Universal Periodic Review of the People's Republic of China

Fourth Cycle, 45th Session, January - February 2024

Human Rights Violations Associated with Chinese Overseas Investment in Guinea

Stakeholder Submission

Submitted by:
Les Memes Droits Pour Tous (MDT)
Maître Alpha Mariam Diallo
Building BARRY 2ème floor, Hamdallaye route le prince, commune of Ratoma

and

The Center for Transnational Environmental Accountability (CTEA)
Emily Scherr, Esq.
500 W. Baltimore St., Baltimore, MD 21201

Table of Contents

Executive Summary

1. This submission was prepared by Les Memes Droits Pour Tous (MDT) and The Center for Transnational Environmental Accountability (CTEA) for consideration during the 4th Cycle of the UPR for the People's Republic of China (P. R. China). Created in 2006, MDT is a Guinean civil society organization working to defend and promote human rights. MDT accompanies communities impacted by major projects, particularly mining projects, in the protection of their rights. It also supports the Guinean government in the implementation of land governance reforms in the Republic of Guinea. CTEA is a non-profit legal organization with expertise on Chinese laws and the environmental and human rights impacts of Chinese overseas investments associated with the Belt and Road Initiative (BRI).

2. MDT and CTEA have reviewed the recommendations made to P. R. China during the 3rd Cycle of the UPR in 2018 concerning P. R. China's overseas operations. Chinese companies, including state-owned and private companies, operating in Guinea lack respect for Guinea's human rights and environmental laws. Enforceable legislation in P. R. China to ensure companies respect human and environmental rights in overseas operations is absent. There is no state-run grievance mechanism in P. R. China for Chinese investment recipient country communities to report violations. MDT and CTEA have drafted this report with the following recommendations:

- Make new legislation and revise current regulations to ensure the Chinese government respects and protects people and communities' economic, social and cultural rights; ensure Chinese companies & financial institutions operate their business in and outside P. R. China in line with the ICESCR and UN Guiding Principles on Business and Human Rights.
    - Integrating the UN Guiding Principles on Business and Human Rights, making **Outbound Foreign Investment Management Law** and **Law on Corporate Due Diligence Obligations in Supply Chains**.
    - Revise the **Environmental Impact Assessment Law**, and require environment, climate and social impact assessment results as required documents for the approval and recordation of the outbound investment and foreign aid projects.
- Increase the transparency of administrative actions in the approval and recordation of the outbound investment and foreign aid projects.
- Make, publicize and update a blacklist of Chinese companies and other business entities which caused severe human rights harms and environmental damages overseas.
- Establish state-run grievance mechanisms to accept communities' complaints and petitions.

Introduction

3. In the 3rd Cycle of the UPR, P. R. China accepted several recommendations in relation to business practices, human rights, and Chinese companies and their operations abroad including:
    - Consider the establishment of a legal framework to guarantee that activities carried out by industries subject to its jurisdiction do not negatively impact human rights abroad;[1]
    - Continue extending Chinese laws, regulations and standards such as the Guiding Principles on Business and Human rights to Chinese companies operating beyond P. R. China's borders;[2]
    - Strengthen efforts, in accordance with the International Covenant on Economic, Social and Cultural Rights and the Guiding Principles on Business and Human Rights, to reduce

the adverse environmental effects of industrialization including air pollution;[3]

  - Establish a regulatory framework to assess the human rights and environmental impacts of corporations headquartered in China so as to promote and respect human rights, in follow-up to the recommendations contained in paragraphs 186.185, 186.193, 186.224 and 186.251 of the report of the Working Group, accepted during the second cycle;[4]
  - Take further measures on business and human rights in line with its international obligations and ensure that companies operating in high-risk or conflict areas conduct human rights due diligence in line with the Guiding Principles on Business and Human Rights;[5]
  - Promote measures that ensure that development and infrastructure projects inside and outside its territory are fully consistent with human rights and respect the environment and the sustainability of natural resources, in line with applicable national and international law and the commitments of the 2030 Agenda for Sustainable Development;[6]

4. P. R. China has ratified the International Covenant for Economic, Social and Cultural Rights (ICESCR) and the Paris Climate Agreement and has committed to implementing the Sustainable Development Goals.[7] Additionally, the right to a clean, healthy, and sustainable environment was recognized as a human right in 2021.[8] While P. R. China has accepted the above referenced recommendations concerning Chinese overseas business practices, including creating a legal framework to ensure businesses operating abroad respect human rights, no such framework has been established in the five years since P. R. China's last UPR.

