

**Request for Review Submitted to Canada's National Contact Point Pursuant to the
OECD Guidelines for Multinational Enterprises**

Specific Instance Regarding:

**The Operations of China Gold International Resources Corp. Ltd., at the Copper
Polymetallic Mine at the Gyama Valley, Tibet Autonomous Region**

January 28, 2014



Submitted by:

Canada Tibet Committee
1425 René-Lévesque Blvd West, 3rd Floor
Montréal (Québec) H3G 1T7, Canada

Prepared by:

Cynthia D'Cruz LLM, Researcher, Canada Tibet Committee
Carole Samdup, Executive Director, Canada Tibet Committee

Submitted to:

Canada's National Contact Point
OECD Guidelines for Multinational Enterprises
Foreign Affairs, Trade and Development Canada
125 Sussex Drive
Ottawa, ON K1A 0G2

Request for Review Submitted to the Canadian National Contact Point Regarding the Operations of China Gold International Resources Corp. Ltd at the Copper Polymetallic Mine on the Gyama Valley, Tibet Autonomous Region.

Pursuant to the Organization for Economic Co-Operation and Development's Guidelines for Multinational Enterprises (OECD Guidelines), the Canada Tibet Committee (CTC) submits the present request for review to Canada's National Contact Point (NCP) regarding the conduct of China Gold International Resources Corp. Ltd (China Gold) in the Tibet Autonomous Region of China at the Gyama mine site (Ch. Jiama).¹

The CTC has brought this case to the attention of the NCP in Canada as there is no NCP office in China. China Gold is registered in Canada with its Corporate Headquarters in Vancouver, and the company is listed on the Toronto Stock Exchange.

For reasons of personal security, members of affected communities are unable to bring forward public complaints and the CTC is acting on their behalf based on testimony recorded by information-gathering organizations, and other protected communications. Precedent for non-governmental organizations advocating on behalf of anonymous complainants in Tibet was set by the World Bank Inspection Panel (WB INSP/R2000-4), which cited a prevalent "climate of fear" in Tibet deterring affected parties from coming forward publicly.²

The Canada Tibet Committee (CTC) is an independent non-governmental organization (NGO) registered as a federal not-for-profit organization. The CTC promotes human rights and democratic freedoms for the Tibetan people. Contact: Carole Samdup, Executive Director at Canada Tibet Committee, (carole@tibet.ca) (www.tibet.ca)

China Gold International Resources Corp. Ltd (China Gold) is a Canadian based, gold and copper producer.³ The company operates two producing mines: the CSH Gold Mine in Inner Mongolia Region; and the Gyama Copper-Polymetallic Mine in Tibet Region. China Gold is the flagship and the only overseas listing vehicle of the largest gold producer in China, China National Gold (CNG) which is a state-owned enterprise. China Gold acquired the Gyama mine in 2010 from China National Gold (which owned 51%) and Rapid Result Investments of the British Virgin Islands which owned 49%.

The People's Republic of China (China) is a one-party state, with actual power lying with the Communist Party of China. The country is governed under the constitution of 1982 as amended. The unicameral legislature is the National People's Congress (NPC), consisting of deputies who are indirectly elected to terms of five years. The NPC decides on national economic strategy, elects or removes high officeholders, and can change China's constitution; it normally follows the directives of the Communist party's politburo.⁴ The current head of state is President Xi Jinping.

¹ We have used the Tibetan name "Gyama" throughout this submission unless in a direct quote or title.

² World Bank. 2000. *China - Gansu and Inner Mongolia Poverty Reduction Project: Qinghai Component - Inspection Panel Investigation Report*. Washington, DC: World Bank. p.52, para.119

³ China Gold International Resources Corp Ltd. 2014. *Company Overview*.

⁴ The Columbia Electronic Encyclopedia, 6th ed. 2012. *China*. Columbia University Press.

China has ratified core human rights treaties including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the International Convention on the Elimination of Racial Discrimination (ICERD) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). China has signed but not yet ratified the International Covenant on Civil and Political Rights (ICCPR).⁵ China is party to some International Labour Organization conventions including #111 on discrimination (employment and occupation) and #155 on occupational health & safety.⁶ China is not a member of the OECD.

Stakeholder Interest: The CTC has monitored and reported upon the human rights situation in Tibet since 1987. Since 1997, the CTC has been actively involved in raising awareness about potential human rights and environmental impacts of mining in Tibet. The Gyama mine project was first brought to the CTC's attention in 2008. In March 2013, the CTC was notified of a landslide at the Gyama mine. Personal testimony and academic investigation revealed conflicting information and evidence of possible persistent violations of human rights and environmental protection in the project area. Given that China Gold is a Canadian company, the CTC is an appropriate stakeholder to bring the case to the NCP. The CTC believes that China Gold's actions and activities constitute non-observance of the OECD Guidelines for Multinational Enterprises.

Sources:

China Gold International Resources Corp Ltd. 2014. *Company Overview*. Last accessed on 10 January 2014 at <http://www.chinagoldintl.com/corporate/overview/>

International Labour Organization. 1996-2012. *Ratifications for China*.
https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103404

Signalfire. 18 October 2010. *Tibetans protest against acquisition of Gyama mine by Canadian company*. Last accessed on 10 January 2014 at <http://www.signalfire.org/?p=4442>

The Columbia Electronic Encyclopedia, 6th ed. 2012. *China: Government*. Columbia University Press. Last accessed on 10 January 2013 at <http://www.infoplease.com/encyclopedia/world/china-government.html#ixzz2hLq987zT>.

