

Sustaining Mining Investments in the Evolving Context of Sustainable Development

April 25, 2013, Beijing

In April 2013 the International Institute for Sustainable Development (IISD) and the Global Environmental Institute (GEI) convened a workshop in Beijing, China, to discuss how international tools and instruments, especially the legal instrument developed by the International Bar Association (**the Model Mining Development Agreement [MMDA]**) can help Chinese companies address the challenges raised by the growing demands of developing country capital importers with regard to mining investments and promoting sustainable development. Participants from the Chinese government, academia, mining companies and associations attended the workshop to discuss and debate these issues.

Growing Expectations of Developing Countries in Mining Investments

It is now widely recognized that developing country capital importers increasingly expect that the inward mining investments they receive should contribute to sustainable development, including its social, environmental and economic dimensions. The leading explanation of those expectations is seen in **the African Mining Vision (AMV), which was adopted by heads of state at the African Union's summit in 2009**. At the workshop, Antonio Pedro, director of the Sub-regional Office for Eastern Africa of the United Nations Economic Commission for Africa, underscored that the essential need for Africa is **resource-based development**, meaning a robust natural resources sector that supports inclusive growth and development across society. Accordingly, the expectations are for more linkages between foreign direct investment and local economies, greater local content, more value addition, etc.

It was acknowledged that addressing the growing expectations of host states is crucial in terms of accessing investment opportunities, conducting long-term operations and mitigating investment risks. The Chinese government and Chinese companies are very much aware of these terms. Participants pointed to the fact that the views of the Chinese government regarding sustainable development have evolved significantly in recent years. Indeed, a senior manager from Minmetals said: **"The issues that were not felt to be problems domestically turn out to be the exact problems that Chinese companies confront abroad."**

Senior government officials have understood that these host states' growing expectations relating to social responsibility, human rights and environmental protection pose new challenges to Chinese outward investors and **the underlying risks can even exceed political and commercial risks**. One participant provided a salient example of a lesson hard learned: having suffered a painful loss of US\$6 billion on a dam project in Myanmar arising from the failure to meet the expectations noted above, China Power Investment Corporation has now conducted a comprehensive social and environmental impact assessment according to international standards for its new investment project in Guinea.

International and Chinese Tools and Instruments

International tools and instruments to address sustainable development concerns in outward investment are available. In particular, the MMDA, as the pre-eminent legal instrument in relation to mining investments, addresses the expectations laid down in the AMV by contouring a **mining contract in the art of triple-win for investors, governments and communities**.

Meanwhile, China is also developing its own guidelines. Two rationales for this are: it is difficult for Chinese companies to thoroughly study all the international instruments and those international instruments sometimes do not fit well into the Chinese context. However, it is also widely acknowledged that **referring to and reconciling with international instruments were of great importance in developing Chinese guidelines**. This approach has already been followed in certain cases; for example, the *Guidelines on Environmental Protection in Foreign Investment and Cooperation*, recently released by the Ministry of Commerce and Ministry of Environmental Protection, gives due consideration to international instruments.

Ways Forward

Participants called for Chinese investors to make full use of cutting-edge international instruments, especially the MMDA, as it provides a comprehensive agenda for understanding the multiple relationships of a successful investment in the future. Moreover, it was noted that in the case of developing Chinese guidelines for mining investments, the MMDA could be used by Chinese policy-makers as part of the **foundation to bridge China's interests with the interests of host governments and local communities, not only in Africa but also internationally**. Lastly, participants advocated a proactive manner to construct success.

Global Environmental Institute's full report of the event can be found here: <http://www.geichina.org/index.php?controller=News&action=View&nid=196>

Comments are welcome in English to Howard Mann (hmann@iisd.ca), or in Chinese or English to IISD's Investment and Sustainable Development program (investmentlaw@iisd.org).

IISD's Investment and Sustainable Development program can be found at www.iisd.org/investment.