5. The Guiding Principles on Business and Human rights[9] states that "[b]usiness enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved." Additionally, the Guiding Principles state that "[i]n all contexts, business enterprises should: (a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate."

6. The PRC's overseas investments in developing nations often use technologies and standards that are not in line with the PRC's and the host nations' environmental standards, climate commitments and international human rights norms. Several Chinese enterprises and state-owned enterprises (SOEs) rely on highly polluting coal technology to provide power for their industrial operations in developing nations. The construction and reliance on coal-fired power plants is not in line with the terms of the Paris Climate Agreement, the International Covenant for Social and Cultural Rights, or the UN Sustainable Development Goals.

7. As an illustration of ongoing human rights and environmental issues associated with P. R. China's overseas investments, and to show that P. R. China has not implemented the recommendations it accepted that are listed above, we have compiled case studies from Guinea to highlight how P. R. China has failed to meet their international human rights and environmental obligations. These case studies focus on land rights and climate change concerns associated with the bauxite and iron mining sectors in Guinea.

Chinese Investment in the Bauxite and Iron Mining Sectors in Guinea

8. From late October to early November 2016, President Condé of Guinea paid a state visit to P. R. China. President Xi Jinping held talks with President Condé at the Great Hall of the People. The two heads of state decided to establish a comprehensive strategic partnership between P. R. China and Guinea. P. R. China and Guinea signed the "China-Guinea Resource and Loan Cooperation Framework Agreement" in September 2017 in Xiamen, Fujian Province, P. R. China, one year after the then President of the Republic of Guinea, Alpha Condé's official visit to Beijing and meeting with Chinese President Xi Jinping in 2016.[10] The Chinese Embassy in Conakry posted news showing Mr. He Lifeng, Chairman of the National Development and Reform Commission (NDRC) and Mr. Ibrahima Kassory FOFANA, Minister of State and the Investment Advisor of the Presidency of Guinea, signing the Framework Agreement on Cooperation on Resources and Loans between the two countries in Xiamen on September 5th.[11]

9. In the agreement, Guinea grants Chinese corporations exploration rights for bauxite, iron, and other mineral resources, while the PRC agrees that Chinese financial institutions will provide the necessary loans for the extraction projects.[12] The agreement notes that over the next 20 years (2017-2036) the amount of money invested in mining projects in Guinea by the PRC should reach 20 billion USD.[13] A list of priority projects added as an addendum to the agreement includes bauxite mining projects in Boffa and Boké.[14] Overall, the agreement seeks to accelerate the financing and extraction of mineral resources.

10. P. R. China's demand for minerals and the Chinese and Guinean governments' natural-resources-for-infrastructure agreement has boosted the bauxite and iron mining industries in Guinea. The Chinese government-run newspaper, *Global Times*, reported on September 6, 2021 that a total of 14 Chinese state-owned and private companies are involved in the aluminum sector in Guinea.[15] In 2020, P. R. China imported 52.7 million tons of bauxite from Guinea, 50% of P. R. China's imported bauxite.[16] The Chinese companies operating in the mining sector in Guinea include but are not limited to:
    - Aluminum Corporation of China (Chinalco), a Chinese central government-owned enterprise.
    - China Baowu Steel Group Corp., Ltd., China's biggest state-owned iron and steel enterprise, announced its investment in Simandou infrastructure and iron.[17]
    - State Power Investment Corporation Limited（SPIC).
    - China Henan International Group Co. Ltd, Henan Province government-owned company.

