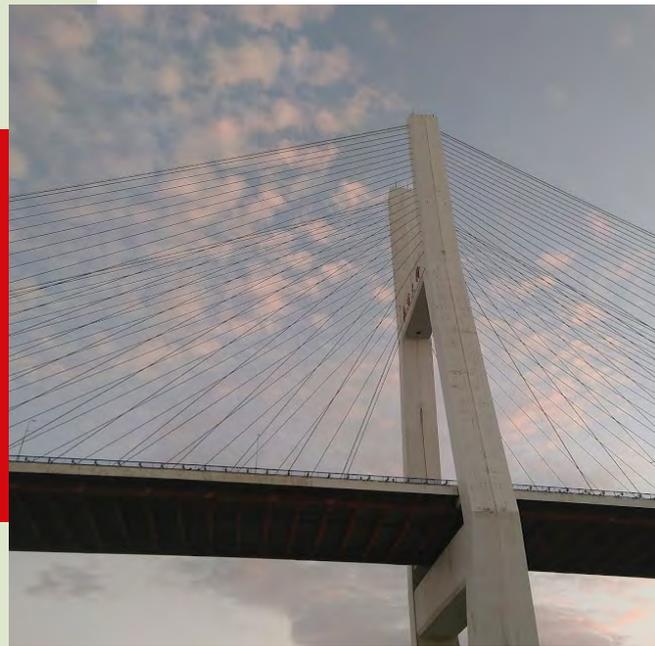


Supply chain due diligence: China's role in the international debate and setting of standards



The debate on mandatory human rights supply chain due diligence is gaining momentum. Legal regulations are discussed extensively both at the international level as well as in Germany. In this debate, one country in particular is getting attention: China. According to some industry associations and sympathizing politicians, if Germany or the EU were to introduce a mandatory supply chain due diligence law, the 'level-playing field' would be lost. Chinese companies would be placed in an even more competitive position. But the concepts of supply chain due diligence and corporate social responsibility are being discussed in the People's Republic as well. With a special focus on the mining sector, this fact sheet presents some of the cornerstones of these debates and develops proposals for a proactive cooperation policy.

The UN Guiding Principles on Business and Human Rights¹ (2011) have not been implemented adequately in Germany. The German government's National Action Plan (NAP) on Business and Human Rights (2016) merely formulates the expectation that companies will set up processes in order to fulfil their human rights due diligence obligations. Implementation, however, remains voluntary.² The results of the NAP thus have been poor. A survey by the German government, sent to 3,000 companies with more than 500 employees, recently inquired about the implementation of processes to fulfil human rights due diligence. Not even one-sixth of the companies

responded. Only 20 percent met the desired social and environmental standards.³ The *Initiative Lieferkettengesetz* ("initiative for a supply chain law"), a broad civil society alliance of over 80 organizations, therefore calls on the federal government to "immediately initiate a legislative procedure for a supply chain due diligence law."⁴ This law remains contested. Its advocates are met with various claims by their political opponents. If companies in Germany had to fulfill human rights due diligence along their entire supply chain, this would be a "competitive disadvantage compared to companies from other countries."⁵ When this claim is made, one country is often and explicitly mentioned: China.

The claim goes that profit-seeking Chinese have no understanding of and for human rights and environmental protection. Some go even further, asserting that German companies would withdraw from conflictive and politically instable states in the Global South if they were subject to high supply chain due diligence requirements. Chinese companies with even lower standards would then take their place. There is no doubt that the business activities of Chinese companies have often led to serious human rights violations and environmental pollution. However, in this line of discourse, all Chinese companies are lumped together, one standing for all. The stereotype of the profit-seeking, human rights-violating Chinese recalls the colonial image of the "yellow peril". Moreover, debates and activities



Civil society organizations in Germany call for mandatory human rights supply chain due diligence!
Photo: PowerShift e.V.

regarding corporate social responsibility and human rights supply chain due diligence conducted by Chinese companies, industry associations, the government, non-governmental organisations or other stakeholders within China are largely ignored.

