

ENVIRONMENTAL AND SOCIAL RISK MANAGEMENT OF CHINESE TRANSNATIONAL CORPORATIONS

A Collaboration of the Yale School of Forestry and Environmental Studies and WWF

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Yale School of Forestry and Environmental Studies

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PREFACE

Professor Sir Peter Crane FRS

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China is the world's second largest economy, and is projected to be the largest by 2030 if current economic trends continue. Much of this growth, like growth in other major economies, depends fundamentally on the use, and often irreversible modification, of natural resources, from reef and river fisheries to forests and land cleared for agriculture. As one indication of the magnitude of China's impact, China ranks only 75th in its per capita carbon footprint according to the latest Living Planet Report from WWF. But China's vast population, the world's largest already accounts for 16% of the total global carbon footprint. More than any country including the U.S., which accounts for 15%.

An important and positive outcome of China's growth over the past two decades has been a significant increase in the standard of living of many of its people and its human development index. However, at the same time, this increased consumption has greatly increased China's demand on natural resources, and the impacts have been felt not only in China but also globally. Chinese transnational corporations are now engaged in commerce and the use of natural resources all over the world.

This Report summarizes the results from a workshop held at the Yale School of Forestry & Environmental Studies in the spring of 2014 that focused on the possibilities for enhancing the environmental and social performance around the world of China's transnational corporations. It also include articles solicited from conference participants and their co-authors. The workshop was organized by an enthusiastic group of students from Yale, many of them from China, in close collaboration with WWF-China and WWF-US. The workshop included excellent participation by representatives from major Chinese transnational corporations. As Dean of the Yale School of Forestry & Environmental Studies, and also a member of the Board of WWF-US, I could not be more delighted by this exciting collaboration, which points the way for future progress at the crucial interface between business and the environment.



PREFACE

LO, Sze Ping

CEO, WWF China

The rise of China as a world power in recent years has presented both promises and challenges to the rest of the world. China's multinational companies have set up business operations in almost every corner of the world. It has also led the world in manufacturing and deploying renewable and clean technologies. China's struggle to transform its development path towards better sustainability will therefore provide valuable lessons for others. China is now better positioned than ever to play a more active role commensurate with its economic prowess by demonstrating its ability to protect its environment at home and manage its environmental footprint overseas.

WWF has been working to support China achieve its development goals within the ecological limits of one planet. Towards this end, we have been engaging stakeholders in China and globally to explore ways to help reduce the environmental impacts of Chinese overseas investment and trade. We have worked to inform China's socio-economic planning that reflects enlightened consciousness of 'environmental footprint' both domestically and internationally. We have also created new conduits for candid dialogue between several African governments and Chinese government agencies to leverage opportunities around a concrete green environment and energy agenda under the Forum on China-Africa Cooperation. With valuable lessons learned from the first phase of its China for A Global Shift Initiative, WWF is ready to launch a second phase of the Initiative to achieve even greater reach and impact.

The joint Yale-WWF workshop on Environmental and Social Risk Management of Chinese Transnational Corporations held at Yale School of Forestry & Environmental Studies in April therefore could not have been timelier. It gathered representatives from some major Chinese multinational companies, international civil society organizations and academic institutions into thought-provoking dialogues and knowledge sharing. We hope to continue these productive conversations both internationally and in China and further build collaborative relationships with partners.

We give our sincere thanks to the group of students at Yale, especially Ms. Wang Yiting, who successfully organized the workshop in collaboration with our WWF US colleagues Dr. HU Tao, Mr. ZHU Li, Mr. WU Yanyang and Dr. Jason Clay who kindly offered the keynote speech for the workshop.

Synthesis report on the Yale-WWF workshop: Environmental and Social Risk Management of Chinese Transnational corporations

2014 Yale-WWF Workshop Organizing Committee

1. Workshop background

An increasing number of Chinese enterprises have globalized their business operations with significant investment in other developing economies. Meanwhile, managing environmental and social risks of these investments has become a critical challenge for Chinese transnational corporations (TNCs), especially for enterprises investing in extractive and infrastructure activities. The lack of attention to environmental and social responsibility will jeopardize long-term relationships with the host community and country, and the project operation itself. Gaps remain in complying with domestic and international guidelines, standards, and safeguards established to manage risks so as to control or minimize negative impacts of unforeseen environmental, political, and financial disruptions.

On April 5, 2014, the Yale School of Forestry and Environmental Studies (Yale F&ES) and the World Wildlife Fund (WWF) co-organized the workshop “Environmental and Social Risk Management of Chinese transnational corporations” to foster discussions around the challenges and opportunities for Chinese TNCs and how they can enhance their environmental and social performances overseas. It brought together 14 speakers with a wide range of backgrounds including Chinese corporate managers, multilateral policy bank managers, academic scholars, and public policy experts from the public and private sector. Many students, professors, resident scholars, and alumni from the entire Yale community also joined the conversations.

This synthesis report is organized around three main themes highlighted throughout the workshop. The first part takes an overview of China’s economic expansion and the accompanying social ecological challenges and opportunities. The second part focuses on patterns of local interactions of Chinese FDI in hydro dam construction and extractive sector. The third part addresses environmental and social risk management and standards in the context of public policy and corporate social responsibility. The last section concludes with recommendations for a new analytical framework to tackle these challenges.

2. Overview of Chinese outward foreign direct investment: New challenges to global environment and society

China’s recent trade and investment relationship with the rest of the world has captured the imagination among western commentators, scholars, environmental groups, diplomats, and politicians alike. At the end of last century, China doubled the GDP for 1 billion people in just

12 years. The impact of China's growth is not limited to China. The world is feeling it. China is investing in a wide range of hard and soft commodities from food and timber to minerals and oil. In 2013, China invested over \$90 billion in more than 156 countries and regions, a 16-fold increase since 2004 and surpassing traditional investor such as the U.K. and Japan.

The expansion of Chinese overseas investment has brought considerable benefits to the host countries, such as job creation, contribution to GDP, and local taxing. However, challenges exist as to the multifaceted environmental and social impacts associated with the investments China is making globally. For the Chinese TNCs, how to manage the social and environmental risks for their overseas investment becomes an important and unavoidable question.

Fortunately, Chinese actors are quickly learning and adapting their behaviors. International and domestic non-governmental organizations (NGOs) are accumulating experience in their interaction with Chinese firms. More scholars are turning to the field and contributing new and critical thinking and knowledge. New analytical frameworks are being proposed, and novel standards and practices are being piloted. The complexity of the issue requires a more nuanced and contextual understanding that moves beyond conventional stereotypes and myths, and towards a constructive and pragmatic approach to the problems at hand.

