Performance and Enhancement Opportunities". *Corporate Social Responsibility Initiative*, Harvard Kennedy School. p.43

***Fig.3:* Popularity of actions taken by UNGC adherents worldwide to implement environmental practices and policies**

Employee training & awareness 62%
Impact assessment 59%
Good industry practices 57%
3R (reduce, re-use, recycle) 57%
Risk assessment 54%
Management system 48%
Corporate environmental (CER) or sustainability reporting 41%
Report emissions and strategic data 32%
Technology assessment 31%
Technology management 31%
Monitor supply chain 31%
Multi-stakeholder dialogue 28%
Eco-design 27%
Life-cycle assessment / approach (LCA) 26%
Emissions trading / CDM Projects 23%

0 20 40 60 80 100

Source: United Nations Global Compact Annual Review 2009 – Anniversary Edition. Released June 2010. "Environment in Practice". p.46

5.3 Comparative Matrices: MATRIX 1: NORMS AND REGULATIONS / INCENTIVES BY COUNTRY OF ORIGIN

Country	Government/ ministerial guidelines	Financial incentives: banking and insurance	Financial incentives: stock exchange	CSR reporting and monitoring pre- and post-implementation
China	- Nine Principles on Encouraging and Standardizing Foreign Investment, issued in October 2006 by the State Council. - Guidelines on Fulfilling Social Responsibility by Central Enterprises, issued in January 2008 by SASAC. - Ministry of Commerce is currently in the process of developing draft guidelines for TNCs. - *Use of international codes of behavior*: • In 2008 SEPA signed an agreement with the IFC to introduce the *Equator Principles* in China for use by domestic banks • The Government and local EPBs are encouraging enterprises to obtain *ISO 14001 certification*; certification is a	- Since 2007 *the China Export Import Bank*'s code of environmental conduct requires environmental impact assessment before, during, and after project implementation; funds can be withheld in case of poor performance. • The Bank's environmental guidelines require projects to comply with host country policies, but not international standards - Launched by SEPA in 20008, the *Green Credit Policy* co-ordinates environmental protection and credit administration. • Highly-polluting firms are disqualified from obtaining loans, and companies which already have loans can have these called in. • Applied by the Industrial and Commercial Bank of China (ICBC) since Sept. 2007, and by the Bank of China (BOC). - SEPA and the China Insurance Regulatory Commission (CIRC) jointly issued a *green insurance policy* in 2007.	- *Shenzhen Stock Exchange* (SSE) published its own set of social and environmental instructions for listed companies in 2006. • Instructions include: allocating human resources for regular inspection of ESG practices; reporting pollutant discharge to competent authorities; and paying fees in the case of over-pollution. • Application of these requirements overseas is limited however. - The SSE also released a *Social Responsibility Index* in August 2009.	- *Environmental Impact Assessment* (EIA)is a requirement for all development projects under the EIA Law 2002 • The MEP conducts nationwide checks on the implementation of EIAs and publishes the results on an annual basis. - By the end of 2008, 11 SOEs had published CSR reports. - The *Global Environmental Institute* (GEI), a Chinese NGO, is developing an *Integrated Policy Package for Overseas Chinese Enterprises* (IPP) since 2007. This has been approved and supported by the MEP and MOC, and aims to "investigate the environmental and social impacts caused by the overseas investment of Chinese enterprises" so as to develop a set of norms

	prerequisite in certain economic development zones.	- The 2008 SEPA *green securities policy* makes environmental audit a prerequisite for refinancing for 13 heavily polluting industries.		for the environmental behavior of these enterprises, including a financial and credit guide.
South Africa	- The *King Report* framework for responsible investing provide South Africa's CSR framework: King I, II and III give guidelines for CSR and stress environmental sustainability. - Yet the South African government does not have specific policies to regulate and monitor companies doing business overseas (in the SADC region).	- *Use of international codes of behavior*: most large South African banks adhere to the *UN Global Compact*, the *Equator Principles*, and the *UNEP: Financial Institutions*. • The EP's are the most popularly adhered to by banks and include ABSA, Nedbank, Standard bank and First Rand Bank. • Nedbank also issues "Green Mining Awards" to recognize achievements by mining companies across Africa. - Yet there is no existing South African government policy to regulate lending institutions outside South Africa.	- The *Johannesburg Stock Exchange* (JSE) has a Social Responsibility Index. - JSE listing requirements include commitments to an 'environmental management pillar'.	- Domestically-operating South African mining companies set annual targets for their consumption of water and energy, and waste management, and report on these issues in their periodic environmental assessments.
India	- Despite its EIA legislation, India had the lowest ESG standards of the five emerging-market countries surveyed in a 2009 IFC-commissioned report. - Weak general framework for CSR: the first guidelines on CSR were released in January 2010, with no specific focus on ESG or on overseas behavior.	- The *Export-Import Bank of India* has a very vague approach to ESG: its 2009-2010 Annual Report only mentions environmental concerns once, in the context of a loan agreement with the European Investment Bank that will support projects contributing to climate change mitigation. The Bank website gives no information on conducting EIAs for proposed overseas projects.	- While there are no ESG listing requirements or indices on the national stock market, S&P released an ESG index for India in 2010.	- EIA was formally introduced into Indian legislation in 1994. - In 2001 the Ministry of Environment and Forests released a Manual for EIA, which assists regulatory authorities by outlining EIA methodology. However this framework provides little ESG guidance for private corporations.