2

Corporate social responsibility: A concept known in China

For more than a decade, China has been increasingly involved in activities related to Corporate Social Responsibility (CSR). Holding patriotic undertones, CSR has also been propagated as “responsibility towards one’s own country”. With regard to environmental protection in particular, calls for companies to be “more responsible” have been somewhat successful. The widespread and public outrage among the Chinese population over polluted air and waters has played a major role in this. The environment has been increasingly considered a “non-sensitive” topic. Xi Jinping, President since 2013, significantly expanded the competencies, financial and human resources of the Ministry of Environment. Inspectors are now sent to factories much more frequently to check compliance with environmental protection standards. And whereas in the past only economic performance was used to evaluate and reward the work of local governors, ecological criteria now also apply. In the Five-Year Plans, climate policy has a firm place. Numerous new environmental and climate protection laws in the country, as well as a stronger presence at international climate negotiations and debates on Green Finance, are evidence of a new prioritisation of this issue by the Chinese government.⁶ Accordingly, climate and environmental aspects

have also become central issues within CSR as well as financing on the capital markets.

In addition, environmental and climate damage is seen as easily quantifiable – much easier so than labour, social and human rights problems. “At this point in time, let’s first talk about the environment,” industry representatives and officials often reply when non-governmental organisations want to put other issues on the agenda.⁷ Some issues are easier to discuss under different terminology – for example, it is easier to talk about “occupational health and safety” rather than “workers’ rights”.⁸ However, at least on paper – for example in CSR legislation, guidelines and company reports – some of these issues nonetheless get raised. In 2008, the State-Owned Assets Supervision and Administration Commission (SASAC) published CSR guidelines for state-owned enterprises.⁹ Enterprises should assume responsibility for all stakeholders and “harmonise” their activities with social and environmental development. By 2012, more than 70 percent of the 100 largest Chinese companies had published CSR reports.¹⁰ In Germany in 2019, a total of 69 of the 100 largest companies published an “independent sustainability report or an integrated annual report.”¹¹

However, the discussion is not limited to corporate social responsibility at home. Knowledge of the concept of human rights supply chain due diligence is slowly but gradually spreading. In the summer of 2019, the Sustainable Supply Chain Manager of a major Chinese smartphone manufacturer declared that he was concerned with responsible raw material procurement and wanted to follow the supply chain of gold, cobalt, tantalum, tungsten and tin, among others, all the way to their source of extraction. Western regulations such as the EU Conflict Minerals Regulation, which comes into force in 2021, or Section 1502 of the US Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA)¹², which came into force in 2012 and was suspended again under President Trump, are well known to the relevant actors in China. As major players in global markets, Chinese companies follow developments in international legislation and industry standards. Likewise, the Chinese government is involved in international proceedings on this issue.

China's role in the UN Treaty process

Contrary to its poor reputation, the Chinese government is closely monitoring the legal development of human rights standards for companies in other countries and at the international level. Since 2015, an international human rights treaty is being negotiated at the United Nations. The treaty would create rules for global corporate activities and provide better legal protection for those affected by human rights violations. This UN process on a "binding treaty" was initiated by countries of the Global South – above all Ecuador and South Africa. The EU, Germany, the USA, Australia, Japan and other industrialised countries do not, or only with critical marks, take part in the negotiations, which take place every year in October in Geneva.¹³ During the 5th round of negotiations (14 to 18 October 2019), a *Revised Draft* of the agreement was discussed. Among other things, it calls for states to legally bind "their" companies to human rights due diligence and to sanction any violation of these obligations. At the beginning of the negotiations, the EU representative made a brief statement which was less critical than in previous years, but then did not further participate in the discussion of the content of the draft. Germany once again participated only as an observer.

On the other hand, the representative of the Chinese government actively participated

in the discussion of the content of the draft agreement. He spoke on all days of the negotiations and made concrete proposals for amendments to individual articles of the draft. His main criticism was that the "right to development", in which transnational corporations play an important role, must not be jeopardized by disproportionate human rights provisions. Furthermore, he said that, before creating new obligations and mechanisms to prevent human rights violations, it is necessary to look at already existing regulations, for example in China.

Due to the increasing juridification of human rights due diligence obligations in various legal systems around the world, globally active companies will be confronted with a multitude of requirements. Some of the due diligence laws already adopted at national level also apply to foreign companies: The UK Modern Slavery Act and the Dutch Child Labour Due Diligence Law cover not only domestic but also foreign companies.¹⁴ Many companies are therefore already calling for a uniform regulation at the international level.¹⁵ This increases the pressure on the international community to agree to international human rights standards for companies in the form of a UN Treaty. In contrast to most of the industrialized countries, China has recognized this and is already actively shaping the process.