China is not alone. India, Brazil, Mexico, and other emerging economies are right behind and flexing their muscles. A better management of the global environment in a changing world calls for a new paradigm that promotes more partnering around the supply chains and financial flows. Throughout the workshop, many more important questions were raised that should guide us in the ongoing effort to increase understanding and solving problems.

- What are the similarities and differences between Chinese and Western TNCs?
- What is driving the overseas investment of Chinese state-owned corporations?
- Who has the right to set the international standards
- How will the overseas investment influence China's domestic practice?
- How to balance the art of environmental standards and economic development?
- How are we going to advance environmental and social policies of business through its engagement with civil society and governments?

3. Patterns of local interactions, implications for environmental and social challenge

The surge of outward investment activities owes much to the Chinese government's "Going Global" policy since 2000, which provides Chinese companies, especially state-owned ones, a package of financial incentives to invest overseas. The largest destination of the investment stock goes to the rest of Asia, followed by Latin America, Europe, and Africa. Throughout the workshop, the dam construction and extractive sector were frequently brought up as examples illustrative of the dynamic and complex nature of interaction among key stakeholders, showing positive signs for leverage points at both corporate and governance level. The bigger question is what kind of mechanisms and institutions can lead to a ratcheting

up of environmental and social standards, and to finding collective solutions in the process of economic globalization.

3.1. Chinese overseas construction of dams

Dam construction is a centerpiece of environmental and social controversy surrounding Chinese investment. Chinese dam builders and financiers account for 75% of world's dams being built, mostly for electricity generation. One workshop participant shared that Chinese dam builders are in general willing to take high environmental, governance and geographical risks for projects. They have however not been very open to interaction with civil societies, but have been adaptive and quick at learning to engage with NGOs. Some organizations have made great efforts in collaboration with the host countries and Chinese NGOs to engage in dialogue with Chinese dam builders, who have invited NGOs to provide input and recommendations to their environmental policy-making including assessment of sensitive and high-risk projects. It has welcomed most recommendations and even withdrew from projects.

From the companies' perspective, one should recognize the projects' significant contribution to the host country's economic development as well as the economic cost of adopting higher standards. Since the environmental and social management standard is tied closely to the economic development status of the host country, it will be challenging to impose one international standard across all countries. Some companies will adopt the higher standard between the host country and China. As a result, the environmental performance is often better overseas than in China. In addition, since the environmental standard will directly affect the cost of projects, a higher standard might not generate the optimal results as it sometimes prevents project development that is urgently needed.

On-the-ground outcome varies not only across host countries but also across companies. In Nepal, Chinese dam builders are heavily involved in the hydropower construction. Nepal needs 1200 MW generating capacity to deal with the regular blackouts in Kathmandu during dry seasons. Currently two projects are under construction by two Chinese hydropower companies. Both projects raise significant concerns among local communities and NGOs about their environmental impacts and how risks are managed. The lack of institutional management of Nepalese government has caused public boycotting the two projects. Although one company has excellent safety standard and community engagement programs, it would not interfere with the sovereignty of the host country by adopting higher international dam standard that is not accepted by the Nepalese government. Local benefits sharing is also present – the project will go public on the stock exchange and offer 10% to local people, so people have equity in this project. This system can be improved with a more established social structure.

A few lessons came across among speakers focused on the dam issue. Top Chinese TNCs want to maintain a good reputation, being it because they are seen as actors of the Chinese state or care about their corporate image. Chinese hydropower companies are also not homogeneous representatives of the Chinese government even though they are all state-owned enterprises (SOEs). There can be trade-off between economic development, consumption and environmental sustainability. A more optimal outcome will require

negotiation at individual company level, as well as at governance level of both host country and home country.

3.2. Chinese participation in extractive industries

“Extractive industries” (EIs) is a term used to describe industries that produces non-renewable resources. Because the exploration of non-renewable natural resources such oil, gas, minerals, and timber requires large amount of energy and heavy machinery, and impacts on water and land come from infrastructure development, the EIs present particular environmental challenges for countries around the globe, particularly the ones with fragile ecological or political environment. Over the past decades, Chinese EIs have been actively engaged in exploring non-renewable resources overseas.

How do Chinese TNCs differ from their western counterparts in this sector? Some think there seems to be more similarities than differences. Like western firms, Chinese mining companies’ activities are market driven. Their mission includes identifying the optimal location of the resources, pursuing profit maximization, creating shareholder values, and tackling the environmental and social risk challenges. The difference is that Chinese companies have only recently become TNCs; they have been learning and accumulating experiences. One representative shared that his company has established an internal “diamond model” to integrate resource exploration, trade, metal smelting and deep processing. It has allocated significant resources to manage environmental impact, specifically in the following areas: 1) responsible post-merger integration; 2) operation transparency and stakeholder engagement; 3) work safety; 4) ecological protection; and 5) community development. In addition, it has been actively working with international agencies and organizations such as the United Nation Global Compact and Business for Social Responsibility (BSR).

Apart from mining, Chinese oil and gas companies also find themselves entangled in local politics while going overseas. For policy makers in many countries of South America, Chinese demand for resources has been considered as a blessing, leading to increased exports and it is credited with helping Peru weather the financial crisis in 2008. At the same time, expansion of large-scale extractive activity has raised resource curse concerns and structural questions about how Peru can diversify its economy to decrease its dependency on mineral exports. Cases studies from Peru presented at the workshop illustrate limitations both in the Peruvian government’s legal and policy framework and the extent of Chinese companies’ CSR strategies. Therefor host country governments’ ability to establish and implement regulations is equally critical if not more than CSR, especially for high-risk investments, in directing foreign investment into responsibly and sustainably developing a country’s resources.

One participant believes that the government is improving in this regard. Peru recently increased taxes on the mining industries, a scheme to redistribute money from mining in which 50% goes to affected communities. Peru also recently joined the Extractive Industries Transparency Initiative (EITI), as well as established the Ministry of Environment in 2008. The government incorporated into constitution the International Labor Organization Convention 169 to guarantee prior consultation right for indigenous and tribal peoples on projects that affect their lives. The efforts to consult tribal people are important, as there’s a high level of social conflict around these projects, and the Chinese investors are new in this

game. There are prior examples of Chinese companies that satisfactorily relocated an entire community and cleaned up environmental damages wrought by the previous company.