Canada	- Adheres to the *OECD Guidelines for Multinational Enterprises* - At the national level, guidelines are voluntary and follow a 'comply or disclose' framework. - Bill C-300, if passed, would stress the creation of more specific national and ministerial guidelines for mining companies.	- *Export Development Canada* (EDC) provides state-based project finance. EDC loans are subject to environmental assessment. • If Bill C-300 is passed, EDC funds could be withdrawn in case of poor ESG performance by mining companies overseas. • EDC has adopted the *Equator Principles* in 2007 • Since 2005 the EDC Environmental Policy also emphasizes environmental review of projects.	- Over 50% of the world's mining companies are listed on the *Toronto Stock Exchange* (TSX) - The TSX mandates mining companies to set allocations aside to a 'Closure Fund', for future plant de-commissioning. - Yet TSX ESG listing requirements remain quite lax (more so than for the JSE or SSE).	- Operating under the Ministry of the Environment, the Canadian Environmental Assessment Agency ensures that projects meet the Canadian Environmental Assessment Act. Enforced in 1995 and amended in 2003, this Act is the legal basis for federal environmental assessments. The Act only applies to domestic projects and corporations.

MATRIX 2: NORMS AND REGULATIONS / INCENTIVES BY HOST COUNTRY (Zambia)

Government/ ministerial guidelines	Financial incentives	Monitoring/ audit prior to project implementation	Monitoring/ audit post implementation	Relevant governmental bodies
- Zambia has a strong governance and investment framework. The OECD is currently applying its *Policy Framework for Investment* (PFI) in Zambia, with an aim to strengthen the government's capacity to implement investment policy. Responsible Business Conduct is one of the PFI's 10 focus areas. Zambia is also a	- The *Lusaka Stock Exchange* (LuSE) has a Corporate Governance Code for listed companies since 2005. - The *Bank of Zambia* issued a *Corporate Governance Guideline* for banks and non-bank financial institutions towards the end of 2006; in 2007, it issued draft	- The *Immigration Department* pays particular attention to proposed investments, including in terms of environmental impact. - Key steps for project preparation include : • Project brief submission to the Director of Mines Safety; the brief is	- Companies are required to report their performance to the *Environmental Council of Zambia* (ECZ) by law. - Companies that are likely to impact the environment must also submit a *Final Environmental Management Plan* (FEMP) to the ECZ.	- The *Environmental Protection & Pollution Control Act* of 1990 (EPPCA) set up the *Environmental Council of Zambia* (ECZ), which oversees all companies' environmental conduct in Zambia. - Within the *Ministry of Mines and Minerals Development*, the Mines Safety Department (MSD) monitors

candidate EITI country. - The *Companies Act* of 1994 has elements of good governance enshrined in law (being revised, remains voluntary). - Yet government enforcement capacity remains weak. Moreover these CSR guidelines can be overrun by the *Development Agreements* signed with mining companies at the time of privatization. The Agreements exempt firms from most ZCCM liabilities.	*Corporate Governance Code for SMEs and Large Non-Listed Companies*. • Yet little emphasis is placed on environmental performance in these codes, and loans are not made conditional on ESG performance.	forwarded to the ECZ. • An Environmental Impact Statement (EIS) is then submitted first to the Director of Mines Safety, and next to the ECZ which makes the final authorization decision.	-The Copperbelt Environment Project (CEP) is underway to reinforce monitoring capacity by the ECZ and other regulatory agencies. The CEP also gives companies more responsibility in terms of mine closure.	and enforces compliance with the *Mines & Minerals Environmental Regulations*. • However there are regulatory overlaps between the MSD and ECZ. -The *Ministry of Tourism, Environment and Natural Resources* was established in 2002; the MTENR Minister can at times overrule ECZ recommendations, limiting the ECZ's regulatory autonomy.

MATRIX 3: COMPANY COMPLIANCE TO ZAMBIAN AND INTERNATIONAL ESG REQUIREMENTS

Country of origin company concerned	ESG Management (and accordance with host-country regulations)	Impact assessment and reporting standards	Adherence to international guidelines	Caveats to company performance
Country: **South Africa** *Company*: **Metorex** *Mine*: **Chibuluma Mine**	- Submitted Environmental Impact Assessment and FEMP to ECZ. - FEMP included several measures for minimizing cover dust and water pollution by re-vegetating disturbed areas, implementing a monitoring program for water flow, levels, qualities and	- The mine conducts fortnightly safety and environmental checks and specifies its water quality, air quality and dust count in accessible reports. In 2008 all of these counts were in compliance with national regulations. - In 2009 Chibuluma Mine's environmental reporting	- No ISO14001 qualification, but meets listing requirements of the Johannesburg Stock Exchange (JSE). - Endorses the code of corporate governance as set out in the King II Report.	- South African companies in other African countries do not have such a good record (even in the case of Metorex: the Metorex-operated Ruashi Mine in Katanga, DRC, has a particularly poor environmental record.

