

Myanmar Alliance for Transparency and Accountability - MATA

China

Submission to the United Nations
Universal Periodic Review

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Human Rights Council
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EXECUTIVE SUMMARY

The following report is a submission for the upcoming Universal Periodic Review of China, drafted by the Myanmar Alliance for Transparency and Accountability. This report highlights human rights issues relevant to the case of the Letpadaung copper mine, located in Salingyi Township, Sagaing Division, Myanmar. The Letpadaung Mine is owned and operated in part by Chinese company Wanbao Mining Limited, a subsidiary of China's state-owned China North Industries Group Corporation Limited. The report demonstrates the involvement of Chinese businesses in the continued suppression and abuse of the human rights of Myanmar citizens who reside nearby the Letpadaung Mine, particularly in reference to:

- Violent repression of peaceful protest
- Lack of free, prior and informed consultation of local communities
- Threats to the health and environment of local residents

- Inadequate or non-existent compensation for land seizures from local villagers

Therefore we recommend the government of China take the following actions to remedy these abuses:

- Collaborate with OHCHR to integrate human rights principles, conventions and treaties into its strategies, policies, plans and projects in relation to investment in Myanmar;
- Adhere to its extraterritorial human rights obligations by adopting and implementing human rights standards, laws and mechanisms to address the human rights obligations of its companies operating in other States;
- Ratify ILO Convention 169; and
- Require, and enshrine in its laws and policies, that companies domiciled or headquartered in China to conduct mandatory and adequate human rights due diligence throughout their global operations.

I. BACKGROUND AND FRAMEWORK



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Myanmar Alliance for Transparency and Accountability (MATA), formed in 2013, is a civil society alliance that supports civil society actors to collaboratively advocate for transparency and accountability in all sectors across Myanmar. MATA lobbies for improved natural resource governance, particularly in relation to Myanmar's extractive industry. The following information includes accounts and observations collected from local MATA affiliates, members who work on land rights in their communities; MATA's own research conducted from 2015 - 2016; and references to well-documented events from the Letpadaung Mine project in Salingyi Township, Sagaing Division, Myanmar.

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

A. Cooperation with human rights mechanisms

Introduction

1. Since 2012, Myanmar has embarked on unprecedented political, social and economic change. The nature of these changes has led to the progressive relaxation of international sanctions and subsequently improved international trade conditions to attract aid assistance for developmental projects and opportunities for Foreign Direct Investment (FDI) in extractive projects. The absence of strong regulatory frameworks and failure from the public sector to take responsibility has meant the this economic boom has not adequately benefited Myanmar people, but instead has contributed to resumption of conflicts over resource ownership and revenue sharing between ethnic, military and government groups. In particular, a considerable

number of these FDI projects are being financed and developed by Chinese state-owned enterprises and banks, which have triggered grave human rights violations in their operations.

2. This report intends to inform the United Nations Human Rights Council (UNHRC) for its upcoming Universal Periodic Review (UPR) of China. China must respect human rights in countries where it maintains business activities, such as through conducting due diligence - involving human rights impact assessments - in those countries, and provide access to effective remedy for those who are negatively impacted by its businesses' activities. By highlighting the operation of a mining case in Myanmar by a Chinese business entity, we believe our submission will help China to better respect, protect and fulfil its human rights obligations with regards to its companies' operations in Myanmar.

Extraterritorial Obligations of China

3. Given the human rights violations occurring in Myanmar, it is relevant to examine if China is fulfilling its human rights obligations, specifically with regards to the extraterritorial activities of Chinese businesses and their subsidiaries. We believe it is essential to document these activities in order to remind China that its human rights obligations extend beyond its physical borders.
4. China is a state party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and thus has the state duty to respect, protect, and fulfil the human rights outlined by the ICESCR.

5. General Comment No. 24 of the Committee on Economic, Social and Cultural Rights (CESCR)¹ maintains that state parties also have obligations to respect, protect, and fulfil these rights in their extraterritorial activities. Furthermore, according to General Comment No. 24, China's human rights obligations apply 'outside the national territory in situations over which State Parties may exercise control'² and China must require 'business entities to exercise human rights due diligence in order to identify, prevent and mitigate the risks of violations of Covenant rights.'³
6. Further, China is a state party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The CEDAW Committee, upon its 2016 review of Sweden, stipulated that state parties have an obligation to protect the rights of women in their extraterritorial activities, recommending 'the State party uphold its due diligence obligations to ensure that companies under its jurisdiction or control respect, protect and fulfil women's human rights when operating abroad.'⁴
7. China is also a state party to the Convention on the Rights of the Child, and thus has obligations to uphold the rights of all children. General Comment No. 16 by the Committee on the Rights of the Child maintains that state parties have obligations 'to respect, protect and fulfil children's rights in the context of businesses'

¹ See CESCR General Comment No.24 (2017) on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, E/C.12/GC/24.