University of Minnesota Human Rights Library. 2014. *Ratification of International Human Rights Treaties – China*. Last accessed on 10 January 2013 at <http://www1.umn.edu/humanrts/research/ratification-china.html>.

World Bank. 2000. *China - Gansu and Inner Mongolia Poverty Reduction Project : Qinghai Component - Inspection Panel Investigation Report*. Washington, DC: World Bank.
<http://documents.worldbank.org/curated/en/2000/04/728948/china-gansu-inner-mongolia-poverty-reduction-project-qinghai-component-inspection-panel-investigation-report>.

⁵ University of Minnesota Human Rights Library. *Ratification of International Human Rights Treaties – China*.

⁶ International Labour Organization. 1996-2012. *Ratifications for China*.

CONTENTS

- I. Introduction, page 4
 - II. Specific concerns with reference to the OECD Guidelines, page 5
 - A. Environment, page 5
 - B. Human Rights, page 9
 - C. Disclosure, page 15
 - III. Conclusion and summary of remedies sought, page 16
 - IV. Appendix, page 19
 - A. List of OECD Guideline paragraphs referenced in this submission, page 19
 - B. Summary of past conflicts around the Gyama mine operation, page 21
-

This request for review contends that China Gold has violated and continues to violate the OECD Guidelines for Multinational Enterprises (OECD Guidelines) in its operations at the Copper Polymetallic Mine on the Gyama Valley. It seeks the good offices of the Canadian National Contact Point (NCP) to bring China Gold into compliance with the guidelines and makes recommendations for how this can be achieved. This request for review asks that the NCP bring about a dialogue between representatives of the Canada Tibet Committee (CTC) and China Gold for the purposes of resolving the issues of concern raised herein.

I. INTRODUCTION

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 at 06:00 local time. The camp where the workers were buried belongs to Tibet Huatailong Mining Development Ltd., a wholly owned subsidiary of China Gold International Resources Corp. Ltd. There were no survivors. The workers were reportedly asleep in their tents when they were buried by a mass of mud, rocks and debris, three kilometres wide and thirty metres deep. The landslide occurred in the Pulang Valley in Siphug Village of Tashi Gang Town in Central Tibet (Tibet Autonomous Region TAR).

Although the Government of China has stated that the landslide was a natural disaster, there is documented evidence that this was in fact a manmade disaster and that the company had ignored previous warnings and local protests.⁷ Investigation also reveals that numerous other disputes with local stakeholders have festered unresolved and are indicative of a range of continuing violations of the OECD Guidelines.

With respect to the **environment**, the OECD Guidelines provide that China Gold has a responsibility to “take due account of the need to protect the environment, public health and safety” (VI.preamble). This request for review maintains that China Gold has not and is not meeting OECD Guideline standards in the operations of its copper polymetallic mine

⁷ Wong, Edward. 2 April 2013. *Fatal Landslide Draws Attention to the Toll of Mining on Tibet*.

in the Gyama Valley. Lack of compliance has resulted in serious environmental consequences, consequences for human safety including loss of life, and potential long term consequences for human health in local communities.

With respect to **human rights**, the OECD Guidelines provide that China Gold has a responsibility to “*respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments*” (II.A.2). This request for review maintains that the operations of China Gold have not respected human rights of local men and women as illustrated by discriminative hiring practices, forced evictions and expropriation of land, violations of the freedom of expression and to information, and the inability to obtain remedy.

With respect to **disclosure**, the OECD Guidelines suggest that companies should make available information regarding “*social, ethical, and environmental policies of the enterprise and other codes of conduct to which the company subscribes (VI.1.a) and its performance in relation to these statements....*” (VI.2.a). China Gold has failed to disclose accurate information about the environmental risks associated with the project; it has failed to disclose the full impact of the project to local communities; and it has failed to allow independent inspectors to ascertain the causes of the March 29, 2013 landslide disaster that took 83 lives.

Note: This submission makes references to specific paragraphs in OECD Guidelines chapters II (General Policies); III (Disclosure); IV (Human Rights); V (Employment and Industrial Relations); and VI (Environment). The paragraphs are identified inside brackets following quotations and they are compiled in appendix A.

II. SPECIFIC CONCERNS WITH REFERENCE TO THE OECD GUIDELINES

A. ENVIRONMENT

The March 29, 2013 landslide that resulted in 83 deaths, was preventable and it was a result of China Gold’s failure to undertake sufficient due diligence, to design and implement adequate mitigation measures, or to disclose accurate information about environmental risk of the project. These failures resulted in loss of life and created obstacles for the families of victims to appeal for compensation.

After the March 29, 2013 landslide had taken place, China’s Propaganda Office portrayed the accident as a “natural disaster”. Experts, however, have contested this statement, and presented disputing evidence.

- **Official analysis from Chinese sources:**

According to Chinese state media, an academic with the Chinese Academy of Engineering, named Dorje, examined the situation and stated that: “The area from which the landslide originated was previously covered by large glaciers. Rocks hidden under the glaciers broke into smaller, loose rocks over a long period of time due to thermal expansion and

contraction stress, as well as rainy and snowy weather.”⁸ Dorje further stated that “the smaller rocks near the source of the landslide collected together and snowballed into a massive landslide that was incredibly destructive.”⁹