4. Social and Environmental Risk Management: Public policy or corporate social responsibility?

As such, during the workshop there were considerable debates over the relationship between economic development and environmental protection, and the role of the government agencies, TNCs, and the international community in the creation and implementation of mechanisms to improve the social and environmental performance and outcome of investment.

4.1. Environment or economy? Governmental Policy or Corporate Social Responsibility (CSR)?

With regard to the first debate, panelists offered two main perspectives.

Perspective 1:

The economic and environmental goals are not exclusive to each other. For example, TNCs' violation of the environmental standards can cause social unrest and political dispute. The increased risk might deter potential financiers from investing in those overseas projects. Therefore, regulating companies' environmental practice will reduce the financial risk, achieving both environmental and economic goals.

In order to encourage the synergy of the economy and environment, policy intervention should happen on multiple levels at the same time. One participant proposes that the governments and the companies should actively involve in managing environmental risks by setting goals, learning from their international peers, and improving transparency of decision-making process.

Perspective 2:

Environmental protection will need to catch up with economic development. In China, the economy and environment are two runners with the economy way ahead of the environment. China has put great efforts in developing its economy in the past 30 years. But the environment is a relatively new issue compared with the economy. The environmental laws and public awareness of the environment are still at their early developing stage.

In order to reduce the gap between economic and environmental development, different opinions exist as to who is the most important actor. Some identify the central state as the key actor to initiate the change. In fact the Chinese state has established a series of measures to incorporate environmental protection into broader national planning and promote the idea of ecological civilization.

Others think the key actor is the TNCs. Chinese TNCs may not be familiar with environmental practice at first. But as they encounter environmental problems, they gradually learn to manage the environmental risks. In order to help TNCs to become more environmentally oriented, the international communities need to provide more assistance.

4.2. Towards a more holistic solution

Some participants argue that a big challenge with respect to the implementation of policies is a general lack of international standard. Guidelines such as ISO14001 only go so far in examining the standards of the host countries. Without a truly international standard, what should be the basis for policy implementation and who will be the drivers? Such standard regulating overseas investment, however, is difficult to be agreed upon multilaterally.

Another proposed alternative is for multinational corporations to drive these changes and standards internally, with informed discussions and meaningful collaborations with other drivers such as governments, civil society, and the academia. For example, as a handful of large Chinese dam companies control the majority of the market, their own standards will arguably set the “international” standards for other businesses in the hydropower industry. This highlights the need for the company itself to possess the technological and social skills to understand and appreciate the environment.

The governments, NGOs, and scholars must also play a key role in ensuring that such standards are sufficiently rigorous. In the Niger Delta case where multinational companies such as BP and Exxon have caused significant environmental damages in the area, the Nigerian government fed bad information, and the international media was unable to approach this problem and the NGOs have not been able to effectively remediate. As a result, the bad standard drags on and the problems ensue. In China, a potent legal framework has also not been in place, as seen through the Bohai Bay Oil Spill incident.

Not only does the Chinese government need to place enforceable legal system to supervise Chinese companies’ overseas activities, countries where Chinese companies operate also need to have their own environmental legal system. The environmental footprint of each can, therefore, be brought under supervision and control. So non-corporate drivers should and can take more proactive roles. Granted that environmental issues may still be at its embryotic stage, NGOs should go beyond “whining” and protesting, and scholars need to start disseminating and defining their new ideas directly to the multinational corporations. Although it is up to the multinationals to behave well and setting high standards on their own for the long term, these other drivers can also influence the process positively.

5. Moving forward

China’s ascendancy to the world stage entails many opportunities and challenges to the rest of the world. Environmental and social issues around China’s OFDI involves many actors at multiple scales: Chinese state-owned companies, private companies, banks, international governmental and non-governmental organizations, host country states, local governments, civil society groups, and communities. It also involves a wide variety of values, demands, and

expectations, including commercial profits, political interests, national image, social justice, environmental protection, and many others. An operational analytical framework of OFDI can start with identifying stakeholders in each geographic scale: home country, host country and global community, as well as in different sectors, including business, environmental, social, and political. This systemic framework can help us avoid misinformation, misunderstanding, mistrust and bias, which will enhance effective collaborations to address urgent global sustainability issues.

Opening Remarks from the Workshop on the Environmental and Social Risk Management of Chinese Transnational Corporations

Jason Clay

Senior Vice-President, WWF US

(Transcript)

I want to welcome everybody to today's conference, looking at impacts of Chinese investment both locally and globally. China has become the world's largest trading nation. While China's global growth has been a surprise to some, it actually took decades to make this growth happen. Also China's growth is significant and globally impactful. We need to think about China carefully to get it right so that we can be better prepared for growth by other countries and in other parts of the world. What we are really talking about is the speed of life in 21st century. Change is much faster than it has ever been before. That means we need to move the needle more quickly or the needle will move us.

This is what I am talking about. During the industrial revolution it took the UK 155 years to double the GDP of 9 million people. It took the US 53 years to double the GDP of 10 million people, about a century later. At the end of last century, China doubled the GDP for 1 billion people in just 12 years. China lifted 400 million people out of poverty during that period. This is a good thing. This is what we have all been trying to do. But such growth has impacts. The Chinese growth with the doubling of GDP occurred between 1983 and 1995. It then took 11 years for that growth to hit the global commodity markets. In 2006, we started to see price spikes. These price spikes led to food riots and deaths in 30 countries and this in turn sparked the Arab Spring.

Fast forward, India doubled the GDP of its more than 822 million people in 17 years. If India has the same impact on global markets as China, by 2017 we could start to see impacts in global commodity prices.

But, the impact of China's growth is not limited to China. Two years after the global recession, at least the recession that affected the US and European economy, we found that 100 countries were growing at 5% per year or more. Half of them are growing at more than 7% per year. These countries' primary trading partner is China.

China depends more on other countries' resources than any other country. It is more dependent on other countries for both hard and soft commodities. It is beginning to have more investments to control the flow of these commodities. What we are seeing is interdependence globally. In the last decade, the amount of food traded globally doubled from 6% to 12~15% of all food produced.. China's purchases, and the purchases of all the other countries whose economies are connected to China's economies and that are also growing, are stimulating this growth.

Trade is a good thing. It is a way to manage resources on a finite planet. It is a way to promote comparative advantages to produce things where we produce them with the fewest impacts and provide them to countries that do not have the same resource base. But we are going to need to start investing in the sustainability of the supply chains. We don't really know how to do that yet. I think we have some real opportunities now with China to look at some interesting new models.