可持续矿业投资 在不断推进的可持续发展背景下

2013年4月25日 北京

2013年4月，国际可持续发展研究院（IISD）与全球环境研究所（GEI）在中国北京举办研讨会，讨论国际律师协会开发的国际性法律工具“**矿业开发协议范本（MMDA）**”如何能够帮助中国企业应对发展中国家的投资东道国不断增长的有关矿业投资应当促进当地可持续发展期望和诉求所提出的挑战。来自中国政府、学术界和矿产企业及联合会的参会者就此问题进行了探讨。

发展中国家对于矿业投资不断增长的期望和诉求

当前已被广泛认知的是，发展中国家的投资东道国越来越期望外国矿业投资对本国包括社会、环境和经济方面在内的可持续发展做出贡献。这种期望和诉求集中体现在**各国国家元首在2009年非洲联盟峰会上共同制定的“非洲矿业愿景（AMV）”**中。联合国非洲经济委员会东非分区域办公室主任 Antonio Pedro 先生在

研讨会上强调非洲的关键诉求是**依托于资源的全面发展**，这是指通过一个优势的自然资源行业来带动包容性增长和社会的全面发展。因此，非洲期望矿业的外国直接投资（FDI）与当地经济建立起更紧密的联系，包含更多的地当成分，并且产生出更高的附加值。

对于投资者而言，满足东道国这方面的诉求对获得投资机会，实现长期稳定经营和降低投资风险有非常重要的意义。中国政府和中国海外投资企业已开始认识到这一点。参会者同时提到，中国政府近年来对可持续发展的态度发生了深刻的转变。正如五矿的一位高级经理所说的：“**那些原先在国内不被认为是问题的问题，到了国外却都成为了问题。**”

中国的高层政府官员已清楚认识到，这些投资东道国在社会责任、人权和环境保护方面不断增长的期望和诉求对中国的海外投资者提出了新的挑战，并且其**隐含的风险在某种程度上甚至超过了政治和商业风险**。一位参会者提到了一个中国投资者遭到惨痛教训的典型案列：由于未能满足东道国这方面的诉求，中国电力投资公司在缅甸水坝项目上遭受了60亿美元的重大损失。至此之后，中国电力投资公司十分重视这些期望和诉求，对其在几内亚的新投资项目依照国际标准进行了综合全面的社会与环境评估。

国际和中国的工具、标准

当前国际上已有一些可用的以满足对外投资中可持续发展诉求的国际工具和标准。特别是矿业投资方面的先进法律工具“矿业开发协议范本”，其**通过构建投资者、政府、社区“三方共赢”的矿业合同模式**，满足了“非洲矿业愿景”中体现的投资东道国可持续发展方面的诉求。

与此同时，中国也致力于开发自己的相关工具和标准。其理由为：第一，对于中国企业，透彻地学习所有国际工具非常困难；第二，国际工具中的某些内容并不符合中国企业的情况。然而，得到一致认可的是，**对于开发中国自己的工具和标准，参考并与国际工具、标准相协调是十分重要的**。这一认识已经得到了践行，比如，商务部和环保部近期共同出台的《对外投资合作环境保护指南》就是在参考国际工具的基础上制定的。

下一步行动

参会者呼吁中国投资者应将如“矿业开发协议范本”等前沿国际工具、标准善加运用，因为它们展现了未来一宗成功国际投资当中的多方关系。此外，参会者提出如果中国开发自己的海外矿业投资指南，“矿业开发协议范本”也对中国的政策制定者很有价值，因为其可以**衔接中国与包括非洲在内的世界各东道国的政府及当地社区的各方利益**。最后，参会者倡议采用一种主动构建成功的投资态度。

全球环境研究所的报告全文请参照：<http://www.geichina.org/index.php?controller=News&action=View&nid=196>

欢迎用英文向Howard Mann (hmann@iisd.ca) 提出意见，或用中文或英文向国际可持续发展研究院中国项目 (investmentlaw@iisd.org) 提出意见。

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