Another team of experts led by Cen Jiafa, a researcher from the Ministry of Land and Resources, provided similar analysis. His report stated that about “300,000 cubic meters of loose stone and soil triggered the landslide on the east slope of Zeri Mountain, in Zhaxigang village, Maizhokunggar county.”¹⁰ He said that at approximately 06:00 on March 29, the land gave way and rushed down from an “altitude of 5,359 meters on the mountainside to 4,535 meters, leaving 2 million cubic meters of debris spread across 2 kilometers.”¹¹ Part of the slope was hollowed after the landslide and long cracks in the mountain surface were visible - the longest was about 600 meters. These government experts concluded that the igneous and sedimentary rocks began to disintegrate and that the water from melting snow was absorbed into the mountainside and undermined the slopes stability.¹² Therefore it was the “steepness of the slope, disintegrating rock and water from snowmelt combined to cause the landslide.”¹³

- *Alternate external analysis*

The Environment and Development Desk (EDD) of the Department of Information and International Relations (Central Tibetan Administration), asserts that the landslide in Gyama was “a man-made phenomenon rather than a natural disaster.”¹⁴ Contrary to information provided by Chinese officials, the EDD argues that the rocks had been disintegrated into smaller pieces not due to glacial dynamics, but rather as part of the mining process.

EDD presented evidence to suggest that loose rocks that turned into a landslide came from the surface mining at the top of the mountain, which had been dumped on the eastern flank from where the landslide occurred.¹⁵ In addition, the fact that the rocks that formed the landslide were of similar size and shape suggests that they were not fragmented by any process, such as “thermal dynamics of glaciers but rather crushed into particular sizes for processing.”¹⁶

Evidence supporting this conclusion is found in a technical report issued by the company which states that “excavated rocks will be crushed into sizes smaller than 300 mm.”¹⁷ Normally a natural landslide will cause rocks to disintegrate in varying sizes, while a mechanized crushing could only yield rocks of defined sizes.

Furthermore the EDD pointed out, if rocks had actually disintegrated due to snowmelt and

⁸ Central Tibetan Administration. 9 April 2013. *Assessment Report Of The Recent Landslide Event In The Gyama Valley: It's Possible Cause and Impacts*, 6.

⁹ Ibid.

¹⁰ Moon, Adrian. April 11, 2013. *A landslide in Tibet*, 5.

¹¹ Ibid.

¹² Ibid.

¹³ Central Tibetan Administration. 9 April 2013. *Assessment Report Of The Recent Landslide Event In The Gyama Valley: It's Possible Cause and Impacts*, 6.

¹⁴ Ibid., 7.

¹⁵ Ibid.

¹⁶ Ibid, 10.

¹⁷ Ibid.

thermal dynamics, there should also be similar cases of landslide in other regions covered with snow and glaciers across Tibet. Thus, this would beg the question; if the entire area was environmentally fragile then why did the landslide occur only at the site of mining and not anywhere else?¹⁸

EDD believes that excessive dumping of these rock waste and tailings in the steep slopes of the mountain disturbed the stability of the slope and “increased its vulnerability to fail.”¹⁹ The excessive dumping, which began during the second-half of 2010, had an annual mining and processing capacity of 6,000 tons a day.²⁰ The report stated that “If 6000 tons were processed per day, it would amount to approx. 2.19 million tons per annum, which will add up to approx. 3.5 million tons for the 20 months from mid-2010 till March 2013.”²¹ Considering this evidence in combination with the fact that the surface mining was carried out at the top of a prominent mountain, it is believed that an estimated 1.89 million cubic meters of material was removed from the mountaintop reducing it to a flat ridge-like structure.²² The debris from the excavation was then dumped on its eastern flank down the valley. Chinese state media reported that the amount debris involved in the landslide was approximately 2 million cubic meters. This number matches the EDD’s calculation of the missing material from the mountaintop.²³

High explosives and blasting agents used during the exploration carried out in the adjoining areas was also a contributing factor. When the slope could no longer hold the weight of several million tons of debris, the whole pile plummeted down the valley and the ensuing force pushed it 3 km's away. This situation resembles the process of ‘debris avalanche’ or ‘waste avalanche’, which is a type of landslide characterized by the chaotic movement of rocks soil and debris mixed with water or ice.²⁴

This evidence suggests that the landslide was a gradual process, and not a sudden environmental event. According to the protocol of the OECD guidelines companies are responsible for providing reports on the environment where they carry out their projects as well as assessments and evaluations of the safety concerns of these areas, stating that enterprises should: “*Establish and maintain a system of environmental management appropriate to the enterprise, including; a) collection and evaluation of adequate and timely information regarding the environmental, health and safety impacts of their activities*” (VI.1.a, and preamble).

Furthermore, the OECD guidelines go as far as to state that should the area be found to be unsafe, then activities should be ceased until circumstances prove safe again for employees to carry out their work, or take concrete actions to minimise serious damage to environment, human health and safety: “*[c]onsistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.*” (VI.4). The disaster also reveals that China Gold failed to “*Maintain contingency plans for*

¹⁸ Ibid., 6.

¹⁹ Ibid., 10.

²⁰ Ibid., 7.

²¹ Ibid.

²² Ibid., 10.

²³ Ibid.

²⁴ Ibid.

preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies... ” (VI.5). There is no evidence that appropriate precautions were taken suggesting negligence and lack of due diligence on the part of China Gold.