    Other Chinese companies including:
    - China Hongqiao Group Limited/Shandong Weiqiao Pioneering Group Ltd.
    - TBEA Co., Ltd.
    - Shandong Zibo Rundi Aluminium Co. Ltd.

11. While bringing economic development, Chinese-backed or financed mining and related infrastructure construction activities also caused adverse impacts on communities and the environment. Communities' rights to a clean and healthy environment, rights to adequate food, housing, water and sanitation, and traditional lifestyles and culture have been significantly affected by Chinese companies' activities in Guinea.

The P. R. China Financed Mining Companies and their Environmental and Social Records in Guinea

12. The Société Minière de Boké (SMB) is one of the Chinese-financed companies operating in the bauxite mining sector in Boké, Guinea. The SMB has been operating in the bauxite industry in Boké since 2015. Throughout SMB's presence in Boké, local residents have complained of environmental harms, including harmful dust from the mining operations, heavy truck traffic and resulting respiratory illnesses, depleted and polluted freshwater sources, and a reduction of soil fertility and the level of agricultural productivity for both annual and perennial crops due to pollution and lack of fresh water, among many other harmful environmental impacts.[18] Not only has the SMB had a poor environmental and social track record in Boké, but now SMB has plans to construct an alumina refinery to be powered by a captive coal-fired power plant, in contravention of Guinean environmental laws and Chinese law, policies and international commitments in terms of the fight against climate change.

13. As a result of SMB's bauxite mining operations, communities in Boké have reported that individuals have not been given fair compensation for their land, and that SMB has disregarded customary land laws.[19] Article 829 of the 2019 Guinean civil code ordinance states that "[n]o one may be compelled to give up his property, except for a public purpose and in return for fair and prior compensation."[20]

14. The Article 123 of the Guinean Mining Code (2013) clearly stipulates that "[a] mining right does not extinguish a property right. No right to prospect or operate is valid without the consent of the landowner or its successors, with regard to activities involving the surface or affecting it." By dispossessing many individuals and families of their agricultural lands, which represent the most important livelihood of these communities, without fair and prior compensation and consent as provided for by Guinean regulations and international standards, SMB is guilty of serious human rights violations in the Boke region, in Northern Guinea.

15. The right to a clean environment is enshrined in the Guinean constitution and other laws. Chinese state-owned and private companies failed to comply with Guinea's laws on protecting the right to health, the right to land and the right to a clean environment. Both P. R. China and Guinea are signatories to the UNFCCC,[21] among several other international environmental agreements. Article 3 of the UNFCCC states in part that, "[t]he Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects." **The SMB has forged ahead with its plans to construct the coal-fired power plant in Boké even though the use of coal would violate Guinean law and policy, Chinese policy, and both Guinean and Chinese international commitments.**

16. The founders of the same Chinese company, SMB, started a consortium of companies known as Winning Consortium Simandou (WCS) which includes China Hongqiao Group Limited under Shandong Weiqiao Pioneering Group, to exploit iron reserves in Guinea's Simandou region. The Simandou project is also being backed by China Baowu, P. R. China's largest state-owned steel company. The Simandou iron ore deposit contains several billion tonnes of ore and is one of the largest iron ore deposits in the world. Additionally, the project includes the construction of a 650 km railway to transport the mined ore to a deep water port on the Guinean coast.

17. The Simandou project has not yet commenced with iron mining operations but WCS has begun land clearing ahead of the construction of the planned railway and port. These activities conducted by WCS are having serious impacts on the livelihoods of local communities and WCS has violated local land rights. Local communities located along the proposed 650 km long railway line have reported that they have been relocated without previous consultation or fair compensation.[22] Residents have complained of cracks in their homes due to blasting and complained that their homes were demolished without appropriate relocation measures.[23]

18. In addition to WCS' impacts on land rights, the activities related to the construction of the railway have caused adverse impacts on livelihoods. The communities of the WCS constructed port zone, and those located along the railway also reported the low yield of agricultural activities due to the invasion of cropping areas by mud from laterites of sedimentation. The silting of the Bantamayah agricultural plain and pollution of the watercourse in several villages was caused due to the drainage of water from the channeling of the railway route and from pipelines at the tunnels.[24] Communities living in the Port zone reported on the loss and destruction of their nets and canoes in the fishing area by collision with company boats at sea and scarcity/distancing of fish by ship noise.[25]