One way to address this issue might be a new type of sovereign fund. Countries with a lot of natural resources, particularly those that are non-renewable, have started to develop sovereign funds. Through these funds they take certain percentages of the income each year, prior to the depletion of that resource, and then use those sources of income to build up a fund that creates the same flow of income each year as the sale of the commodity did.

Why can't China develop a type of reverse "sovereign" fund? Such a fund could be built on the resources China imports. It could tax or charge a fee on imports to create a fund which could be used to invest in long-term sustainability of its supply chains, e.g. more sustainable agriculture, more sustainable fisheries, more sustainable forestry and more sustainable products. Going forward, if we are to manage the resources of the planet more sustainably, sustainability needs to be precompetitive. Everyone needs to work together to ensure raw material supplies if we are going to have win-win situations and long-term sustainability on the planet.

China has become the manufacturer to the world. This is not just around clothing and other manufactured products. It is about food, seafood and paper products. It is about many other things. Within this context, we are beginning to see illegality in commodity production at a global level becomes more significant—as much as 5-50% of each commodity traded globally is produced illegally, e.g. not in compliance with the laws of the country in question. This is spurring interest in traceability, transparency and fraud. It is not China's role to fix all these problems. But as a country that's involved in trade, both as an importer and exporter, China is well positioned to help find solutions to these problems.

China is using domestic demand to fuel its continued economic growth. China also has major shifts, such as population shifts (China plans to move 250 million people out of rural areas into cities). This is a big, bold experiment. But this is the type of reaction we need to solve some of the global problems today.

China's key impacts globally are arguably from the import of soft commodities such as timber, paper, food, seafood, and animal protein. Today, China is the largest seafood producer, processor and consumer. In fact, China needs to take a long hard look of whether it wants to import things like cereal grains to produce animal proteins domestically, or simply start importing animal protein and leave the pollution to other producer countries where the manure can be recycled back to the soil. China also imports a lot of hard commodities, minerals, oil, and gas. It is investing not just in the hard and soft commodities but also in infrastructure, and increasingly in energy projects particularly hydroelectricity, where researches suggest that China is responsible for half of the world hydroelectric investments just through its domestic projects, but also that it invests in half of the rest of the world's

hydroelectric projects. This means that China touches about 75% of hydroelectric projects around the world.

Because of these purchases and investments, we see China's global footprint not only in China but also in Southeast Asia, Africa and Latin America. In Africa, five or six countries represent about 75% of the total trade between Africa and China, and in Latin America four countries dominate the trade. Increasingly, China is the biggest trading partner whether it is Brazil or South Africa.

So going forward, China has proven that it is not afraid of addressing big issues. It can also change course and pivot its economic performance based on what is happening in the market. I think China got out of the 2008 recession faster than any other country because it developed a central plan and implemented it more quickly than others. It can clearly address problems as they arise. But there are of course a lot of social and environmental impacts associated with the types of investment and types of purchases China is making globally. That's the discussion we need to start today. Perhaps the biggest question for all of us is: can others pivot their strategies as nimbly as China. This is going to be the real challenge. Because, if we can't, then we are going to have serious challenges between China's trajectory and what the rest of the countries around the world are able to do. It is our hope that from this discussion, we will build awareness and then consensus and finally strategic focus about how best to move forward, not as just with China but with China as the first step towards better management of resources on this planet.

Going beyond compliance to mitigate risks: CNPC's engagement with indigenous federations in Peru

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1. Introduction

In recent years, the Chinese government has begun to formulate standards by which Chinese companies invest in natural resources around the world, including attention to their environmental and social impacts. The Chinese government has introduced various guidelines and rules that seek to mitigate problems that companies commonly face when investing in global natural resource and infrastructure projects. The policy documents also aim to lay the foundation for stable and long-lasting investment opportunities for Chinese companies around the world and urge Chinese sponsored projects into alignment with good international practice. A major stipulation of these initiatives with respect to overseas investments is that Chinese transnational companies (TNCs) follow the laws of host countries and uphold international norms. Applied to actual cases, this guidance may underestimate the inadequacy of host country legal frameworks to mitigate environmental and social risks. At the same time, stating that companies should conform to international practice may lack the clarity necessary to avoid conflict.

Critics have pointed out Chinese sponsored projects that have gained approval from local authorities, but have the potential to cause, or have already caused, egregious harm to the environment and local communities. In one recent example, in early 2014 two Chinese state-owned companies were moving forward with the development of the Mirador mining project in Ecuador despite claims by Ecuadorian civil society that the copper mine would devastate the environment and indigenous peoples (Hill 2014). The severity of the risks to the company has been compounded as Ecuadorians protest the project in the streets, with the potential for project delays and complications. The Mirador project is an example in which Chinese investors have seemingly neglected to consider environmental and social risks. This points to a need to understand the challenges of implementing risk management in practice. Simply put, what are the barriers for Chinese companies to appropriately address non-financial risks that may arise as they invest abroad?

With a view toward understanding the particular context of Chinese overseas investments, I will present some findings from research I conducted in 2012 on a hydrocarbon exploration project in Peru that was sponsored by the China National Petroleum Corporation (CNPC). A primary issue I observed during my investigation was that following laws and working with government regulators in Peru was contentious. With respect to natural resource extraction in the Amazon, Peru's legal framework assigns rights to transnational companies, but also

affords rights to communities, and in particular indigenous communities. However, these two sets of rights are in contest with each other. In the case that I examined, CNPC's Peruvian subsidiary was able to mitigate risks it encountered by taking steps to respect the rights of indigenous peoples, for which it was necessary to go beyond compliance with Peru's laws and regulators.

Below, I will elaborate on China's existing policies governing overseas investments, the inconsistencies in Peru's legal system, and how CNPC's subsidiary handled issues that arose as a result of conflicting rights. In this way, I hope to bring to the fore the complexity of abiding by host country laws, the potential incompetence of those laws to avoid conflict, and the means through which resulting disputes may be resolved. Ultimately, this case may provide insights through which the Chinese government can further clarify rules for overseas companies and assist Chinese companies and financiers to better implement risk management systems.

2. Chinese guidelines for overseas companies

Laws regarding outward foreign direct investment (FDI) abound in China as the government has sought to encourage companies to go abroad while controlling exposure to risks of such activities. Since the turn of the millennium when the Chinese government commenced the "Going Out" (走出去) strategy, approximately 15 regulations pertaining to outward FDI have been issued per year. These regulations have primarily served to boost overseas investments through simplifying, expediting and clarifying authorization procedures, and addressing issues as they arise (Huang and Wilkes 2011). Yet analysts have noted that China's laws on environmental protection and sustainable development for FDI are either non-existent or incomplete (Sun 2012).