² General Comment No.24, para. 10.

³ *Idem.* para. 16.

⁴ Committee on the Elimination of Discrimination against Women Concluding observations on the combined eighth and ninth periodic reports of Sweden CEDAW/C/SWE/CO/8-9 para. 35.

extraterritorial activities and operations'⁵ and that states should 'enable access to effective judicial and non judicial mechanisms to provide remedy for children and their families whose rights have been violated by business enterprises extraterritorially.'⁶

8. Lastly, China endorsed the United Nations Guiding Principles (UNGPs) on Business and Human Rights. UNGP Principle 4 stipulates States should 'protect against human rights abuses by business enterprises that are owned or controlled by the State (...) including, where appropriate, by requiring human rights due diligence'.⁷

B. Implementation of International Human Rights Obligations

Letpadaung Mine Background

9. The *Letpadaung Mine* is a surface copper mine, located in Salingyi Township, Sagaing Division, Myanmar, which began operations in June 2010. It is one of three mines in the larger Monywa project, which also consists of Sabetauung and Kyisintaung (S&K) copper mines. The large-scale mining project is a joint venture between Chinese company Wanbao Mining Limited. (Wanbao Mining), Union of Myanmar Economic Holdings Limited (UMEHL) and Myanmar state-owned company Mining Enterprise 1 (ME1). Wanbao Mining is a subsidiary of the Chinese state-owned corporation China North Industries Group Corporation Limited (NORINCO), while UMEHL is owned by Myanmar's military. Local operations at *Letpadaung Mine* are conducted by Wanbao Mining's subsidiary, Myanmar Wanbao Mining Copper Limited (Myanmar Wanbao).

⁵ Committee on the Rights of the Child General comment No 16 (2013 on State obligations regarding the impact of business sector on children's rights CRC/C/GC/16 para. 43.

⁶ *Idem.* para. 44.

⁷ Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" A/HRC/17/31.

Letpadaung's surface area originally consisted of 7867.78 acres of land, directly affecting 26 landowners in its activities.⁸ The *Letpadaung Mine* project was stalled in 2013 due to contestation of its operations by the local communities but reopened in May 2016 and continues to operate today.

10. The following case information concerning the *Letpadaung Mine* documents China's failure to fulfil its extraterritorial human rights obligations, specifically in reference to the business activities of the Chinese-owned company Wanbao Mining. Serious human rights abuses have occurred in conjunction with Wanbao Mining's activities at *Letpadaung Mine* prior to 2014, but they have largely remained unaddressed and continue to occur.⁹ Continued abuse of the human rights of the local communities around *Letpadaung Mine* have been well-documented and have consisted of lack of free, prior and informed consent of local peoples; forced evictions; environmental impacts damaging to local people's health and livelihoods; and violent responses to peaceful protest.¹⁰ In 2016, China's Foreign Ministry said its companies operating abroad must respect the laws, demonstrating China's familiarity with its extraterritorial obligations in Myanmar.¹¹ However, China has not adequately taken steps to prevent or discourage its companies from violating elements of its international obligations. The project

⁸ Letpadaung Investigation Commission Final Report, 2013, available in Burmese at: http://www.myanmaryangtse.com.mm/images/pdfs/2013%2003%2012%20_%20Letpadaung%20Investigation%20Commission%20-%20Final%20Report%20.pdf.

⁹ For English language information regarding background on Letpadaung Mine, please see Amnesty International's previous reports: *Mountains of Trouble: Human Rights Abuses Continue at Myanmar's Letpadaung Mine* (2015), available at: <https://www.amnesty.org/download/Documents/ASA1600032015ENGLISH.PDF>; and *Open For Business? Corporate Crime and Abuses at Myanmar Copper Mine* (2017), available at: <https://www.amnesty.org/download/Documents/ASA1655642017ENGLISH.PDF> (2017).

¹⁰ *Idem*.

¹¹ Reuters, *After Myanmar protests, China says companies should respect laws*, 9 May 2016, available at: <https://www.reuters.com/article/us-china-myanmar-mine/after-myanmar-protests-china-says-companies-should-respect-laws-idUSKCN0Y00QR>.

has found to lack transparency and accountability; has failed to obtain free, prior and informed consent from local communities; has resulted in blatant land grabbing disguised with unfair compensation.