19. As with the bauxite exploitation by SMB in the Boké region of Guinea, there are serious climate concerns associated with the Simandou iron ore project due to WCS's planned reliance on fossil fuels. WCS stated in their Environmental and Social Impact Assessment (ESIA) that they are planning on constructing a 40 MW diesel fuel power plant to provide power for the mine.[26] Additionally, WCS also underestimated the climate impact of the project in their ESIA by not taking into account emissions caused by land use changes.[27]

The Chinese Government-Issued Policies and Guidance Failed to Ensure that Chinese Companies and Financial Institutions Comply with the Laws of Chinese Investment in Recipient Countries

20. The Chinese government issued Green Credit Guidance in 2012, the Guide to Environmental Protection for Foreign Investment Cooperation in 2013,[28] Guidelines for the Green Development of Foreign Investment Cooperation in July 2021,[29] the Guide to Eco-Environmental Protection for Foreign Investment and Cooperation Construction Projects in January 2022,[30] and Opinions of the National Development and Reform Commission and Other Departments on Promoting Green Development under the Belt and Road Initiative in March 2022.[31] The Principles for Greening Investment in the Belt and Road (GIP) were made by the Green Finance Committee of China Society for Finance, a Chinese research institute, in 2018.[32] Chinese business associations have provided similar guidance for their member companies to comply with voluntarily.

21. However, the documents fall short of affecting corporate governance. They lack enforcement measures and don't have legal consequences. No Chinese governmental ministry or administration is required to enforce these guidance and guidelines. It has been ten years since the first Chinese governmental guidance was issued in 2013, specifically aiming to guide overseas Chinese companies to comply with host countries' laws, respect local culture, and protect the local environment. Still, Chinese companies' environmental and human rights performances of their overseas operations in Guinea weren't improved. It is one of many examples indicating that

guidance and guidelines have not effectively ensured that Chinese state-owned enterprises, other companies, and state-owned financial institutions respect and protect human rights and the environment.

P. R. China's Outbound Direct Investment (ODI) Laws and Regulations are not Sufficient nor Coherent Enough to Ensure the Required Protection

22. P. R. China's ODI regime is designed with the objectives of serving the Belt and Road Initiative and safeguarding state-owned assets and ensuring their financial security. The environmental and human rights impact of offshore projects has not been a core concern of the Chinese government.

23. Institutionally, the Ministry of Ecology and Environment (MEE), the main administrative agency in charge of environmental affairs in P. R. China, does not have the mandate to regulate and penalize overseas projects for their adverse environmental and climate impacts. The lack of such compliance measures has caused human rights and environmental harms in a number of countries, particularly those with nascent legal systems.

Recommendations

MDT and CTEA provide the following recommendations for the PRC to ensure compliance with their human rights obligations:

- Integrate the UN Guiding Principles on Business and Human Rights to PRC's legislation.
    - Make a **Law of Corporate Due Diligence Obligations in Supply Chains**.
    - Make **Outbound Foreign Investment Management Law**.
        - Require environmental and social impact assessment in the outbound foreign investment approval and recordation processes.
        - Make human rights due diligence reports required documents for Chinese companies to request the approval and recordation of their outbound foreign investment projects.
        - Establish the state-run grievance mechanism to accept affected communities' complaints and petitions regarding their economic, social, and cultural rights.
        - Require relevant Chinese government departments and agencies to publicize their administrative decisions on outbound investment project review, approval, and recordation.
        - Make, publicize and update a blacklist of Chinese companies and other business entities which cause severe human rights harms and environmental damages overseas.
- Fulfill PRC's commitments on climate change, revising the **Environmental Impact Assessment Law,** and requiring the environment, climate, and social impact assessment results as required documents for the approval and recordation of outbound investment and foreign aid projects.
- Revise **Measures for the Administration of Information Disclosure by Listed Companies** (2021 Revision) to require Chinese public listed companies to disclose their **overseas subsidiaries'** environmental, social, and governance (ESG) information.