In the past several years, the Chinese government has begun to address this regulatory void, through issuing new policies regarding environmental and social impacts of Chinese companies operating abroad. In 2007 China's State Council, one of the highest levels of China's state administration, released a set of nine aspirational principles that pertained to all Chinese companies operating abroad. The Principles Governing the Activities of Foreign Investment Firms, as this document is known, called on Chinese overseas investors to "fulfill the necessary social responsibility, protect the legitimate rights and interests of local employees, pay attention to environmental protection, care and support of the local community development...and preserve China's good image and a good corporate reputation" (International Rivers 2012: 45). The next year, the State-owned Assets Supervision and Administration Commission (SASAC) followed up with social responsibility guidelines for Chinese state-owned enterprises (SOEs) (SASAC n/d). In 2013, China's Ministries of Commerce and Environmental Protection issued a more detailed document, called the Guidelines for Environmental Protection in Foreign Investment and Cooperation (MofCom 2013). The guidelines address issues such as legal compliance, environmental policies and management plans, mitigation measures and community relations in the overseas context (Mang 2013). Finally, the China Banking Regulatory Commission (CBRC) released guidelines in February 2012 that require Chinese financial institutions to consider environmental and social risks when providing credit to Chinese companies operating abroad (CBRC 2012).

These policy documents collectively form the Chinese government's expectations of Chinese companies operating overseas with respect to their handling of environmental and social risks that may arise.

Efforts to consider environmental and social risks and establish management systems to address these issues serve the multifaceted objectives of Chinese policy makers. First, these policies offer a means to address and potentially avoid risks that pose immediate threats to projects operated by Chinese transnational companies (TNCs) abroad. Additionally, due diligence that investigates non-financial risks may safeguard against interruptions to China's economic growth, particularly because China increasingly relies on foreign imports to provide natural resources such as petroleum and metals. Finally, increasing attention to environmental and social risks is a means for Chinese policy makers to improve the consistency of Chinese overseas projects with international standards. Chinese conformity with international practice has been the subject of public criticism in countries that receive Chinese FDI (Sharife 2010), and has led to debates in the academic and policy arenas over whether or not Chinese FDI is causing a 'race to the bottom' (Chen 2007; James A. Baker III Institute for Public Policy 2007; Gallagher, Irwin, and Koleski 2012; Irwin and Gallagher 2012; Gonzalez-Vicente 2009).

One means that Chinese policy makers have employed to combat an image of Chinese TNCs as deviant is an emphasis on compliance with host country laws. Article 21 of the CBRC's Green Credit Guidelines states that "Banking institutions shall...make sure project sponsors abide by applicable laws and regulations on environmental protection, land, health, safety, etc. of the country or jurisdiction where the project is located" (CBRC 2012). Article five of the Ministry of Commerce's guidelines reiterate this stipulation, requiring that, "Enterprises shall understand and observe provisions of laws and regulations of the host country concerning environmental protection" (MofCom 2013). The language of these articles is relatively forthright and explicit, and is an approach that appears to respect the sovereignty of the more than 170 countries in which Chinese TNCs invest (CCICED 2011).

3. SAPET's oil concessions in Madre de Dios

In practice, following host country laws may prove challenging, and even insufficient, however. In Peru, where I conducted research on a hydrocarbon exploration project that was sponsored by CNPC, legal inconsistencies were at the center of a dispute over the company's exploration in one of its concessions. In particular, rights bestowed to the company were in contest with the rights of indigenous peoples living in the area.

In December 2005, the Peruvian subsidiary of CNPC, China's largest state-owned oil company, signed agreements with the Peruvian government to explore for oil in the ecologically and culturally sensitive Peruvian Amazon. PeruPetro, the authority in charge of leasing Peru's oil concessions, granted SAPET, the Chinese oil company's Peruvian subsidiary, seven-year contracts to explore for oil in Blocks 111 and 113. These adjoining concessions spanned across a 2,747,679-hectare swath of the Peruvian Amazon, which lies within the department of Madre de Dios (GEMA 2006) (See map, below). SAPET was to invest US\$ 80 million during exploration and US\$ 1 billion during production (Biller 2005).

Indigenous federations and environmental NGOs in Peru opposed widespread corporate development of oil in the Amazon, including areas of SAPET's concessions. The block 113 concession overlapped a territorial reserve for indigenous people living in voluntary isolation. The territorial reserve was an area designated by Peru's Ministry of Agriculture for the protection of native tribes in 2002. Indigenous rights groups claimed that when PeruPetro sold block 113 to SAPET in 2005, it superimposed the concession over the reserve. This raised alarm among indigenous peoples' advocates, who pointed to earlier instances in which US-based Mobil Oil's exploration in the area had caused the tribes to flee their land or had been forcibly displaced from their habitat, in some cases violently (La Torre Lopez and Huertas 1999).

Indigenous federations and NGOs contested SAPET's hydrocarbon concessions as a threat to the survival of these vulnerable peoples. Arguably the most vocal opponents of the project were the Federación Nativa del Río Madre de Dios y Afluentes (FENAMAD), which represents over 30 indigenous communities residing in Madre de Dios and La Asociación Interétnica de Desarrollo de la Selva Peruana (AIDASEP), a national umbrella organization with membership of 65 indigenous federations throughout Peru. Other stakeholders from civil society organizations at the national and sub-national levels were also actively involved in advocacy about SAPET's oil concessions. These included NGOs focused on conservation, faith-based development, the environment and indigenous rights, as well as agricultural associations and academics from local universities.

The activists failed to convince key players within the Peruvian government, including PeruPetro and the Ministry of Energy and Mines, to make the Territorial Reserve of Madre de Dios off-limits to hydrocarbon projects. However, they had more success communicating directly with the company. From my interviews, I learned that after a series of meetings with indigenous rights activists and NGOs throughout mid-2006, SAPET agreed to stay out of areas of the block 113 concession located in the territorial reserve, which amounted to more than half of the oil block (FENAMAD 2006; GEMA 2006). This decision was made just half a year into the 7-year exploration contract and before the Peruvian government had issued permits for exploration. The timing is noteworthy because a PeruPetro official told me that he did not believe the company could have determined the existence of oil reserves during that short period, which implies that the company may have been motivated to create the no-go zone by civil society groups (Interview 14 2012).