- ***Failure of China Gold to act on independent scientific advice regarding serious environmental and health risks***

China Gold had received a report advising further study of environmental risk in the mine area before expanding operations in Gyama. A pre-feasibility study technical report for the phase II expansion of the Gyama project carried out by Minacro Mine Consult (MMC), Brisbane, Queensland, Australia, in November 2012, recommended that five additional detailed mine planning studies were required to be conducted prior to operation in the region. MMC recommended that these additional studies should:

- “1) Confirm, optimize and improve pit designs, scheduling and equipment selection for South Pit and Jiaoyan (this will require further geotechnical work but this work has potential to improve project economics);
- 2) Confirm final design parameters for South Pit and Jiaoyan, particularly those relating to the overall pit slope angle of 43 degrees, which are considered conservative;
- 3) Confirm final design parameters used for the underground mine (this will require further geotechnical work).”²⁵

In addition, the report articulated the need for further geotechnical studies to better understand the rock mechanics related to the Jiaoyan Pit, South Pit and the underground mine. The report further suggests geotechnical work, such as “rock stress testing, research on rock mass strain properties and ground pressure observation and analysis.”²⁶ To our knowledge, China Gold did not comply with these recommendations.²⁷ The OECD guidelines require that companies “*protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development.*” (VI.preamble).

Moreover, China Gold was required to “*Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts,*”(II.A.10) to “[a]void causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur,”(II.A.11).

Although the China Gold website claims that it adheres “to policies of people first and safe production” and to “high standards of occupational health, safety and environmental protection,”²⁸ the fact that its workers were camped so close to such a “natural geological hazard”, and that its “risk-emergency plan” was launched only after the tragedy struck,

²⁵ Central Tibetan Administration. 9 April 2013. Assessment Report Of The Recent Landslide Event In The Gyama Valley: It’s Possible Cause and Impacts, 12.

²⁶ Ibid.

²⁷ Ibid, 7.

²⁸ China Gold International Resources International Corporation LTD. *Code of Business Conduct and Ethics and Corporate Disclosure, Confidentiality and Securities Trading Policy.*

suggests otherwise.²⁹ By ignoring the Minacro recommendations, China Gold acted with negligence and placed its workers at risk of harm and death.

Remedies requested:

1. An open and transparent investigation of the causes of the March 29, 2013 landslide including access to the mine area for international experts and foreign journalists.
2. Protection for the families of victims from repercussion, including threats to their livelihoods and personal security, should they seek access to justice and/or compensation for the death of their family member.
3. A full external environmental impact study including technical studies as recommended by MMC in 2012 and the introduction of new management safeguards designed to avoid preventable negative environmental impacts of the mine in future.

Sources:

Central Tibetan Administration, 9 April 2013, *Assessment Report of the Recent Landslide Event in the Gyama Valley: Its Possible Cause and Impacts*. Last accessed on 10 January 2014 at <http://tibet.net/wp-content/uploads/2013/04/AR-Gyama-9-April.pdf>.

China Gold International Resources International Corporation LTD. *Code of Business Conduct and Ethics and Corporate Disclosure, Confidentiality and Securities Trading Policy*. Last accessed 10 January 2014 at <http://www.chinagoldintl.com/corporate/bce/> - <http://www.chinagoldintl.com/corporate/bce/>.

International Labour Organization, *Convention concerning Occupational Safety and Health and the Working Environment*, Number 155, 1981, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C155.

Moon, Adrian, 11 April 2013, *A landslide in Tibet*. Last accessed on 10 January 2014 at http://fr.slideshare.net/Dr_Dave/tibet1-19004036.

Wong, Edward, 2 April 2013, *Fatal Landslide Draws Attention to the Toll of Mining on Tibet*. Last accessed on 10 January 2014 at http://www.nytimes.com/2013/04/03/world/asia/deadly-tibetan-landslide-draws-attention-to-mining.html?pagewanted=all&_r=1&

B. HUMAN RIGHTS

The OECD Guidelines require that companies *respect human rights* and that they *address human rights impacts* in which they are involved. (IV.1). China Gold did not meet its responsibility to: “*respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.*”(II.A.2). There is evidence that indicates discrimination in hiring practices, evictions and forced resettlement,

²⁹ Central Tibetan Administration. 9 April 2013. Assessment Report Of The Recent Landslide Event In The Gyama Valley: Its Possible Cause and Impacts, 7.

violations of the rights to water and to health, and denial of freedom of expression and to information. The lack of stakeholder engagement, denial of rights, and a pervasive climate of fear have prevented affected communities from expressing dissent or accessing remedies. China Gold did not carry out its due diligence responsibilities with respect to potential human rights impacts, as required by the OECD Guidelines (IV.5).

- ***Discrimination in hiring practices***

The OECD Guidelines state that companies should “*In their operations, to the greatest extent practicable, employ local workers and provide training with a view to improving skill levels, in co-operation with worker representatives and, where appropriate, relevant governmental authorities.*” (V.5). This principle of local recruitment emphasizes the importance of adequate training when the local workforce requires it, and the principle is understood to apply equally to managerial positions.

The Guidelines further state that companies should not “*discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status...*”(V.1.e).

In 2012, the state-owned China Daily reported “the Gyama mine had hired 191 locals.”³⁰ It reported that non-Han employees made up 35% of the mine operator’s staff, “the highest percentage among mining companies in China”.³¹ Yet, evidence to the contrary was revealed by the ethnicity statistics of the 83 workers who perished in the March 29, 2013 landslide. Only two victims were Tibetan while 81 were Han Chinese migrant workers from neighbouring provinces of Yunnan, Guizhou and Sichuan.³²

In addition, personal testimony given directly to the Canada Tibet Committee, revealed that local community members knew little about the project, that they had no information about employment opportunities at the mine, and that they believed Tibetans “would never be hired by Chinese companies”.³³

The influx of Chinese migrant workers which is encouraged by a variety of incentives has marginalized Tibetans within the local workforce and thereby harmed the economic progress of the local population. These secondary impacts are evidence that China Gold has failed to comply with OECD Guidelines that urge it to “*contribute to economic, social and environmental progress with a view to achieving sustainable development,*” (II.A.1) and to “[e]ncourage local capacity building through close co-operation with the local community...”(II.A.3).