Endnotes

1. Human Rights Council, *Report of the Working Group on the Universal Periodic Review, China*, 26 December 2018, Document A/HRC/40/6, recommendation No. 28.131 (Peru).
2. Human Rights Council, *Report of the Working Group on the Universal Periodic Review, China*, 26 December 2018, Document A/HRC/40/6, recommendation No. 28.135 (Kenya).
3. Human Rights Council, *Report of the Working Group on the Universal Periodic Review, China*, 26 December 2018, Document A/HRC/40/6, recommendation No. 28.132 (Republic of Korea).
4. Human Rights Council, *Report of the Working Group on the Universal Periodic Review, China*, 26 December 2018, Document A/HRC/40/6, recommendation No. 28.134 (Haiti).
5. Human Rights Council, *Report of the Working Group on the Universal Periodic Review, China*, 26 December 2018, Document A/HRC/40/6, recommendation No. 28.133 (State of Palestine).
6. Human Rights Council, *Report of the Working Group on the Universal Periodic Review, China*, 26 December 2018, Document A/HRC/40/6, recommendation No. 28.130 (Ecuador).
7. https://china.un.org/en/sdgs.
8. Human Rights Council, Resolution adopted by the Human Rights Council on 8 October 2021, Document A/HRC/RES/48/13. https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/289/50/PDF/G2128950.pdf?OpenElement.
9. United Nations Office of the High Commissioner, *Guiding Principles on Business and Human Rights* (2011). https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.
10. Research Institute for International Trade and Economic Cooperation, Ministry of Commerce, Economic and Commercial Affairs, Department of the Chinese Embassy in Guinea, Department of Foreign Investment and Economic Cooperation, Foreign Investment Cooperation Country (Region) Guide: *Guinea* (2021) at 4.
11. Economic and Commercial Office of the Chinese Embassy in Guinea, China and Guinea signed the "China-Guinea Resource and Loan Cooperation Framework Agreement" (2017). https://www.investgo.cn/article/yw/zctz/201709/391125.html.
12. China-Guinea Resource and Loan Cooperation Framework Agreement (2017).
13. China-Guinea Resource and Loan Cooperation Framework Agreement (2017).
14. China-Guinea Resource and Loan Cooperation Framework Agreement (2017).
15. Global Times, *Risks of Guinea coup to Chinese projects manageable: Military takeover tests China's ability to protect overseas interests* (2021). https://www.globaltimes.cn/page/202109/1233515.shtml.
16. Global Times, *Risks of Guinea coup to Chinese projects manageable: Military takeover tests China's ability to protect overseas interests* (2021). https://www.globaltimes.cn/page/202109/1233515.shtml.
17. China Baowu Steel Group Corp., *A new leap in international development, Baowu, together with Win Alliance, Simfer and the Government of Guinea officially signed the "List of Terms and Conditions for Simandou Infrastructure Projects"* (2022). https://www.baowugroup.com/media_center/news_detail/264671.
18. Natural Justice, *Community Audit of Environmental and Social Impacts of the Société Minière de Boké*, (February 2023). https://naturaljustice.org/wp-content/uploads/2023/07/COMMUNITY-AUDIT-OF-ENVIRONMENTAL-AND-SOCIAL-IMPACTS-OF-THE-SOCIETE-MINIERE-DE-BOKE-IN-GUINEA.pdf.
19. Natural Justice, *Community Audit of Environmental and Social Impacts of the Société Minière de Boké*, (February 2023). https://naturaljustice.org/wp-content/uploads/2023/07/COMMUNITY-AUDIT-OF-ENVIRONMENTAL-AND-SOCIAL-IMPACTS-OF-THE-SOCIETE-MINIERE-DE-BOKE-IN-GUINEA.pdf.
20. Loi Ordinaire L/2019/035/An Du 04 Juillet 2019, Portant Code Civil De La République De Guinee (2019), Article 829.
21. United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107.
22. Action Mines, Note Synthese De Quelques Insuffisances De La Mise En Œuvre Du Plan De Gestion Environnemental Et Social En Lien Avec Le Constat Sur Le Terrain Du Projet Simandou Des Blocs 1 Et 2 Realise Par Wining Consortium Simandou. https://actionminesguinee.org/projet-simandou-action-mines-plaide-pour-une-mise-en-oeuvre-efficace-des-pges-prenant-en-compte-les-preoccupations-legitimes-des-communautes-impactees/.
23. Action Mines, Note Synthese De Quelques Insuffisances De La Mise En Œuvre Du Plan De Gestion Environnemental Et Social En Lien Avec Le Constat Sur Le Terrain Du Projet Simandou Des Blocs 1 Et 2 Realise Par Wining Consortium Simandou. https://actionminesguinee.org/projet-simandou-action-mines-plaide-pour-une-mise-en-oeuvre-efficace-des-pges-prenant-en-compte-les-preoccupations-legitimes-des-communautes-impactees/.
24. Action Mines, Note Synthese De Quelques Insuffisances De La Mise En Œuvre Du Plan De Gestion Environnemental Et Social En Lien Avec Le Constat Sur Le Terrain Du Projet Simandou Des Blocs 1 Et 2 Realise Par Wining Consortium Simandou. https://actionminesguinee.org/projet-simandou-action-mines-plaide-pour-une-