Human Rights Violations Associated with *Letpadaung*

Violations of the Right to Integrity, Liberty and Security of the Person and the Right to Peaceful Assembly and Association

11. The Universal Declaration of Human Rights outlines the rights to peaceful assembly and association, however Wanbao Mining's actions regarding land seizures continue to stir social unrest, which in turn prompts the criminalization and silencing of protest by security forces. Protests continue to be answered with excessive use of force, intimidation, and harassment.

12. The *Letpadaung Mine* project has triggered numerous protests over its duration, leading to arbitrary detentions, judicial harassment, and the bodily harm of local villagers. On 22 December 2014, Khin Win, local landowner of Moe Kyo Pyin village in Salingyi Township, died from a gunshot to the head by police after entering the vicinity of a protest. Khin Win had went to the area to investigate if Wanbao Mining had fenced in her land as part of a massive land seizure across 35 villages conducted to expand the *Letapdaung Mine* project.¹² This violation of the right to integrity, liberty and security of the person was a direct result of Wanbao Mining's actions of illegally fencing off land without compensation. Local leaders who requested follow up information were detained and prosecuted on

¹² For English language report see: Frontier Myanmar, *Letpadaung, Daw Khin Win and impunity*, 14 November 2016, available at: <https://frontiermyanmar.net/en/letpadaung-daw-khin-win-and-impunity>.

spurious charges. No one has been convicted in relation to Khin Win's case.

13. On 14 March 2017, villagers protested by blocking a road, resulting in 10 people injured from police firing rubber bullets. The protestors were then judicially harassed for participating and were criminally charged with assault, illegal assembly, illegal demonstration, and destruction of property.¹³

Right to Participation and Consultation and Right to Land, Territory and Adequate Housing

14. Wanbao Mining has been highly criticized for its repeated failures to adhere to the processes of free, prior, and informed consultation with local communities outlined in ILO Convention 169, the UN Declaration on the Rights of Indigenous Peoples, and Principle 18 of the United Nations Guiding Principles on Business and Human Rights.

15. The UN Declaration on the Rights of Indigenous Peoples outlines the right to land and that 'States shall give legal recognition and protection to these lands, territories and resources.'¹⁴ General Comment No. 7 of the CESCR also stipulates guidance for protecting populations effected by development.¹⁵

16. Local villagers have most fiercely protested against Wanbao Mining's inadequate compensation schemes and resettlement processes. In the development of *Letpadaung*, Wanbao Mining often seized land resulting

¹³ For English language report see: Radio Free Asia, Myanmar Authorities Charge Farmers in Roadblock Protest of Letpadaung Copper Mine, 27 March 2017, available at: <https://www.rfa.org/english/news/myanmar/myanmar-authorities-charge-farmers-in-roadblock-protest-of-letpadaung-copper-mine-03272017163620.html>.

¹⁴ Resolution adopted by the General Assembly on 13 September 2007, UN Declaration on the Rights of Indigenous Peoples, A/RES/61/295, Articles 26, 27 and 28.

¹⁵ CESCR, General Comment No.7, The Right to Adequate Housing: Forced Evictions (1997).

in the forced evictions of thousands of residents. These actions were conducted prior to consultation with villagers and Wanbao Mining only offered inadequate compensation for land or crops following land seizures, actions which are in direct violation of the Myanmar Land Acquisition Act.¹⁶ Over the course of the project, Wanbao Mining has issued various compensation for crop damage, land use, and return of land, but these compensations do not abide by international standards. Many villagers, including those near the S&K Project, who have lost acres farmland or entire homes have yet to receive compensation from Wanbao Mining. Many villagers remarked they felt pressured to accept inadequate compensation and those who rejected compensation in any form were excluded from subsequent consultations.

17. It has been well documented that Wanbao Mining has failed on numerous occasions to inform or consult the local communities of planned expansions of its activities at Letpadaung, which consequently result in land seizures and Myanmar Wanbao released an Environmental and Social Impact Assessment (ESIA) in January 2015 which itself details that the company did not hold consultations with all possibly affected communities around *Letpadaung*.¹⁷ The company has not been transparent whatsoever regarding its planned expansion of the *Letpadaung Mine's* boundary lines announced in 2016, which involves the complete relocation of four villages - Wet Hme, Kandaw, Zeedaw, and Saedee.

¹⁶ Tomorrow for Lapadaung: Participatory Research by the Local Community, MATA, 2016.

¹⁷ Myanmar Wanbao, CSR Report 2015-16, 17 May 2016, p19, available at: <http://www.myanmarwanbao.com.mm/en/year-2015/53-june-2015/135-final-version-of-esia-report.html>.