According to the activists and company representatives I interviewed in Lima, key players within the Peruvian government, including PeruPetro and the Ministry of Energy and Mines did not support SAPET's decision, and would not officially redraw the boundaries of Block 113. Regardless, SAPET affirmed its commitment to stay out of the area during the exploration phase of the project by publishing a statement in the official *El Peruano* newspaper, Peru's newspaper of government affairs, as Supreme Decree 054-2006-EM in September 2006 (*El Peruano* 2006). The activists applauded the company's decision to respect the rights of indigenous communities, which was welcomed in contrast to the "deplorable" position of the Ministry of Energy and Mines and PeruPetro (FENAMAD 2006).

4. Peru's conflicting laws

The Peruvian government grants rights to both indigenous peoples and resource extraction firms, but often the rights conferred are in direct conflict. On one hand, an “investor-friendly” resource extraction law empowers foreign companies. On the other hand, international agreements signed by Peru enshrine the rights of indigenous peoples.

4.1. The promotion of foreign direct investment rights through Peru's legal framework

Since the 1990s, Peru's hydrocarbon law and corresponding state agency, PeruPetro, have sought to attract foreign companies through market-friendly policies. For example, Peru's Organic Law of Hydrocarbons (Law No. 26221) was put into force in 1993 during Fujimori's implementation of structural adjustment programs (PeruPetro 2010). According to the law, private companies have the right to full ownership of any hydrocarbons they extract (PeruPetro 2010)

The hydrocarbons law served to protect the rights of the foreign companies that were primarily involved in oil and gas extraction. For example, contracts for hydrocarbon concessions were categorized in Peruvian law as “Contract Law,” which is protected by the Peruvian Constitution and can only be modified by an agreement of both PeruPetro and the contracted company. In the eyes of the law, this contract is an agreement between two corporate enterprises (following corporate rules) and may be subjected to international arbitration, a move that provides assurance to foreign companies but undermines the government's ability to make changes to concessions that are not in the interest of companies (PeruPetro 2010).

4.2. The protection of the rights of indigenous peoples through Peru's legal framework

While Peru has a legal framework in place to protect the rights of TNCs, it also recognizes the land rights of indigenous peoples. A comparison by the World Bank of model frameworks to protect indigenous peoples' rights in Latin America highlighted Peru's legal framework as “superior” to those of many other countries. Peru was held up as exemplary because it had both high-level commitments and regulations to operationalize those standards (Roldán Ortega and World Bank. Environment Department 2004). Notably, the Peruvian government ratified the International Labour Organization's Indigenous and Tribal Peoples Convention (ILO 169) in 1994, which contains provisions that are relevant to resource extraction on indigenous peoples' land.¹ For example, ILO 169 Article 4.1 requires that states provide special measures to safeguard the culture and environment of indigenous peoples, while Article 5(a) demands recognition and protection of the social, cultural, religious and spiritual values and practices of indigenous peoples. Furthermore, Article 6.2 calls for consultation of indigenous peoples to be done in an appropriate manner “with the objective of achieving

¹ Peru also voted in favor of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, which is a non-binding declaration recognizing the status of indigenous peoples and their right to self-determination.

agreement or consent to the proposed measures.” Article 15.2 more specifically calls for consultation of indigenous peoples with respect to sub-surface resources (such as hydrocarbons) before initiating or permitting any exploration or exploitation projects on indigenous territories (ILO 1991).

Peru’s legal framework also provides for implementation and enforcement of ILO 169. Article 33 of the Convention states that responsibility for implementation falls on the State. To an extent this has been done through Peru’s Law of Native Communities (Roldán Ortega and World Bank. Environment Department 2004). Also, Peru is subject to the Inter-American Human Rights System, which can compel Peru to enforce treaties and conventions ratified by the government if claimants have exhausted domestic channels to hold the government accountable (Organization of American States 2009). As these details suggest, in theory, the ratification of ILO 169 provides ample protection of indigenous rights and the ability to implement and enforce such provisions in Peruvian law.

5. Conflict over different interpretations of rights

The tension between laws protecting the rights of indigenous peoples and laws and policies in support of foreign investors has been linked to socio-economic conflicts throughout Peru. The Defensoría del Pueblo, the government Public Defender, reported that almost 90 percent of socio-environmental conflicts across Peru between 2004-2007 were related to mining and hydrocarbon projects (Defensoría del Pueblo (Peru) 2007: 138). Some scholars hypothesize that different interpretations of land and natural resource rights leads to these disputes between legally empowered, but oppositional parties over extractive resource projects. According to Bebbington and Bury:

Conflicting views exist regarding the rights that mining companies and residents have, and the relative weight of these respective rights. Such discrepancies manifest themselves in different claims on the landscape...this spatial disjunction has led to conflicts between different legal, constitutional and cultural interpretations of rights (2009: 17299).

With respect to land and resource rights in Madre de Dios, FENAMAD interpreted the creation of the Territorial Reserve of Madre de Dios as an indication that the government was obligated to protect land claims by indigenous communities against encroachment by outside interests, including industry. Indeed, Peru’s Ministry of Agriculture had created the Territorial Reserve of Madre de Dios by Ministerial Resolution 427-2002.AG in 2002 (FENAMAD 2012). However, by 2005 PeruPetro had superimposed the block 113 concession on top of this territorial reserve and licensed the rights to hydrocarbon extraction in this area to SAPET. This license could then be interpreted by SAPET as giving the company full ownership of hydrocarbons in the concession in accordance with the 1993 Organic Law of Hydrocarbons. A mystified Víctor Kameno Manuaje, the former vice-president of FENAMAD when the block 113 concession was awarded, said to news media in 2007, the “state does not guarantee [indigenous peoples’] security, their life, or their territory,” because it simultaneously recognizes various territorial reserves in favor of the isolated peoples while giving these same reserves to oil and lumber companies (Carpo 2007). Mr. Kameno’s statement highlights the

contradictions in Peru's legal regime and the frustration that his federation felt in trying to gain the State's support to protect indigenous peoples living in voluntary isolation in the face of PeruPetro's licensing of hydrocarbon concessions.

This analysis of Peru's legal framework makes apparent that the Peruvian State gave foreign companies and indigenous peoples legal standing from which to stake opposing claims on the land and natural resources of Madre de Dios. Without a decisive legal framework, the stakeholders held vastly different interpretations of their rights, which became a source of potential conflict.

6. Finding solutions to disputes beyond the letter of the law

In the face of incompatible laws, SAPET took steps to address the potential impact of oil exploration on indigenous peoples living in isolation in the Territorial Reserve of Madre de Dios. In this section, I will show that the CNPC subsidiary's recognition of the rights of indigenous peoples, even though the Peruvian government did not support its position, allowed the company to take the necessary steps to ameliorate conflict and potential harm.

