

## **CTC RESPONSE TO THE GOVERNMENT OF CANADA NCP FINAL STATEMENT ON CHINA GOLD INTERNATIONAL RESOURCES INC**

### **Background**

On Friday, March 29, 2013, Chinese state media reported that 83 miners were buried after a major landslide hit part of the Gyama Copper Polymetallic Mine. The camp where the workers were buried belongs to Tibet Huatailong Mining Development Ltd., a wholly owned subsidiary of Vancouver-based China Gold International Resources Corp. Ltd (China Gold).

Although the company stated that the landslide was a natural disaster, there was considerable evidence that it was a manmade disaster and that the company had ignored previous warnings and local protests.<sup>i</sup> The mine had already been the subject of numerous unresolved disputes with local communities related to discriminative hiring practices, forced evictions and expropriation of land, violations of the freedom of expression, assembly and to information, and the inability to obtain effective remedy.

In January 2014, the Canada Tibet Committee submitted a “request for review” to Canada’s National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises, alleging violations of the Guidelines’ articles on human rights, environmental protection, and disclosure. The NCP final concluding statement, which closes the review process, was released by Canada’s Ministry of Foreign Affairs, Trade and Development on April 8, 2015.

### **What the final statement says**

The Government of Canada NCP concludes that allegations made by the Canada Tibet Committee were partially substantiated and that they merited further investigation. The NCP statement reveals that it made numerous attempts to reach out to the company during the review process, but that the company declined to participate or did not respond.

The NCP’s final statement emphasizes the recent adoption by the Government of Canada of its enhanced CSR Strategy - *Doing Business the Canadian Way: A Strategy to Advance Corporate Social Responsibility in Canada’s Extractive Sector Abroad*<sup>ii</sup> in which new measures were announced for companies that refuse to participate in the NCP process. Such measures include the withdrawal of Trade Commissioner Services and other advocacy support abroad including the issuance of letters of support, advocacy efforts in foreign markets, and participation in Government of Canada trade missions.

The final statement makes recommendations to China Gold with respect to human rights due diligence including the importance of undertaking human right impact assessments of the potential impacts of anticipated activities, and of disclosing any past or future reports.<sup>iii</sup>

The final statement refers to specific human rights violations that had been alleged by the Canada Tibet Committee regarding labour practices and resettlement as well as freedom of association and assembly, stating that these “appear to be Government of China policies” and therefore “beyond the mandate of the Canadian NCP”.<sup>iv</sup>

### **Canada Tibet Committee response**

The Canada Tibet Committee thanks the Government of Canada NCP for its efforts over the past 14 months. The NCP office has been responsive and helpful throughout the process. Notwithstanding good intentions however, the ability of the NCP to affect change in Tibet’s Gyama Valley is limited by its mandate including the inability to investigate specific allegations, to compel company participation in the review process, or to apply corrective action.

The new measures adopted by Canada for companies that refuse to cooperate with the NCP process do not go far enough. For example, they do not remove access to the protections offered to companies via Canada’s bilateral investment treaties<sup>v</sup> nor do they appear to exclude access to trade services provided by provincial governments. In fact, even as the NCP statement is released, China Gold is participating in a Government of British Columbia trade mission to Indonesia and China<sup>vi</sup>. It remains to be seen whether or not companies that refuse to participate in the NCP process will continue to receive support from Canada’s export credit agency, Export Development Canada, because references to the EDC in the CSR Strategy are vague.

With respect to recommendations for enhanced human rights due diligence, the Canada Tibet Committee supports such practices in theory, but does not believe that a credible human rights impact assessment can be carried out in present-day Tibet<sup>vii</sup> where access to information and freedom of assembly are tightly controlled by the state<sup>viii</sup>. The free expression of dissent commonly results in detention and lengthy prison sentences<sup>ix</sup>. In the absence of an enabling environment for stakeholder engagement, no ex-ante impact assessment will meet its objective.

The Canada Tibet Committee had hoped for a broader reading of the Guidelines concerning companies’ responsibility when human rights standards conflict with national policies or law. While it is true that the OECD Guidelines are voluntary in nature and do not override policies or laws in other countries, they do suggest that companies should act when those laws or policies conflict with the Guidelines, stating that “... in countries where domestic laws and regulations conflict with the principles and standards of the Guidelines, enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law”<sup>x</sup>.

### **Mixed messages from the company**

In 2014 the Government of China’s Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters adopted its own “Guidelines for Chinese Mining Companies Operating Abroad” that endorse a range of international human rights standards, including the OECD Guidelines.<sup>xi</sup> Subsequently, in October 2014, the Government of China signed a Memorandum of Understanding with the OECD “setting out the conditions for co-operation to promote the

implementation by Chinese companies of responsible business conduct in global mineral supply chains<sup>xii</sup>. Yet despite these commitments to cooperate, the Government of China was unwilling or unable to compel China Gold – the Canadian face of a state-owned company - to respond to Government of Canada NCP inquiries.

China Gold's refusal to engage the OECD review exposes a double standard not only on the part of the Government of China, but also by the company itself. When responding to a question during China Gold's June 18, 2014 shareholder meeting in Vancouver, Board Chairperson Xin Song told shareholders present that he was "not concerned at all" about the review and that the company "welcomes independent reviews or any reviews" adding "my answer is yes, we will respond to it"<sup>xiii</sup>. Yet, the NCP final statement reveals that at the time of the shareholder meeting, the company had already informed the NCP on April 11, 2014 that it would not participate in the process. That position was reiterated on August 14, 2014, when China Gold wrote to the NCP declining to respond with comments on the initial assessment. All subsequent requests from the NCP went unanswered by China Gold.<sup>xiv</sup>

## Conclusion

If China Gold really wants to be a Canadian company, then it must reflect Canadian values and accept corresponding responsibilities in all its operations including those in Tibet. If however, China Gold wishes to remain essentially a Chinese company operating under a Canadian flag of convenience, then this raises serious concerns for government policy makers seeking to promote the OECD Guidelines and implement Canada's new CSR Strategy in Tibet and elsewhere.