Right to Live in a Healthy Environment

18. China is party to the ICESCR, which stipulates in Article 12 the right to live in a healthy environment. This right is reiterated as well in United Nations General Assembly Resolution 45/94, the Rio Declaration on Environment and Development. However, Chinese company Wanbao Mining undermines this right in operations at Letpadaung, which directly impacts local communities' health, food security, and quality of life.

19. The *Letpadaung Mine* sits in the flood plain of the Chintwin River. In August 2015, thousands of villagers were forced to flee dangerous flooding in Salingyi Township. Villagers remarked that dirt embankments created by Wanbao Mining around the *Letpadaung Mine* exacerbated flooding, which led to large crop and home destruction.¹⁸

20. Wanbao Mining has also failed to create safe and sustainable waste management and treatment facilities, leading to pollution of local water sources. Local MATA member and Salingyi resident Thwe Thwe Win observed that during rainy season, Wanbao Mining's wastewater overflows directly into the Chintwin River. Thwe Thwe and other MATA members noted in 2015, only a few hours after the waste contents were released into the river hundreds of fish died and were visible in the river.¹⁹ There have also been instances of cows dying after drinking from the river.

21. Thwe Thwe Win's personal health has been impacted as a result of drinking water contaminated by the

¹⁸ MATA, 2016.

¹⁹ MATA, 2016.

Letpadaung Mine's waste. She has experienced severe kidney problems, which her doctor attributed to the drinking water, as well as skin lesions and back pain.²⁰

22. The Moe Gyo sulphuric acid factory, used to purify copper from the S&K and *Letpadaung* mines, shows evidence of pollution in nearby Kan Kone village. Soil samples revealed high levels of sulphate and in December 2013, local villagers reported respiratory illnesses. By the end of that year, there were 31 deaths recorded, believed to be linked to the pollution from the acid factory.²¹ Many women in Kan Kone are reporting a rise in miscarriages and children born with birth defects, believed to be a result of the pollution.

Summary

23. Human rights violations observed in conjunction with the *Letpadaung Mine* demonstrate Chinese companies' disregard for internationally recognized economic, social and cultural rights. China has failed to conduct human rights due diligence, as its corporations and state-owned enterprises continuously neglect international obligations to respect, protect and fulfil the human rights of the Myanmar people in their business activities. It is unacceptable for China to justify its actions as in compliance with local law given that Myanmar is also a state party to the ICESCR and is under the same obligation to uphold economic, social and cultural rights. It is vital that China take steps to address the human rights abuses enacted and

²⁰ Interview conducted on: 26 March 2018.

²¹ MATA, 2016.

exacerbated by its businesses' operations in Myanmar, specifically in the case of the *Letpadaung Mine*. There has been violent repression by local authorities of peaceful protest, resulting in the death Khin Win in 2014 and the continued arrest and harassment of protestors. Wanbao Mining has continuously failed to consult the local community and to exhibit transparency in its planned expansion of the *Letpadaung Mine*. Wanbao Mining's operation at *Letpadaung* continues to negatively impact the health, livelihoods, and environment of the surrounding local communities. Moreover, the company has failed time and again to provide adequate compensation to villagers for land acquisitions and communities continue to be forcefully evicted from their lands.

RECOMMENDATIONS

23. This report serves to ensure that China respects, protects and fulfils the human rights of Myanmar communities that are affected by its companies' extraterritorial activities. We recommend China take the following actions:

24. We encourage China to collaborate with OHCHR to integrate human rights principles, conventions and treaties into its strategies, policies, plans and projects in relation to investment in Myanmar.

25. We ask China to ratify ILO Convention 169.

26. We implore China to adhere to its extraterritorial human rights obligations by adopting and implementing human rights standards, laws and mechanisms to address

the human rights obligations of its companies operating in other States. This adoption and implementation should include a structured plan, with measurable targets and reasonable time frames, to integrate these standards into Chinese operations abroad and ensure compliance.

27. We urge China to require, and enshrine in its laws and policies, that companies domiciled or headquartered in China to conduct mandatory and adequate human rights due diligence throughout their global operations. Mandatory requirements for enhanced due diligence must include:

- The practice of compulsory participation processes, including free, prior and informed consultation and environmental consultation;
- The mandatory implementation of human rights due diligence assessments at each project phase;
- Detailed plans outlining corrective measures when violations occur;
- The availability of and access to effective reporting mechanisms for violations;
- The availability of and access to effective remedy, whether legal or compensatory, for victims of violations.