- ***Evictions and forced resettlement***

The Gyama Valley is considered to be the historical birth place of Songtsen Gampo, one of the great religious leaders of Tibet. It is also home to many sacred historical temples.

³⁰ Central Tibetan Administration. 9 April 2013. *Assessment Report Of The Recent Landslide Event In The Gyama Valley: It's Possible Cause and Impacts*, 5.

³¹ Ibid.

³² Ibid., 13-14.

³³ On file.

Thousands of Tibetans throng the valley every year for pilgrimage.³⁴ China Gold activities have not sufficiently protected traditional religious pilgrimage sites and the company has limited community access to these sites. Moreover, holy lakes have been depleted of their water, sacred mountains have been pillaged, and sacred landscapes have been lost to future generations of Tibetan pilgrims.

Establishing the mine at Gyama required the relocation of nomadic communities that had for centuries moved across the sacred valley for grazing purposes. Tibetan farmers and approximately 100 nomadic families were forced off their ancestral pastures and arable lands by local government authorities to facilitate expansion of mining operations in Gyama. Those affected were consequently denied access to their traditional livelihoods as well as to their cultural and religious heritage.³⁵

The forced resettlement of farmers and nomadic communities in Gyama is an example of a broader state-sponsored initiative to remove nomads from their traditional way of life across the Tibetan plateau. That process has been well-documented in numerous reports including by the UN Special Rapporteur on the Right to Adequate Food, Dr. Olivier De Schutter. De Schutter conducted a country mission to China in 2010 and recommended in his 2012 report to the Human Rights Council that China “suspend the non-voluntary resettlement of nomadic herders [in Tibet] from their traditional lands and cease the practice of forced settlement.”³⁶

Evictions and resettlement constitute a breach of the OECD Guidelines which require companies to “respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments” (II.A.2). In 2012, the UN Food and Agriculture Organization (FAO) adopted, by consensus, guidelines on the responsible governance of land tenure. Both Canada and China were party to the consensus which includes specific attention to conflict situations. According to the guidelines, in the case of conflict arising from displacement, all parties are urged to “guarantee” that tenure rights are respected.³⁷

- ***Violations of the rights to water and to health***

In 2010, researchers found elevated concentrations of six metals in the surface water and streambeds in the middle and upper reaches of the valley (including on streams that feed the Lhasa River). These metals pose “a considerably high risk to the local environment.”³⁸ Pools of heavy metals were also flagged as “a great potential threat to downstream water users.”³⁹ Impacts have affected the sustainability of traditional economic activities in the valley which is a semi-agricultural area, made of up pastures and some farmland with

³⁴ Central Tibetan Administration. 9 April 2013. *Assessment Report Of The Recent Landslide Event In The Gyama Valley: It’s Possible Cause and Impacts*, 3.

³⁵ Maps illustrating the relocation of nomadic communities in the Gyama mine area are found in: Human Rights Watch, *They Say We Should Be Grateful: Mass Rehousing and Relocation Programs in Tibetan Areas of China*, 2013, p 26 & 28.

³⁶ Human Rights Council. 20 January 2012. *Report of the Special Rapporteur on the Right to Adequate Food: Mission to China*, A/HRC/19/59/Add.1, para 46(2).

³⁷ UN-FAO. 2012. *Voluntary Guidelines on the Responsible Governance of the Tenure of Land, Fisheries, and Forests in the Context of National Food Security*, para 25(4).

³⁸ Wong, Edward. 2 April 2013. *Fatal Landslide Draws Attention to the Toll of Mining on Tibet*.

³⁹ *Ibid*.

nomadic husbandry.⁴⁰

Environmental pollution has resulted in “water contamination, illness of local Tibetans, and loss of animals is common in the Gyama Valley.”⁴¹ Research conducted on the environmental impact of mining activities on the surface water quality in the Gyama town discovered that “high content of heavy metals in the stream sediments as well as in a number of tailings with gangue and material from the ore processing, poses a great potential threat to the downstream water users”.⁴²

Available evidence points to illness in communities that depend on the Gyama Shingchu for their drinking water supply and irrigation. Some victims died as a result of their illness or have fallen ill, according to anecdotal reports received from Tibet.⁴³

Evidence indicates that disputes over access to water and water contamination from the mine persist in 2014. A village resident wrote, “I have been stationed in this village, one cannot drink the river water... yet, for the mining area there is a special vehicle that drives to the county seat to fetch drinking water every day, so they don’t need to worry.”⁴⁴ The personal testimony by a member of the local community reveals that China Gold is well-aware of water contamination. However, efforts have not been made to provide safe drinking water for affected communities but only for China Gold employees.

China is party to the ICESCR. The UN Committee on Economic, Social and Cultural Rights (CESCR) has affirmed that the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. In its General Comment on the Right to Water, the CESCR said that an adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.⁴⁵

- ***Violations of the rights to freedom of expression and to information***

With the exception of state-orchestrated visits, international media has been barred from Tibet since 2008. Independent news gathering and reporting has therefore been impossible in the Gyama mine area.

In the wake of the landslide at the Gyama mine site in 2013, leaked instructions reportedly from the Chinese Central Propaganda Department instructed state media outlets to “use Xinhua wire copy and information issued by authorities as the standard.” It specified that “No journalist to be sent to the region for reporting or interviewing.”⁴⁶ Chinese media were given strict instructions not to diverge from the official government position about the event and this was reiterated in a Xinhua news agency article published March 30, 2013

⁴⁰ Central Tibetan Administration. 9 April 2013. *Assessment Report Of The Recent Landslide Event In The Gyama Valley: It’s Possible Cause and Impacts*, 4.