Beyond the questions inherent in Chinese state-owned companies registered as Canadian entities, the fact remains that human rights are under siege in Tibet and that - as the Government of Canada NCP notes in its final statement – Government of China policies and laws are responsible. In this context, can any Canadian company investing in Tibetan areas be expected to comply with the OECD Guidelines or Canada's new CSR Strategy? If they can, what conditions would be necessary to make that true?

One suggestion might be to take a look at the US *Tibetan Policy Act of 2000*. The Act identifies conditions for lenders, non-governmental organizations and "US entities" seeking to participate in the economic development of Tibet. These conditions include conducting ex-ante impact assessments, ensuring Tibetan participation, allowing independent monitors, excluding resettlement components, and excluding the transfer of land or natural resources to non-Tibetans.<sup>xv</sup>

In the absence of similar legislation in Canada, trade commissioners based in the Canadian Embassy and Consulates in China should, at the minimum, provide informed and timely human rights briefings and risk alerts to Canadian companies (including Chinese companies registered in Canada) that are considering investment in Tibet, accompanied by guidance on how to support the interests of affected communities and protect their basic human rights throughout the life of the project. This approach must apply not only to the extractive sector but to any economic

sector where Canadian companies are involved in Tibet including construction, hydro, railways, pulp and paper, financial services, agriculture, cultural exchange, or telecommunications.

At its core, human rights policy is about people. In Tibet, the people are not able to exercise their basic human rights because they live in a pervasive climate of fear and intimidation. If the international community is unable to change that situation for the better, then it must refrain from actions that entrench it or make it worse. That means not encouraging or assisting Canadian investment in Tibet until Tibetans can freely obtain information, express opinions and dissent without reprisal, and until they can seek and obtain effective remedies when human rights violations occur. Until Tibetans are assured their basic human rights, Tibet must be designated as a “no-go zone” for Canadian investment.

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<sup>i</sup> Wong, Edward. 2 April 2013. *Fatal Landslide Draws Attention to the Toll of Mining on Tibet*

[http://www.nytimes.com/2013/04/03/world/asia/deadly-tibetan-landslide-draws-attention-to-mining.html?\\_r=0](http://www.nytimes.com/2013/04/03/world/asia/deadly-tibetan-landslide-draws-attention-to-mining.html?_r=0)

<sup>ii</sup> The Government of Canada’s CSR Strategy is found at: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse.aspx?lang=eng>

<sup>iii</sup> Government of Canada NCP final statement, para 38.IV and 38.VI

<sup>iv</sup> Government of Canada NCP final statement, para 32

<sup>v</sup> The Canada-China Foreign Investment Promotion & Protection Agreement (FIPPA) was ratified in October 2014.

It is available at: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/fipa-apie/china-text-chine.aspx?lang=eng>

<sup>vi</sup> According to a Government of British Columbia media release, China Gold participated in its trade mission to Indonesia and China from March 27-April 9, 2015. The mission was led by BC’s Minister of International Trade Teresa Wat. <http://www.newsroom.gov.bc.ca/2015/03/spring-trade-missions-showcase-bcs-diverse-export-market-in-asia.html>

<sup>vii</sup> Efforts to carry out an HRIA in Tibet are documented in *Tracking Dissent on the High Plateau: Communications Technology on the Gormo-Lhasa railway*, Rights & Democracy, 2009 <http://www.bhrd.org/fe/view.php?id=130#rm>

<sup>viii</sup> This is particularly true in cases related to the extractive sector. See Canada Tibet Committee submission to the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, January 2015.

<http://tibet.ca/media/PDF/SubmissionSRFreedomAssembly.pdf>

<sup>ix</sup> The *US State Department Report on Human Rights 2013* notes that “Tibetans who spoke to foreign reporters, attempted to provide information to persons outside the country, or communicated information regarding protests or other expressions of discontent through cell phones, e-mail, or the internet were subject to harassment or detention.

<http://www.savetibet.org/state-department-report-on-human-rights-2013/>

<sup>x</sup> *OECD Guidelines for Multinational Enterprises*, Section I, Concepts and Principles, paragraph 2.

<http://mneguidelines.oecd.org/text/>

<sup>xi</sup> *Guidelines for Social Responsibility in Outbound Mining Investments*, Government of China, 2014

[http://www.srz.com/files/upload/Conflict\\_Minerals\\_Resource\\_Center/CCCMC\\_Guidelines\\_for\\_Social\\_Responsibility\\_in\\_Outbound\\_Mining\\_Operations\\_English\\_Version.pdf](http://www.srz.com/files/upload/Conflict_Minerals_Resource_Center/CCCMC_Guidelines_for_Social_Responsibility_in_Outbound_Mining_Operations_English_Version.pdf)

<sup>xii</sup> *China and OECD to co-operate on promoting the responsible sourcing of minerals*, OECD, October 24, 2014

<http://mneguidelines.oecd.org/china-oecd-cooperation-responsible-sourcing-of-minerals.htm>

<sup>xiii</sup> Translation from the original Chinese by China Gold interpreter present at the shareholder meeting.

<sup>xiv</sup> Government of Canada NCP final statement, paras 23-29

<sup>xv</sup> The Tibetan Policy Act of 2002, H.R.1646, Foreign Relations Authorization Act, Fiscal Year 2003, P.L. 107-228, Subtitle B–Tibet Policy at <https://www.savetibet.org/policy-center/tibetan-policy-act/>