

The Human Right Impacts of Chinese Overseas Investments and Other Business Operations in Third Countries

A Stakeholder Submission to the 3rd Universal Periodic Review of China

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Introduction and Context

This stakeholder submission aims to address human rights violations arising in the context of China's outbound investments and Chinese companies' operation overseas. In the five years since the 2nd Universal Period Review of China in 2013, China's outbound investment have grown exponentially¹, and their environmental footprint and human rights impact can be found in many Chinese investment recipient countries, especially in the Global South. In March 2015, the Chinese government formalized this process by announcing the "Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road". Also known as the Belt and Road Initiative, or "One Belt, One Road", this effort to create a coherent Chinese investment strategy has had and will continue to have strong implications for the human rights conditions of the 65 countries who have joined it. It is therefore in the interest of these countries, as well as others in the international community, to encourage China to take steps to ensure safeguards against negative human rights impacts of Chinese investments and operations overseas.

This submission is in no way intended to downplay the role of host countries in carrying out their duty to protect human rights. However, as the Committee on Economic, Social and Cultural Rights has recognized, "The Covenant establishes specific obligations of States parties [which] apply both with respect to situations on the State's national territory, and outside the national territory in situations over which States parties may exercise control."² The Committee continued:

Extraterritorial obligations arise when a State party may influence situations located outside its territory, consistent with the limits imposed by international law, by controlling the activities of corporations domiciled in its territory and/or under its jurisdiction, and thus may contribute to the effective enjoyment of economic, social and cultural rights outside its national territory. (para. 28)

¹ FDI outflows from China increased 44 percent year on year, reaching to 183 billion USD in 2016. China rose to the position of the second-largest source of outward foreign direct investment (FDI) for the first time in 2016. http://www.xinhuanet.com/english/2017-06/08/c_136350164.htm

² E/C.12/GC/24, para. 10.

Furthermore, in the view of the UN Working Group on Business and Human Rights, the state duty to protect “requires States to take additional steps to protect against abuses by the enterprises they own or control.”³

The sections below first introduce the legal framework which should guide China’s efforts to promote and protect human rights in the context of business activities, and point to relevant international commitments undertaken by the Chinese government. They then highlight the range of violations which have been reported in third countries, linked to policies and practices of Chinese multinational companies. The examples provided are intended to be illustrative, not exhaustive; they are focused primarily in West Africa and southeast Asia, as a result of information provided by partner organizations. However, it is helpful to note that the human rights – and geopolitical – impacts of Chinese investment are also felt significantly, albeit differently, in parts of South Asia (for example in Sri Lanka⁴ and the Maldives⁵); Latin America and the Caribbean (Bolivia⁶ and Nicaragua⁷, among many examples); Central and East Africa (including Zambia⁸ and Mozambique⁹); and North America¹⁰.

Legal frameworks

China has signed and ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), and the Convention on the Rights of Persons with Disabilities (CPRD). China has signed, but not ratified, the International Covenant on Civil and Political Rights (ICCPR). China is also a member of the International Labor Organization.

Various of these instruments, namely the ICESCR, CEDAW and CRC, as well as a range of ILO Conventions and Recommendations, have offered guidance on how to fulfill the State obligation to protect human rights in the context of business activities, most recently with the adoption by the Committee on Economic, Social and Cultural Rights (CESCR) of their General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities.¹¹ The scope of this General Comment specifically includes State-owned business entities.

³ A/HRC/32/45, para.88.

⁴ <https://www.reuters.com/article/us-sri-lanka-china-insight/chinas-silk-road-push-stirs-resentment-and-protest-in-sri-lanka-idUSKBN15G5UT>

⁵ <https://foreignpolicy.com/2018/03/21/is-abdulla-yameen-handing-over-the-maldives-to-china/>

⁶ <https://www.business-humanrights.org/en/bolivia-joint-venture-of-yxfb-chinese-oil-companies-threatens-uncontacted-indigenous-tribe-according-to-ngo-includes-yxfb-comments> and <https://www.survivalinternational.org/news/11499?utm>

⁷ <https://www.nytimes.com/2016/04/04/world/americas/nicaragua-canal-chinese-tycoon.html>

⁸ <https://www.hrw.org/news/2013/02/20/zambia-safety-gaps-threaten-copper-miners>

⁹ <https://www.amnesty.org/en/documents/afr41/7851/2018/en/>

¹⁰ <https://www.reuters.com/article/us-uaw-fyg-vote/ohio-workers-vote-against-union-at-chinese-auto-supplier-plant-idUSKBN1D90LS>

¹¹ E/C.12/GC/24, adopted at the Committee’s 61st session and published on 10 Aug 2017.