⁴¹ Ibid, 14.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Woesser. 17 April 2013. *Lhasa’s Mining Disaster Clearly Shows the Contamination of the Water Supply Will Continue*.

⁴⁵ CESCR, GC 15, 2002, para 2.

⁴⁶ Anne Henochowicz, “Ministry of Truth: Tibet Mine Landslide,” China Digital Times, March 30, 2013.

stating:

“Regarding the natural massive landslide which occurred at the China Gold Group’s mining area in Lhasa, use Xinhua wire copy and information issued by authoritative departments as the standard.”⁴⁷

Furthermore, the pervasive practise of censorship in China, and resulting limited access to information from inside Tibet, has hampered efforts to determine the environmental practices of China Gold at Gyama, what information it had at what time, what steps were taken to prevent accidents such as the landslide that claimed 83 lives and in fact, what steps have been taken since to ensure that similar incidents do not reoccur in future.

There has been considerable anecdotal chatter about the lack of information about the mine disaster on Chinese social media sites (Weibo):

“I heard an employee from Tibet TV leaking out some secrets: this is not a natural disaster, it is a human disaster caused by managerial carelessness, the TV stations comply with the instructions given from above as to how to report to the outside world. What collapsed wasn’t a natural mountain slope, it was a mountain-like pile of mining slag, the workers’ shed had been built right next to this loose, broken but extremely long mountain of mining slag. So close, a human disaster.”⁴⁸

These threads and similar posts were quickly removed and disappeared from the Internet. However, under the OECD Guidelines, companies are encouraged to: “*Support, as appropriate to their circumstances, cooperative efforts in the appropriate fora to promote Internet Freedom through respect of freedom of expression, assembly and association online*” (II.B.1).

According to information received by the Central Tibetan Administration, mining activities at Gyama have been the subject of long-standing conflict dating back to 2008 before China Gold acquired the mine.⁴⁹ However, the OECD Guidelines advise that companies “*“[s]eek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship”*(IV.3). China Gold failed to address existing conflict in the community. The public expression of dissent and discontent continues to be met with harsh crackdowns and repression by local authorities.⁵⁰

- ***Lack of stakeholder engagement***

China Gold did not engage local stakeholders when it assumed ownership of the Gyama mine operations. The OECD Guidelines require that companies “*Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that*

⁴⁷ As cited by Woesser. April 17, 2013. *Lhasa’s Mining Disaster Clearly Shows the Contamination of the Water Supply Will Continue.*

⁴⁸ Ibid.

⁴⁹ A short summary of these events is provided in Appendix B.

⁵⁰ Central Tibetan Administration. 9 April 2013. *Assessment Report Of The Recent Landslide Event In The Gyama Valley: It’s Possible Cause and Impacts*, 14.

may significantly impact local communities.” (II.A.14).

Accepted best practice with respect to the OECD Guidelines further demands that stakeholder engagement continue over the life of the project (from exploration to closure), that it be supported by resource commitments from the company, and that it adapt to changes within the company, community, or at the project site.⁵¹ China Gold has failed to introduce such procedures and local communities have no venue in which to engage a dialogue with company representatives, to seek compensation and reparation, or access either judicial or non-judicial remedy for violations of their human rights.

Remedies requested:

1. An independent fact-finding mission should be carried out to determine the scope and full range of details about human rights abuses that have accompanied China Gold’s management of the Gyama mine operation.
2. China Gold should initiate a stakeholder engagement procedure with the objectives of providing remedy for human rights violations experienced by local communities around the Gyama mine, and of mitigating future negative human rights impacts.
3. In accordance with the *UN Basic Principles and Guidelines on the Right to Remedy and Reparation*, the host state (China) must “provide judicial assistance and other forms of cooperation in the pursuit of international justice, including assistance to, and protection of, victims and witnesses, consistent with international human rights legal standards and subject to international legal requirements such as those relating to the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment.”⁵²

Sources:

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

Central Tibetan Administration. April 9, 2013. *Assessment Report of The Recent Landslide Event In The Gyama Valley: It’s Possible Cause and Impacts* <http://tibet.net/wp-content/uploads/2013/04/AR-Gyama-9-April.pdf>

Committee on Economic, Social and Cultural Rights (UN-CESCR), General Comment 15 on the Right to Water. <http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94>

Discrimination (Employment and Occupation) Convention, 1958 (No. 111), *Convention concerning Discrimination in Respect of Employment and Occupation*. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_I D:312256

⁵¹ *Stakeholder Engagement and the Extractive Industry under the OECD Guidelines*, SHIFT, 2013

⁵² *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Dec. 16, 2005), Section III, para 5.

Henochowicz, Anne. "Ministry of Truth: Tibet Mine Landslide," China Digital Times, March 30, 2013, <http://chinadigitaltimes.net/2013/03/ministry-of-truth-tibet-mine-landslide/>

International Convention on the Elimination of All Forms of Racial Discrimination (UN-ICERD) <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>.

Human Rights Council, *Report of the Special Rapporteur on the Right to Adequate Food: Mission to China*, A/HRC/19/59/Add.1, 20 January 2012, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.59.Add.1.pdf>.