Industry associations develop guidelines

Several industry associations have now developed their own sustainable and/or CSR guidelines or have started to draft them.¹⁶ These include associations in the electronics sector (China Electronics Standardization Association, CESA),¹⁷ in the construction and infrastructure sector (China International Contractors Association, CHINCA)¹⁸ and in the textile sector (China National Textile and Apparel Council; CNTAC).¹⁹ For the government and the industry associations, it is of importance to develop own standards. "*Our terms will always be different,*" said a Chinese CSR consultant in the summer of 2019: "*They will be our terms.*" If Chinese actors are not involved in the conception from the outset, standards would simply be perceived as "*foreign*". One poignant example in this case: the Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains, which were published by the China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (CCCME) in 2015. The CCCME, which is subordinate to the Chinese Ministry of Commerce, is a quasi-governmental organization to which more than 6,000 mining companies belong. The guidelines published by the CCCME

have been developed in cooperation with the OECD – of which China is not a member – and are strongly based on the corresponding OECD guidance.²⁰ A year earlier, the CCCME had already published the Guidelines for Social Responsibility in Outbound Mining Investment together with the German Corporation for International Cooperation GmbH (GIZ).²¹

However, so far the development of own audit systems, and in particular the attempts to translate the respective guidelines into audit projects, seems to be challenging. Their implementation remains voluntary. At this point it must be said that what applies to German companies obviously also applies to Chinese companies: Membership in industry initiatives or non-financial reporting via a CSR report will not lead to success. Only binding legal regulation will have the necessary impact. As long as this is not the case, German companies and industry associations must not apply double standards – i.e. claim that membership in voluntary initiatives is sufficient for them, but that Chinese companies cannot be trusted when publishing similar reports. The emergence of the guidelines published by the CCCME, as well as guidelines in other sectors, are proof of an emerging awareness of this topic. They are important at the normative level. For example,



The Chinese electronics and information technology industry met for the 7th time in August 2019 to discuss CSR. Photo: PowerShift e.V.

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the publication of the CCCMC guidelines has helped to establish China as an actor shaping the framework for responsible commodity supply chains.²²

Ways forward

In 2016, Amnesty International published a report on human rights violations in cobalt mining in the Democratic Republic of Congo.²³ The Chinese company Huayou Cobalt, which trades directly in cobalt, was heavily criticized for human rights violations in cobalt mining in the Democratic Republic of Congo. Although the report cannot be read in the People's Republic without encrypted internet access, various actors in China nonetheless consider it to be a game changer for the Chinese industry's debate. The damage to Huayou Cobalt's reputation was enormous, which also made other companies in the industry aware of the issue. Following the publication of the report, CCCMC mediated between Amnesty International and Huayou Cobalt. Shortly afterwards, CCCMC launched the Responsible Cobalt Initiative (RCI), the world's first industrial initiative to address responsible cobalt sourcing. One of the aims of the RCI is for member companies to endorse the CCCMC guidelines as well as the OECD Guidelines for Responsible Supply Chains from Conflict and High Risk Areas.²⁴ It remains to be seen whether the RCI will have a meaningful positive impact.

The example of the RCI shows that the work of NGOs – for example through “naming and shaming” – can also be influential in China. However, the companies that suffer most from reputational damage are those that form part of the supply chains of Western companies. In the summer of 2019, a CCCMC representative admitted that more pressure was needed to get things moving. This pressure, he said, should come not only from NGOs but also from transnational companies, which should demand high standards from their Chinese suppliers. In the mining sector, downstream companies – such as those in the electronics and automotive industries that purchase the processed metals – are the most influential players. For example, due to the expectations by international buyers, more and more Chinese refineries and smelters have joined the *Responsible Mineral Initiative* (RMI) industrial certificate. If an ambitious supply chain law in Germany obliges companies to fulfill human rights and environmental standards, corresponding requirements could be passed on to suppliers. If the law were to apply to business activities in Germany, Chinese companies doing business there would also be bound by it.