China, as a State party to the ICESCR, has the obligation to realize economic, social and cultural rights, for all persons within its territory, to the maximum of its ability. However, in its most recent review of China in 2014, the CESCR stated concerns that, “despite the efforts made by [China] to harmonize domestic legislation with the Covenant, not all the provisions thereof have been incorporated into domestic legislation.”¹²

In January 2015, a revised Environmental Protection Law went into effect. It has been called the strongest environmental law in China’s history, and “a law with teeth” as it gives law enforcement power to the government. However, the laws scope is limited to domestic Chinese jurisdiction and cannot be used to regulate Chinese companies’ operations beyond China’s borders.

In 2013, Ministry of Environmental Protection and the Ministry of Commerce jointly announced the *Guidelines on Environmental Protection in Investment and Cooperation Overseas*. Two other policies, *the Belt and Road Ecological and Environmental Cooperation Plan* and *Guidance on Promoting Green Belt and Road* were announced by the National Development and Reform Commission (NDRC), the Ministry of Commerce, and other relevant agencies in line with efforts to build international support for the Belt and Road Initiative.

In 2014, in collaboration with the OECD, the Chinese Chamber of Commerce of Metals, Minerals and Chemicals (CCCMC) – a sub-unit of the Ministry of Commerce – launched *Guidelines for Social Responsibility in Outbound Mining Operations*. The human rights chapter of the document reflects basic elements of the UN Guiding Principles; references the Voluntary Principles on Security and Human Rights; and includes attention to major sectoral issues, including free, prior and informed consent for indigenous communities.¹³ In December 2017, media reported that China would introduce a “code of conduct” for all outbound investment, to help “better identify risks in foreign countries.”¹⁴

China also has extraterritorial obligations to respect and protect such rights beyond and outside its territory. Despite the policy attention to the issues, all existing and foreseen efforts are, or appear to be, voluntary. They are not regulations with legal consequences for Chinese companies. As a result, Chinese companies don’t really have legal requirements to comply when they are operating abroad. According to the IHRB report, “Until the incorporation of the Guidelines into Chinese laws or regulations, the incentives for compliance will come through more explicit linkage to any necessary Chinese government permission for approval for overseas investment.”¹⁵

In March 2018, China’s State Councillor Wang Yong announced that a new agency would be created to combine various existing responsibilities for foreign aid and assistance.¹⁶ According to official state media reporting, the agency “will be responsible for making strategic guidelines,

¹² E/C.12/CHN/CO/2, para. 9

¹³ The Institute for Human Rights and Business, https://www.ihrb.org/uploads/reports/IHRB%2C_Home_Governments_Series_-_4_Innovative_Tools%2C_March_2017.pdf

¹⁴ http://www.chinadaily.com.cn/business/2017-12/01/content_35148033.htm

¹⁵ IHRB report, p. 15

¹⁶ <https://www.reuters.com/article/us-china-parliament-aid/china-says-new-agency-will-improve-foreign-aid-coordination-idUSKCN1GP02J>

plans and policies on foreign aid; coordinating and making suggestions on major issues related to it; pushing forward reform of the means of aid-giving; making foreign aid plans and overseeing and evaluating their implementation.” This was identified in political speeches as a key element for the success of the Belt and Road Initiative.

International Commitments

China voted in favor of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, and the Chinese Delegation expressed to the UN at the High-level Meeting Commemorating the 10th Anniversary of the UN Declaration on the Rights of Indigenous Peoples in Geneva in 2017 that: “Countries with indigenous peoples, especially developed countries concerned, must show political will and take concrete actions to include indigenous peoples in the mainstream of the society, protect their human rights and fundamental freedoms and preserve their unique cultures, languages and ways of life.”¹⁷

China was a member of the UN Human Rights Council when the Council adopted resolution 17/4, endorsing the UN Guiding Principles on Business and Human Rights and establishing the UN Working Group on Business and Human Rights. The annual resolution on this topic has continued to be adopted by consensus, most recently in June 2017, and the mandate of the Working Group has been renewed twice, in 2014 and 2017, with the approval of China.