Human Rights Watch, *They Say We Should Be Grateful: Mass Rehousing and Relocation Programs in Tibetan Areas of China*, June 2013, http://www.hrw.org/sites/default/files/reports/tibet0613webwcover_0.pdf

SHIFT, *Stakeholder Engagement and the Extractive Industry under the OECD Guidelines*, 2013 http://mneguidelines.oecd.org/globalforumonresponsiblebusinessconduct/2013_WS2_1.pdf

Woeser. 17 April 2013. *Lhasa's Mining Disaster Clearly Shows the Contamination of the Water Supply Will Continue* <http://highpeakspureearth.com/2013/lhasas-mining-disaster-clearly-shows-the-contamination-of-the-water-supply-will-continue-by-woeser/>

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?pagewanted=all&_r=3&

C. DISCLOSURE

China Gold has failed to make important safety and environmental risk information publicly available. Failure to publicly disclose such information constitutes a failure by China Gold to comply with OECD Guidelines that require companies to “ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance.” (III.1) Such information would include foreseeable risk factors (III.2.f) and issues related to workers and other stakeholders (III.2.g).

The OECD Guidelines, under section VI, set out the type of data companies should be gathering and providing to stakeholders with respect to the environment. In particular, the OECD Guidelines require that companies collect data on “the environmental, health and safety impacts of their activities”(VI.1.a) and “provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise.” (VI.2.a)

China Gold's failure to provide adequate and timely environmental, health and safety information that was elaborated in the Minacro Mine Consult (MMC) report, permitted violations of the OECD guidelines to continue over an extended period of time. In failing to disclose risk or information about steps taken to mitigate risk, China Gold rendered it impossible for workers or other stakeholders to hold the company responsible for its actions or inaction which resulted in serious harm.

Additional concern is raised by the lack of access to the mine site for international observers including both domestic and foreign media, as described above (Human Rights: Rights to freedom of expression and to information). As a result, stakeholders have not been able to investigate factual inconsistencies, contradictory evidence, or alleged attempts by the company and/or government to conceal information.

China Gold has adopted a “Code of Ethics” which provides for disclosure of information related to environmental issues, health and safety concerns, and equal opportunity in employment.⁵³ The OECD Guidelines state that “enterprises are encouraged to communicate additional information that could include: (...) information on social, ethical, and environmental policies of the enterprise and other codes of conduct to which the company subscribes (III.3.b) and its performance in relation to these statements.” (III.3.c)

Remedies requested:

1. China Gold should increase transparency around the implementation of its code of business conduct and ethics. This will include providing information regarding management practice in relation to disputes with local stakeholders, and company efforts to contribute to sustainable development and environmental stewardship.
2. China Gold should disclose what steps it took to comply with Minacro Mine Consult (MMC) report recommendations related to technical studies and the subsequent implementation of associated mitigation procedures.

Sources:

China Gold International Resources Corp Ltd. *Code of Business Conduct and Ethics*. Last accessed on 10 January 2014 at <http://www.Chinagoldintl.Com/Corporate/Bce/>

III. CONCLUSION AND SUMMARY OF REMEDIES REQUESTED

China Gold is a Canadian company with two active mining operations – one in Inner Mongolia, and the other in Tibet which is the subject of this submission. China Gold’s largest shareholder is the state-owned enterprise China National Gold and the company therefore affiliated with the Government of China. Through its affiliation, China Gold avails itself of preferential rights to land acquisition and licenses.⁵⁴

At the same time, as a Canadian company China Gold enjoys certain rights and privileges that are available to all Canadian companies. This includes diplomatic and trade services, credit and loan insurance, and protection by bilateral treaties designed to insulate Canadian investors overseas from expropriation or discriminatory treatment. As the beneficiary of

⁵³ China Gold International Resources Corp. Ltd. 2014, *Code of Business Conduct and Ethics*

⁵⁴ China Gold International Resources Corp Ltd . *Company overview*.

such privileges, China Gold should be required to comply with Canadian standards of corporate behaviour.⁵⁵

Moreover, because Canada is a member of the OECD and hosts a National Contact Point in Ottawa, Canadian companies are expected to comply with the OECD Guidelines. When China Gold acquired the Gyama mine, it should therefore have exercised due diligence “to identify, prevent and mitigate actual and potential adverse impacts” (II.A.10) and it should have taken steps to “avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.” (II.A.11). It did neither and there is considerable evidence that serious environmental and human rights abuse continues with impunity as a consequence.

- **Summary of remedies requested**

ENVIRONMENT

1. An open and transparent investigation of the causes of the March 29, 2013 landslide including access to the mine area for international experts and foreign journalists.
2. Protection for the families of victims from repercussion, including threats to their livelihoods and personal security, should they seek access to justice and/or compensation for the death of their family member.
3. A full external environmental impact study including technical studies as recommended by MMC in 2012 and the introduction of new management safeguards designed to avoid preventable negative environmental impacts of the mine in future.

HUMAN RIGHTS

1. An independent fact-finding mission should be carried out to determine the scope and full range of details about human rights abuses that have accompanied China Gold’s management of the Gyama mine operation.
2. China Gold should initiate a stakeholder engagement procedure with the objectives of providing remedy for human rights violations experienced by local communities around the Gyama mine, and of mitigating future negative human rights impacts.
3. In accordance with the *UN Basic Principles and Guidelines on the Right to Remedy and Reparation*, the host state (China) must “provide judicial assistance and other forms of cooperation in the pursuit of international justice, including

⁵⁵ Canadian standards are contained within its CSR strategy - Foreign Affairs, Trade and Development Canada.2009. *Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector*.

assistance to, and protection of, victims and witnesses, consistent with international human rights legal standards and subject to international legal requirements such as those relating to the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment.”⁵⁶

DISCLOSURE

1. China Gold should increase transparency around the implementation of its code of business conduct and ethics. This will include providing information regarding management practice in relation to disputes with local stakeholders, and company efforts to contribute to sustainable development and environmental stewardship.
2. China Gold should disclose what steps it took to comply with Minacro Mine Consult (MMC) report recommendations related to technical studies and the subsequent implementation of associated mitigation procedures.