China already is of large importance for global supply chains, and this importance will only continue to grow. The electronics and automotive industries, as well as the construction and infrastructure sectors, require huge quantities of raw materials every year. A large proportion of the globally mined raw materials, at one point or another of their processing chain, ends up in China. The People's Republic of China should therefore be proactively involved in the development of international frameworks for human rights due diligence – otherwise there will be no effective regulation. The OECD and the United Nations Development Programme are already actively engaged with the Chinese government on this issue and are doing important work in capacity building. In addition to the adoption of a binding supply chain law in Germany, the German government must also seek and strengthen dialogue on this issue.

Seeking dialogue

In 2017, the Federal Ministry for Economic Cooperation and Development (BMZ) opened the Centre for Sustainable Development in Beijing. The Centre focuses on trilateral projects involving Germany, China and African states, for example on sustainability in the textile sector and in infrastructure. In this context, the cooperation with relevant actors in Chinese mining should be intensified again. In 2017, the German Federal Ministry for Economic Cooperation and Development (BMZ)

opened the Centre for Sustainable Development in Beijing. The Centre focuses on trilateral projects involving Germany, China and African states, for example sustainability in the textile sector and infrastructure. It would be welcome if the project activities of German development cooperation in cooperation with actors in the Chinese mining sector were to be intensified again. In recent years, the Federal Institute for Geosciences and Natural Resources (BGR) has also gained expertise in the field of human rights due diligence and the implementation of standards along the supply chain. Here too, cooperation projects with the Chinese Ministry of Raw Materials could be examined. These could potentially build upon a joint project for the development and implementation of human rights due diligence obligations, as GIZ has undertaken with the CCCMC.

In addition, the German Presidency of the EU in the second half of the year 2020 should be used to kick off the development of an EU human rights due diligence system. Moreover, the option to establish an EU-China dialogue on human rights supply chain due diligence can be considered. In all of these processes, the role of non-governmental organisations must be strengthened and given weight. Dialogue, joint research and cooperation projects, however, will only be successful when all partners are fully engaged. Thus, one cannot wait for others before implementing the highest possible standards for the protection of human rights and the environment. Their protection must not be economically quantified and viewed through the lens of “competition”. “China” can no longer be used as an excuse. The German government must act independently of the Chinese government and pass a mandatory law on human rights supply chain due diligence as well as finally take an active, positive role in the process for a UN binding treaty. At the international level, Germany must seek alliances with other states in order to address and sanction any human rights violations.

Part of the research for this fact sheet was carried out in summer 2019, when Merle Groneweg participated in the EU-China NGO Twinning Programme of Stiftung Asienhaus.