mise-en-oeuvre-efficace-des-pges-prenant-en-compte-les-preoccupations-legitimes-des-communautes-impactees/.
25. Action Mines, Note Synthese De Quelques Insuffisances De La Mise En Œuvre Du Plan De Gestion Environnemental Et Social En Lien Avec Le Constat Sur Le Terrain Du Projet Simandou Des Blocs 1 Et 2 Realise Par Wining Consortium Simandou. https://actionminesguinee.org/projet-simandou-action-mines-plaide-pour-une-mise-en-oeuvre-efficace-des-pges-prenant-en-compte-les-preoccupations-legitimes-des-communautes-impactees/.
26. Mark Chernaik, *Evaluation of the Climate Impact Assessment ESIA for the Simandou Blocks 1 & 2 Mining Project*, Environmental Law Alliance Worldwide (2022).
27. Mark Chernaik, *Evaluation of the Climate Impact Assessment ESIA for the Simandou Blocks 1 & 2 Mining Project*, Environmental Law Alliance Worldwide (2022).
28. Department of Foreign Investment and Economic Cooperation, Ministry of Commerce, Notice of the Ministry of Commerce and the Ministry of Environmental Protection on Printing and Distributing the "Guidelines for Environmental Protection in Foreign Investment and Cooperation" (2013). http://www.mofcom.gov.cn/article/b/bf/201302/20130200039930.shtml.
29. Information Office of the Ministry of Commerce, The Ministry of Commerce and the Ministry of Ecology and Environment jointly issued the "Guidelines for Green Development of Foreign Investment and Cooperation" (2021). http://www.mofcom.gov.cn/article/ae/ai/202107/20210703176325.shtml.
30. General Office of the Ministry of Ecology and Environment General Office of the Ministry of Commerce, Notice on Printing and Distributing the "Guidelines for the Protection of the Ecological Environment of Foreign Investment and Cooperation Construction Projects" (2022). https://www.mee.gov.cn/xxgk2018/xxgk/xxgk05/202201/t20220110_966571.html.
31. National Development and Reform Commission, National Development and Reform Commission and other Departments Opinions on Promoting the Green Development of the Joint Construction of the "Belt and Road" (2022). https://www.ndrc.gov.cn/xxgk/zcfb/tz/202203/t20220328_1320629.html?code=&state=123.
32. Xinhua News Agency, Chinese and British institutions jointly released the "Belt and Road" Green Investment Principles (2018). http://www.gov.cn/xinwen/2018-12/01/content_5345075.htm; Green Investment Principles, What is GIP? (2019). https://gipbr.net/SIC.aspx?id=170&m=2.