⁵⁶ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (Dec. 16, 2005), Section III, para 5.

IV. APPENDIXES

A. List of OECD Guideline paragraphs referenced in this submission:

Section II. General Policies -

- Paragraph A.1 states that enterprises should, “*contribute to economic, social and environmental progress with a view to achieving sustainable development.*”
- Paragraph A.2 states that enterprises should, “*respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.*”
- Paragraph A.10 states that enterprises should “*Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.*”
- Paragraph A.11 states that enterprises should “*Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.*”
- Paragraph A.14 states that enterprises should “*Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.*”
- Paragraph B.1 states that enterprises should “*Support, as appropriate to their circumstances, cooperative efforts in the appropriate fora to promote Internet Freedom through respect of freedom of expression, assembly and association online.*”

Section III. Disclosure –

- Paragraph 1 states that enterprises should “*ensure that timely, regular, reliable and relevant information is disclosed regarding their activities, structure, financial situation and performance.*”
- Paragraph 2.f states that “*Disclosure policies of enterprises should include, but not be limited to...foreseeable risk factors.*”
- Paragraph 2.g states that “*Disclosure policies of enterprises should include, but not be limited to...issues regarding workers and other stakeholders.*”
- Paragraph 3.b states that “*Enterprises are encouraged to communicate additional information that could include....policies and other codes of conduct to which the enterprise subscribes, their date of adoption and the countries and entities to which such statements apply.*”
- Paragraph 3.c states that “*Enterprises are encouraged to communicate additional information that could include.... its performance in relation to these statements and codes.*”
- Paragraph 5 states that “*enterprises are encouraged to communicate additional information that could include: (...) information on social, ethical, and environmental policies of the enterprise and other codes of conduct to which the company subscribes (...) and its performance in relation to these statements....*”

Section IV. Human Rights -

- Paragraph 1 states that “enterprises should “Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”
- Paragraph 2 states that enterprises “avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.”
- Paragraph 3 states that enterprises should “Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.”
- Paragraph 5 states that enterprises should “Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impact.”
- Paragraph 6 states that enterprises should “Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.”

Section V. Employment and Industrial Relations –

- Paragraph 1.e states that enterprises should “Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.”
- Paragraph 5 states that enterprises should “In their operations, to the greatest extent practicable, employ local workers and provide training with a view to improving skill levels, in co-operation with worker representatives and, where appropriate, relevant governmental authorities.”

Section VI. Environment –

- The Preamble states that “enterprises should...protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development...”
- Paragraph 1.a. states that enterprises should: “Establish and maintain a system of environmental management appropriate to the enterprise, including; a) collection and evaluation of adequate and timely information regarding the environmental, health and safety impacts of their activities.”
- Paragraph 2.a. states that enterprises should “provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance...”
- Paragraph 4 states that enterprises should “[c]onsistent with the scientific and technical understanding of the risks, where there are threats of serious damage to the environment, taking also into account human health and safety, not use the lack of scientific certainty as a reason for postponing cost-effective measures to prevent or minimise such damage.”

- Paragraph 5 states that enterprises should “*Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.*”

B. Summary of past conflicts around the Gyama mine operation

In 2008 – before China Gold acquired the Gyama mine - a water-diversion project in the upper Gyama region led to forceful confiscation of agricultural lands.⁵⁷ In the same year, local Tibetan residents from Gyama Township reportedly petitioned the local government to put an immediate halt to the mining project in the area. The local government responded by putting the whole region under heavy military surveillance, with imposition of severe restrictions on communication to outside world and people visiting the region. On June 20, 2009, angry villagers took to streets and clashed with Chinese miners. The scuffle between Tibetans and miners was followed by a police crackdown leaving three Tibetans wounded.⁵⁸

Subsequent protests in 2009 resulted in the arrest of at least nineteen local community members and “some were kept for several months, some even for half a year and the village head, Nyima Tsering, for a whole year.”⁵⁹ Witnesses also claim that villagers who had been beaten and subsequently sent to hospital were later moved from hospital to prison.⁶⁰ A petition was submitted by Tibetans in Gyama to the local authorities appealing for a halt to the mining. An excerpt from the petition sent to Radio Free Asia states: “As we petitioned many years ago, I would like to state again that in Meldro Gongkar county’s Gyama township, mining operations have shown utter disregard to the grasslands, forests, mountains, rivers, wildlife, environment, local people’s life and livelihood. The mining operations have caused great destruction to our farmlands, mountains and rivers.” Government authorities responded to the petition by saying that such matters were the responsibility of the company, not the government.⁶¹

⁵⁷ Central Tibetan Administration. 9 April 2013. *Assessment Report Of The Recent Landslide Event In The Gyama Valley: It’s Possible Cause and Impacts*, 14.

⁵⁸ US Congressional Executive Commission on China. *Special Topic Paper: Tibet 2008-2009*, <http://www.cecc.gov/publications/issue-papers/cecc-special-topic-paper-tibet-2008-2009>

⁵⁹ Woeser. May, 2013. *A Gyama Resident Talks About the Disaster Brought About by Mining Activities*.

⁶⁰ Ibid.

⁶¹ US Congressional Executive Commission on China. *Special Topic Paper: Tibet 2008-2009*, <http://www.cecc.gov/publications/issue-papers/cecc-special-topic-paper-tibet-2008-2009>