In its effort to be responsible for risk mitigation, SAPET sought to mediate controversy over its block 113 concession through arranging a dialogue with its most vocal critics. A SAPET manager at the time invited indigenous peoples federations and NGOs to meet with company representatives in Lima shortly after signing its contracts for blocks 111 and 113 with PeruPetro (Interview 12 2012). Among those the company reached out to were groups that had sent letters to the company in 2005 opposing the block 113 project (Interview 03 2012; Interview 05 2012).

After the first dialogue meeting, SAPET modified its behavior, taking steps to share some decision-making authority with its critics. For example, whereas SAPET had not involved its legal team during the initial meeting, afterwards the company had its lawyers draw up a letter requesting that PeruPetro redraw the borders of block 113 to avoid the Territorial Reserve of Madre de Dios and revise the company's contract to reflect this change (Interview 15 2012). It then sent the letter to the government oil agency, and had its agreement with the activists notarized and published in Peru's official gazette, *El Peruano* (FENAMAD 2006). SAPET's invitation to its critics to engage in dialogue and decision to change its work plan as a result of those meetings demonstrates that the company took seriously the rights of stakeholders. It is notable that SAPET took such actions even though they were in opposition to the company's own rights and were not required by law.

7. The absence of the Peruvian government in mediating controversy over block 113

Perhaps more remarkable is that SAPET recognized the rights of its indigenous stakeholders despite deliberate attempts by government regulators in Peru to ignore native claims to the land. Specifically, PeruPetro initially licensed the block 113 concession without regard for pre-existing land rights. Also, the government agency does not appear to have notified SAPET

about indigenous land claims during the contract negotiations. Finally, once the company began meeting with non-governmental stakeholders to address concerns, PeruPetro refused to support SAPET's efforts to respect indigenous rights.

PeruPetro's block 113 concession ignored the presence of the Territorial Reserve of Madre de Dios, which had been legally established by Peru's Ministry of Agriculture in 2002. The reserve made official the land claims of native tribes that had been previously challenged by hydrocarbon concessions. Mobil Oil Company, which had held a license to explore for oil in Madre de Dios from 1996-2000 had pulled out of the area after documenting several encounters between its workers and isolated indigenous peoples in the mid to late 1990s (Davila and Montoya n/d). At that time, FENAMAD expressed concern to Mobil and the Peruvian government that hydrocarbon exploration within the territory posed unacceptable threats to indigenous people living in voluntary isolation (La Torre López and Huertas 1999). Thus, PeruPetro's decision to include the Territorial Reserve of Madre de Dios within the bounds of block 113 can be seen as a choice by the agency to ignore the government's commitments to indigenous peoples under ILO 169, including the right of these peoples to be consulted or otherwise included in the development of natural resource projects on land that they traditionally occupy.

Another way in which PeruPetro ignored indigenous rights was through failing to discuss the risks of contacting indigenous people living in isolation with SAPET prior to signing the contract. A SAPET manager who was instrumental in arranging and carrying out SAPET's dialogue with civil society groups stated that he first learned about the controversial issue from NGOs, not PeruPetro (Interview 12 2012). This information was likely available to SAPET through PeruPetro's databases, but his comment implies that he is unaware of PeruPetro officials raising the issue during contract negotiations for blocks 111 and 113 in 2005. As a result, conversations about indigenous rights were absent from contract negotiation between PeruPetro and SAPET, marginalizing indigenous peoples and their supporters from hydrocarbon development plans in Madre de Dios. Instead, indigenous peoples' rights advocates appealed to SAPET directly through letters and public statements.

A final means through which the Peruvian hydrocarbon agency avoided responsibility to indigenous peoples was by neglecting to support the revisions that SAPET planned to make in order to mitigate harm. According to a SAPET employee who was actively involved, PeruPetro refused to amend its contract with the company to revise the boundaries of block 113. This employee reported that PeruPetro had instead told the company that it was free to do what it wanted with the concession, as long as it fulfilled its contract obligations. A PeruPetro representative elaborated that the government agency's contracts include a quota for laying a certain amount of seismic lines within the exploration phase, or require companies to forego a security deposit held in escrow (Interview 12 2012; Interview 14 2012).² Hence it can be seen that PeruPetro failed multiple times to recognize the rights of indigenous peoples, which put greater pressure on SAPET to mitigate potential risks.

² For example, the company was obligated to lay a certain amount of seismic lines within a set amount of time or forego a security deposit held in escrow

8. SAPET engages in international good practice

SAPET's response to demands from indigenous federations and civil society was consistent with good practice in Peru and was heralded as such by its critics. Specifically, the company's actions prevented harm to indigenous peoples living in voluntary isolation and ameliorated conflict between the company and the activists. The agreement was notarized and made public just 10 months into the 7-year exploration contract and before government permits for exploration had been granted (El Peruano 2006). Therefore, SAPET oil workers were prevented from stepping foot on the territorial reserve and thus could not expose the indigenous peoples living in voluntary isolation to modern diseases nor threaten their way of life. Additionally, SAPET's request that PeruPetro revise its contract to accommodate the rights of indigenous peoples' living in voluntary isolation, and the company's subsequent decision to unilaterally remove itself from the territorial reserve, successfully diffused the conflict about this issue between the company and the activists. As a testament to this shift, FENAMAD began praising SAPET for the company's actions even as it continued to rail against the Ministry of Energy and Mines and PeruPetro for their promotion of oil exploitation in the Amazon (FENAMAD 2006). Five years later, FENAMAD continued to hold up SAPET as an exemplar for other companies such as Repsol YPF, a Spanish and Argentinian oil company operating in Loreto (FENAMAD 2011). Thus, in this case, carrying out international good practice was a matter of respecting the rights of current inhabitants of the land and engaging with project stakeholders to find satisfactory solutions.

9. Conclusion

My analysis of a Chinese-sponsored hydrocarbon project in Peru reveals that the legal and administrative framework for FDI in Peru was inadequate to mediate social conflicts that arose over natural resources. Investor-friendly laws provided TNCs with ownership over subsoil resources and protection against changes to concessions without a company's agreement. At the same time, Peru had adopted ILO 169, enshrining in its constitution land and other rights of indigenous peoples. In the context of contradictory government regulation, mitigating risks required CNPC's subsidiary to be judicious when interpreting the law. The company was able to ameliorate potential conflict and harm because it made two crucial decisions. First, it recognized that indigenous peoples held opposing, but valid rights to land within the boundaries of its concession. Second, the company took action that respected indigenous rights even as government regulators avoided this responsibility.