Endnotes

- 1 The UN Guiding Principles clearly state that the protection of human rights and the introduction of appropriate laws is the responsibility of the state. However, regardless of a country’s ability or willingness to implement or monitor compliance with human rights laws, companies do have a responsibility to respect human rights wherever they operate. Companies must be proactive in their efforts to ensure that their global operations neither cause nor contribute to human rights abuses. In case this nonetheless happens, they must respond accordingly. In short, the purpose of human rights due diligence is for companies to identify, prevent, mitigate and report on potential human rights violations and how they address them.
- 2 Forum Fairer Handel: “Deutschland hinkt hinterher – Die Umsetzung des Nationalen Aktionsplans für Wirtschaft und Menschenrechte und ein Blick auf andere Länder”, without date, <http://www.forum-fairer-handel.de/politik/wirtschaftsmenschenrechte/nationaler-aktionsplan/>, last accessed December 17th, 2019.
- 3 Deutschlandfunk: “Firmen sollen weltweit auf Einhaltung von Menschenrechten achten”, December 11th, 2019, https://www.deutschlandfunk.de/sozial-und-umweltstandards-firmen-sollen-weltweit-auf.766.de.htm-?dram:article_id=465580, last accessed December 31th, 2019.
- 4 Initiative Lieferkettengesetz.de: “Deutsche Unternehmen bei Menschenrechts-Test durchgefallen – Katastrophales Ergebnis macht Lieferkettengesetz unumgänglich”, December 11th, 2019, <https://lieferkettengesetz.de/presse/>, last accessed December 17th, 2019.
- 5 Handelsblatt: “CDU-Wirtschaftsrat: Lieferkettengesetz schadet deutscher Wirtschaft”, December 31st, 2019, <https://www.handelsblatt.com/dpa/wirtschaft-handel-und-finanzen-cdu-wirtschaftsrat-lieferkettengesetz-schadet-deutscher-wirtschaft/25378600.html?ticket=ST-1402478-Bc9L7wqWiiB2c933HH36-qp6>, last accessed December 31st, 2019.
- 6 Kostka, Genia und Chunman Zhang: “Tightening the grip: environmental governance under Xi Jinping”, in: Environmental Politics, Volume 27, 2018, p. 769-781.
- 7 This observation was made by the representative of a Chinese non-governmental organization in summer 2019.
- 8 职业健康安全 (Zhiyè jiànkāng ānquán) instead of 工人权利 (gōngrén quánlì).
- 9 Tan-Mullins, May und Peter S. Hofman: “The Shaping of Chinese Corporate Social Responsibility”, in: Journal of Current Chinese Affairs, 4/2014, p. 3-18; p. 7.
- 10 Ibid.
- 11 Institut für ökologische Wirtschaftsforschung: “CSR-Reporting von Großunternehmen und KMU in Deutschland. Ergebnisse und Trends im Ranking der Nachhaltigkeitsberichte 2018”, published 2019.
- 12 Both regulations address companies that process so-called „conflict minerals“, i.e. gold, tantalum, tungsten and tin. The aim of the regulation was or is, among other things, to stop conflict financing through trade in raw materials.
- 13 Treaty Alliance Deutschland: Für eine menschenrechtliche Regulierung der globalen Wirtschaft, 2019, https://www.brot-fuer-die-welt.de/fileadmin/mediapool/2_Downloads/Fachinformationen/Sonstiges/Positionspapier_TreatyAllianz2019_Fassung2019_WEB.pdf, last accessed December 17th, 2019.
- 14 Friedrich-Ebert-Stiftung / Robert Grabosch, Unternehmen und Menschenrechte im weltweiten Vergleich, September 2019, <http://library.fes.de/pdf-files/iez/15675.pdf>, last accessed December 17, 2019.
- 15 Presseportal: „REWE Group: ‚Menschenrechte dürfen nicht verhandelbar sein‘. Regulierung der Sorgfaltspflicht soll Menschenrechte in der Lieferkette stärken“, December 19th, 2019, <https://www.presseportal.de/pm/52007/4473545>, last accessed December 20th, 2019.

16 Industry associations in China are often attached to the Ministry of their sector and thus semi-governmental organizations. For example, China Electronics Standardization Association (CESA) is subject to the Ministry of Industry and Information Technology.

17 See China Electronics Standardization Association, <http://www.cesa.cn/index>.

18 See China International Contractors Association, <http://www.chinca.org/EN>.

19 See China National Textile and Apparel Council, <http://www.cntac.org.cn/>.

20 See OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, https://www.oecd-ilibrary.org/governance/oecd-due-diligence-guidance-for-responsible-supply-chains-of-minerals-from-conflict-affected-and-high-risk-areas_9789264252479-en.

21 See CCCMC and GIZ: Guidelines for Social Responsibility in Outbound Mining Investment, <http://images.mofcom.gov.cn/csr2/201812/20181224151850626.pdf>.

22 Stiftung Asienhaus / Jannick Saegert and Gregor Gossmann: "Human Rights Due Diligence in Mineral Supply Chains: International Developments and Chinese Efforts", 2018, in: Blickwechsel, p.4, https://www.asienhaus.de/uploads/tx_news/Blickwechsel_Human_Rights_Due_Diligence_in_Mineral_Supply_Chains_International_Developments_and_Chinese_Efforts_02.pdf, last accessed December 2019, 17th.

23 See Amnesty International: "This is what we die for: Human Rights Abuses In The Democratic Republic Of The Congo Power The Global Trade In Cobalt", 2016: <https://www.amnesty.org/download/Documents/AFR6231832016ENG-LISH.PDF>, last accessed December 17th, 2019.

24 RCI: 责任钴业倡议(RCI)会员宣言 ("Declaration of RCI Members"), 2018, p. 2, http://www.hrcobalt.cn/_25d4_25f0_25c8_25ce_25ee_25dc_25d2_25b5_25b3_25ab_25d2_25e9_25bb_25e1_25d4_25b1_25d0_25fb_25d1_25d4.pdf, last accessed December 17th, 2019.

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