In 2008 and 2013, China did not receive any UPR recommendations related explicitly to business and human rights. Indeed, in the first cycle of the UPR there were only 17 BHR-related recommendations overall, and in the second cycle only 75, of which 13 related to the development of National Action Plans on Business and Human Rights (NAPs). However, recommendations from the 2nd cycle that provide some precedence include:

- Australia
Adopt a NAP on Business and Human Rights (Netherlands and Norway); strengthen the normative framework for the protection of human rights, including the monitoring, investigation and reparation for human rights violations committed by Australian enterprises in their territories and in third States (Ecuador)
- Austria, Belgium, Denmark, Greece, Hungary, Iceland and Ireland:
Strengthen oversight of Austrian companies operating abroad with regard to any negative impact of their activities on the enjoyment of human rights, particularly in conflict areas, where there are heightened risks of human rights abuses (State of Palestine)
- Canada
Continue efforts towards the establishment and implementation of an effective regulatory frame work for holding companies registered in Canada accountable for the human rights impact of their operations (Egypt).
- Mongolia
Develop a National Action Plan on business and human rights, for the implementation of the UN Guiding Principles on Business and Human Rights, with special attention for the situation of nomadic herders and access to remedy (Netherlands)

¹⁷ <http://www.china-un.org/eng/hyyfy/t1457067.htm>

- Norway
Ensure that the activities of transnational corporations and other business enterprises do not have a negative impact on the enjoyment of rights of indigenous peoples, and other ethnic groups (South Africa)
- South Africa
With reference to a recommendation of the ICJ (International Commission of Jurists), adopt legislation to enable registered South African companies to be held liable for violations of human and labour rights beyond South Africa's borders (Namibia)

Context and Findings: Human rights violations in Chinese investment recipient countries

The biggest portion of Chinese overseas investments has been by state-owned enterprises, while private-owned enterprises have also become a strong force in outbound investment. Many of those Chinese companies are state-owned, whether at the national, provincial or local level, or are companies over which the Chinese government exercises substantial authority. The Chinese government has effective control over private-owned Chinese companies by reviewing and approving their outbound financial flows; Chinese companies, or their subsidiaries, could be acting as contractors to implement Chinese governmental concessional loans from a foreign aid package.¹⁸ State-owned Chinese banks also provide finances to both state-owned and private-owned Chinese companies. Media outlet Reuters has noted: “Much of China’s overseas finance is made in the form of loans or export credits, which allow infrastructure-for-resource deals.”¹⁹

While Chinese investments of both kinds have played a role in improving infrastructure, facilitating knowledge transfer, and providing jobs to the investment recipient countries, Chinese companies have been accused of numerous human rights violations—most notably related to the right to a healthy environment, indigenous peoples’ rights, and the right to life.

1. Violations of the Right to a Healthy Environment

A. Vietnam

China Aluminum International Engineering Corporation Limited, a state-owned enterprise, has operated in the framework of an EPC (Engineering, Procurement and Construction) contract in Vietnam since 2008. In 2010, they began construction of the Tan Rai aluminum plant and Nhan Co Aluminum Plant in the Central Highlands. This is an area with a high concentration of ethnic minority communities, known generally as Montagnards.²⁰

Since the beginning of construction phase, both plant projects have resulted in chemical spills. Drinking water was contaminated, fish were killed, and crops died. In 2016, some 9.6 cubic meters of sodium hydroxide leaked from the plant. The leaked chemical has

¹⁸ <https://www.yidaiyilu.gov.cn/xwzx/gnxw/36080.htm>

¹⁹ <https://www.reuters.com/article/us-china-parliament-aid/china-says-new-agency-will-improve-foreign-aid-coordination-idUSKCN1GP02J>

²⁰ <http://minorityrights.org/minorities/highland-minorities/>

reportedly penetrated an area of 600 square meters, and some of it has been flowing into a stream, posing serious environmental threats to nearby residents.²¹

China's state-owned China Southern Power Grid Company and China Power Investment Corporation have invested in the biggest Chinese investment in the country, the coal-fired build-operate-transfer Vinh Tan-1 Power Station in Binh Thuan province. China's provincial-government owned Shanghai Electric Group won a deal for the construction of Vinh Tan-2 Station.