	discharge, etc. - Sound environmental policy… consultation problematic in terms of resettlement though. - In 2009 Metorex established the Safety, Health, Environmental and Communities ("SHEC") Board sub-committee; this body will further develop the framework, policies and guidelines for SHEC management for all Metorex operations and subsidiaries.	system was under development; new steps taken to improve the mine's environmental impact included weekly sampling of effluent discharges. - No environmental incidents were reported for 2009. - Metorex's SHEC Board sub-committee conducts independent audits of the company's annual report; it has recommended a review of baseline risk assessments on the SHEC-related aspects of Metorex operations.		- While Metorex's performance in Zambia is particularly good in terms of environmental management, it has performed less well on the labor and health dimensions.
Country: **India** *Company*: **Vedanta Resources** *Mine*: **Konkola Copper Mines (KCM)**	- Vedanta has won an impressive number of awards for energy and environmental management. - All KCM greenfi eld projects undergo strict Environmental Impact Assessment (EIA) studies: an interim EMP was released in 1999, and a Final EMP was approved by the ECZ in May 2001. - KCM has also developed a Safety, Health, Environment and Quality (SHEQ) policy, and undertakes voluntary environmental projects for environmental stability.	- Vedanta provides annual sustainability reports fot its global operations. However KCM's reports provide insufficient information on measurable targets, such as levels of sulphur dioxide emitted by the KCM smelter. - The KCM reports suggest that Vedanta places great emphasis on the 'philanthropy' dimension of CSR, perhaps at the cost of more managerial approaches to incorporating ESG into business practices.	- The majority of Vedanta sites (including KCM) are ISO14001 certified; environmental systems are subject to regular internal and external audits. - Vedanta's annual Sustainability Reports use the Global Reporting Initiative's G3 Sustainability Reporting Guidelines. -	- Vedanta's early ESG performance at the KCM mine was particularly poor; while remedial measures (totaling USD $6.135 million) were taken following the Kafue river spill, civil society groups note that these were not fully implemented, or undertaken with considerable delay.

Country: **Canada** *Company*: **First Quantum Resources** *Mine*: **Kansanshi Mines** (and minority ownership in Mopani Copper Mines, MCM).	- The company has environmental management systems in place at each of its operations, which include the preparation of annually-reviewed closure plans. - However since 2008 Kansanshi is in a dispute with the GRZ with respect to the tax legislation; this place a strain on future investor-government relations, including in the field of ESG.	- First Quantum publishes both an annual Carbon Disclosure Report and a Sustainability Report. - These reports also place some focus on the 'social investment' side of ESG: First Quantum has set up a game management area within the Kansanshi concession, and a biodiesel initiative with planting Jatropha trees.	- First Quantum ensures that the management systems at its operations comply with ISO 14001. - Use of *OECD Guidelines for MNEs*: in 2001, this conciliation facility was used to explore First Quantum's relocation of the local population; Oxfam Canada submitted the operations to the Canadian NCP.	- First Quantum has faced several problems with its environmental management in the past: heavy metal effluents being discharged into rivers that supply drinking water posed a problem particularly at the Mopani Concession.
Country: **China** *Company:* **Non-Ferrous Company Africa** (NFCA, subsidiary of the state-owned China Nonferrous Metal Mining Company, CMMC) *Mine:* **Chambishi Mine**	- NFCA submitted its Final Environmental Management Plan (FEMP) and draft Environmental Impact Statement (EIS) to the ECZ in 2006; this complies with Zambian legislation, but the documents were published with an 8-year delay. - While NFCA does place officers in charge of health, safety and the environment, these are often junior officers; the company's management demonstrate a strong preference to minimize costs, at the cost of environmental mitigation.	- Unlike for the other multinationals studied, the CNMC website provides no annual ESG reports for NFCA's operations. - NFCA has maintained a poor CSR reporting record since acquiring Chambishi Mine. - NFCA's account was not signed off on by Deloitte & Touche due to insufficient financial disclosure. - Transparency records are also poor in terms of NFCA's relationships with the Zambian government: the GRZ plays a 'broker role' between NFCA and local stakeholders, curtailing the company's learning process.	- No ISO14001 qualification, but is accountable to SASAC as it is a subsidiary of the state-owned CNMC - Rather than using international guidelines as a benchmark, NFCA's baseline commitment in its EMP is that the company "will at least come into compliance with the national legal framework". - Potential for more linkage to country of origin through the local branches of the MOC (ECCs, or Economic & Commercial Councils).	- The company's FEMP and EIS are not accurate reflections of whether ESG standards have been built into the enterprise's operating strategy, as they were mostly drafted by external consultants. - ESG is narrowed down to philanthropy, particularly strongly in the Chinese case. - NFCA's ESG approach involves mostly superficial commitments, rather than managerial internalization of ESG.

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