The construction of the plants has had a severe impact on the environment. Trucks on the construction site caused dust and noise, and affect communities' daily lives. In mid-April 2015, thousands of local residents blocked the National Highway No 1A in protest against coal dust pollution from the plant. [What happened?] In late 2016, people found that Vinh Tan-1 had dredged a navigable channel for barges transporting waste, and the dredging and dumping of dredged soil could harm corals and other marine life. The water samples showed that chloride in the groundwater near the plant exceeded the environmental standard, and communities report that the land in this area has become very salty, which affects the growth of crops and fruit trees.²²

B. Sierra Leone

China's provincial-owned enterprise, Shandong Iron and Steel Group, invested in an iron mine in Tonkili District in Sierra Leone in 2011 which has come under intense scrutiny due to litigation initiated by affected communities. The company started constructing a railway line which ran alongside the plaintiffs' villages. During the construction, the villagers allege, company employees created huge stockpiles of unprotected debris made up of rocks, mud and other materials.

Villagers rely on farming for their livelihood, growing rice, beans and vegetables on their swampland. They also fetch water for domestic and other uses from streams within their villages and from the Tonkolili River. Every rainy season, the unprotected stockpiled debris eroded into the villages along the railway, and covered their swampland, streams and the common ground of their villages. As a result, crops have been destroyed, swamplands polluted and rendered useless and streams and other water sources clogged or ruined. General movement in and around the plaintiffs' villages has been difficult, especially for children. Iron ore sludge and tailings have repeatedly flowed from the mining site into the villages, severely polluting the ponds and streams which see daily use by the communities for household purposes as well as agriculture.²³

2. Violations of Indigenous Peoples' Rights

A. Cambodia

21 <https://e.vnexpress.net/news/news/unprecedented-corrosive-chemical-leak-at-vietnam-alumina-refinery-3447432.html>

22 <http://www.thanhniennews.com/society/vietnam-orders-coal-power-plant-to-reduce-pollution-following-30hour-protest-42524.html>

23 <http://slconcordtimes.com/namati-9-villages-sue-aml-for-pollution-and-other-legal-violations/>

Chinese investment has affected indigenous peoples' rights in Cambodia. In 2012, five companies (Heng Nong, Heng Rui, Lan Feng, Heng You, and Rui Feng), which are subsidiaries of Hengfu Sugar Industry Group, Ltd., won economic land concessions of 42,422 hectares in Preah Vihear, Cambodia. In August 2012, just four months after those companies began their operations, four of seven Kuy villages' self-identification as indigenous communities was formally recognized.

According to the information from the communities, Chinese investors demarcated villagers' land and community forests for the development of sugarcane plantations. Families depend on forest areas for the collection of other non-timber forest products, and on streams for fish. Most significantly, a sizeable number of families in the villages earn most of their cash income by tapping resin from ancient *Dipterocarpus* trees that grow wild in the forest. Most families raise cattle or buffalos, letting them graze in collectively used spaces. The clear-cutting of indigenous lands and the conversion of the land into sugarcane fields has posed an immediate threat to all these sources of livelihood. The communities reported that no measures were taken to ensure free, prior and informed consent and that there was no information regarding an environmental or social impact assessment as the companies began their operations.²⁴

3. Violations of Right to Life

A. Myanmar

Wanbao Copper Mining Company is a subsidiary of a China's state-owned North Industries Group Corp. In 2011, the company signed a joint-venture agreement with Union of Myanmar Economic Holdings Ltd. (UMEHL), an entity controlled directly by the Burmese military, to operate Letpadaung Copper Mine in the Salingyi Township of Sagaing Region of Myanmar. The project, one of the largest copper mines in Asia, requisitioned 5057 acres of cultivated land from villagers in Ton Moegyopyin, Setae, Kyautphyusai, Zeetaw, and other villages at the base of mountains of Letpadaung. Sixty-six villages were forcibly relocated without fair compensation. The mining operation has also caused dust and noise, and has polluted water resources.

There have been severe conflicts between Wanbao Company and local residents. In September 2012, over 5000 villagers participated in a protest at the Monywa copper mine. Credible evidence demonstrates that security forces used white phosphorus, a highly explosive chemical, to disperse the protesters; between 110 and 150 individuals reported suffering serious, in some cases debilitating, injury.²⁵ On December 22, 2014, violence once again erupted in the Letpadaung copper mine as villagers opposed to the expansion of the mine clashed with police and Chinese workers. A 56-year-old woman villager Daw Khin Winwas was shot dead and four were arrested.²⁶

²⁴ <https://www.grain.org/article/entries/5728-cambodia-communities-in-protracted-struggle-against-chinese-sugar-companies-land-grab>

²⁵ <https://www.amnesty.org/en/latest/news/2015/11/myanmar-letpadaung-mine-protesters-still-denied-justice/>

²⁶ <https://www.amnesty.org/en/documents/asa16/5564/2017/en/>

B. Peru

Las Bambas is a large, long-life copper mine located in Cotabambas, Apurimac region of Peru, managed by a joint venture of three subsidiaries of Chinese state-owned enterprises: MMG, Guoxin International Investment Co. Ltd and CITIC Metal Co. Ltd. MMG is a subsidiary of China's central government-owned enterprise, China Minmetals Corporation (CMC). The mining has resulted in dust, noise and vibrations have affected the communities since the beginning of operations. Prior to opening the mine, the companies had taken no effective measures of prevention, mitigation or remediation, and had held no consultation with the affected indigenous communities.

On September 25, 2015, various peasant organizations and affected communities held a strike in protest; direct actions have been continuous since then, to demand environmental protection in indigenous territories. The company has responded by filing complaints and seeking criminal prosecution against community members, arguing that they are part of a criminal organization. This has further deepened tensions between MMG and communities. Activists have also provided documents alleging that MMG signed an agreement with local police force for protection. The local government has used the armed forces and the announcement of a state of emergency to restrict indigenous activists and community leaders' mobility.²⁷

Three peasants from Cotabambas – Exaltación Huamaní, Alberto Chahuallo and Alberto Cárdenas – were killed by gunshots fired by police during the eviction of *comuneros* blocking the mining camp in 2015. Quintino Cereceda was also killed in similar circumstances in a protest in 2016.

Recommendations

ISHR and Mekong Legal Network remain concerned that, as China's political and economic influence grows, violations and abuses such as those listed above will continue to impact communities in the host countries where Chinese enterprises and investors operate. In this regard, the authors urge governments to use the 3rd cycle of the Universal Periodic Review to encourage China to fulfill its international obligations to respect and protect human rights, and to take meaningful steps to regulate Chinese overseas companies' operations in line with international human rights standards.

States should recommend that China:

- incorporate protections for international human rights standards into new legislation addressing outbound investment and overseas development assistance, and amend as needed complementary existing regulations on ownership, corporate governance or responsible business conduct.²⁸

²⁷ <https://www.opendemocracy.net/protest/las-bambas-mine-peru>

²⁸ As in A/HRC/32/45, para.98.

- require all state-owned enterprises to report any significant negative human rights impacts outside China’s territory to their supervisory governmental agencies, and to maintain a public and accessible record of these reports.
- require all Chinese companies listed on the Shanghai and Shenzhen Stock Exchanges to:
 - adopt corporate human rights policies which recognize the essential role of community-based organisations and other civil society actors, including trade unions and human rights defenders.
 - to disclose information about the human rights impacts revealed by such due diligence to their shareholders, regardless of the jurisdiction in which the violations or abuses occurred.²⁹
- ensure that the mandate of the newly-announced international aid agency includes the application of environmental, social and human rights impact assessment standards to China’s foreign aid projects, and that the agency has the resources and authority to enforce those standards.
- set up a grievance mechanism to receive complaints from people and communities whose human rights have been negatively affected by China’s foreign aid and international cooperation projects.
- actively promote and implement the UN Guiding Principle on Business and Human Rights and other relevant international or regional human rights frameworks, and undertake outreach in particular to Chinese state-owned and private enterprises and Chinese financial institutions.
- join the Voluntary Principles on Security and Human Rights, and prohibit any Chinese enterprise, whether state-owned or private, to contract police or armed military of third countries to provide security for their business operations **unless** such contracts are in line with the standards and best practices outlined in the Voluntary Principles.

²⁹ As in A/HRC/32/45, citing Global Reporting Initiative, *Carrots and Sticks: Sustainability reporting policies worldwide – today’s best practice, tomorrow’s trends* (2013), this is already occurring in China.