Taking a broad view, Chinese guidelines are also implicated when host country laws unsatisfactorily address land rights and other contentious issues. SAPET's actions demonstrated that requirements by Chinese policy makers that Chinese TNCs follow host country laws do not go far enough to safeguard against potential problems related to the environment and local people. The company's handling of contentious issues also revealed the steps needed to engage in international good practice. Undeniably, the existence of guidelines issued by Chinese policy makers regarding environmental and social issues abroad indicates that regulators have taken a degree of responsibility for assisting Chinese TNCs to overcome the challenges they face. At stake is their ability to avoid risks, create sustainable investments

in natural resources that are essential to China's growth, and conform to international standards and norms.

In the face of such stakes, this case offers insights from which Chinese policy makers may continue to strengthen the regulation of its overseas companies. SAPET's experience developing the block 113 project suggests that policy makers could further refine their FDI policies regarding environmental and social risks. This might entail more precise guidance that articulates the complexity of land and resource rights abroad and recognizes that local people may have rights that contradict the positions of government regulators. In this way, going beyond the straightforward stipulation to follow host country laws and clarifying the measures necessary to achieve international good practice could be a boon to Chinese outward FDI.

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Civil Society Responds to China's Global Dam Builders

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Rivers, the arteries of our planet, are in crisis. From 1970 to 2008, tropical freshwater species lost a stunning 70 percent of their populations.¹ Civil society groups from the US, China, Africa and other parts of the world have long worked together to protect the world's remaining rivers from over-damming. How have they responded to the evolving role of Chinese actors as international dam builders and financiers?

Since the turn of the 21st century Chinese companies have become dominant institutions in global dam building. Chinese actors for the first time took the lead in a big overseas hydropower project when China Exim Bank agreed to fund the controversial Merowe Dam in Sudan in December 2003. Meanwhile, International Rivers is aware of 304 projects in 74 countries in which Chinese companies or financiers are involved in some form.²

In social, environmental, political, technical, geological and economic terms, large dams are inherently risky projects. According to the World Bank's former senior water adviser, lending for big dams accounts for about 10% of the Bank's portfolio but 95% of its headaches.³ As late comers to a sector where many low-hanging fruit have already been picked, Chinese dam builders – both project developers and turnkey contractors – are expanding their presence in markets that are particularly risky, including remote regions and countries with serious governance problems.

International environmental and social standards and other tools have been created to assess, avoid or mitigate the risks of dam building. China was involved in developing the safeguard policies of the World Bank and other multilateral development banks, but not the guidelines of the OECD or the recommendations of the independent World Commission on Dams. A Foreign Ministry spokesperson in October 2006 summarized China's position on applying international standards as follows:

“China has adopted the principle of non-interference of other nations' internal affairs in its foreign relations. China does not accept any country imposing its values, social systems and ideology upon China. Neither will China allow itself to do so to others.”⁴

Several high-profile protests against environmental, social and labor problems in mines and hydropower projects with Chinese involvement took place around 2005/06. Chinese investors realized that they could not simply rely on government relations to safeguard their interests, and that

¹ WWF, Living Planet Report 2012, p. 25

² International Rivers, China Overseas Dams List, viewed at <http://www.internationalrivers.org/node/3611> on May 21, 2014

³ John Briscoe quoted in The Economist, Damming Evidence, 19 July 2003

⁴ Ministry of Foreign Affairs of the People's Republic of China, Foreign Ministry Spokesman Liu Jianchao's Regular Press Conference on 24 October 2006

creating and maintaining positive relations with host communities, trade unions and civil society groups was in their long-term self-interest. Around the same time, the State Council, the State-owned Assets Supervision and Administration Commission and other Chinese government institutions started issuing guidelines to encourage socially and environmentally responsible overseas investments by Chinese companies.⁵

International Rivers started a long-term program to help strengthen the social and environmental performance of Chinese overseas dam builders and financiers, and the ability of local civil society groups to engage with them, in 2006. The program is based on the conviction that improving this performance is not only in the public interest but also the long-term business interest of the involved actors. It does not single out Chinese companies, but follows and complements similar efforts targeting dam builders in Europe, the United States and other parts of the world.

International Rivers' program follows five strategies:

1. The program analyzes the relevant decision-making processes, actors and incentives in China's overseas dam-building industry, and monitors specific projects, including through field visits.
2. International Rivers creates awareness about impacts of Chinese overseas dams and the concerns of local communities and civil society groups in the host countries through case studies, exchange visits, media work and other information published in its Chinese-language magazine and website.
3. Through workshops and a civil society guide, the program strengthens the capacity of partner groups in China and the host countries of overseas dams to engage with Chinese dam builders and financiers.
4. International Rivers engages in a constructive dialogue with Chinese overseas dam-builders and financiers about environmental policies and specific projects.
5. We also support research on sustainable energy solutions for developing countries.

An important element of this program is the dialogue International Rivers has entertained with the management and staff of Sinohydro, China's and the world's biggest hydropower contractor, since 2009. As part of this dialogue we encouraged Sinohydro to prepare and adopt an environmental policy that reflects highest international standards. We provided detailed recommendations and feedback when the company invited our input in 2010, and concluded that the resulting Sustainable Development Policy Framework put Sinohydro at the top of the league in terms of policy commitments. International Rivers also provides regular input to the company on projects of concern, if possible at an early stage of project development.

Since 2006, the International Rivers program has witnessed and achieved significant progress:

- As mentioned above, Sinohydro adopted a Sustainable Development Policy Framework in 2011. The framework commits to following the World Bank safeguard policies, defines environmental no-go zones such as national parks, recognizes the rights of indigenous peoples as enshrined in the respective UN declaration, and commits to creating mechanisms for addressing the grievances of project-affected people.⁶

⁵ See International Rivers, *The New Great Walls, A Guide to China's Overseas Dam Industry*, Second Edition, November 2012

⁶ See *ibid.* pp. 51ff.

- China Exim Bank adopted and published detailed environmental guidelines in 2007. The China Banking Regulatory Commission in 2012 called on China’s commercial banks to “strengthen the environmental and social risk management for overseas projects” and follow “appropriate international practices or international norms” in such projects.⁷
- Sinohydro has solicited input from International Rivers on a variety of specific projects. The company withdrew from the Agua Zarca Dam in Honduras, a project associated with serious human rights violations, and has adopted a wait-and-see approach to other contentious projects.
- Other companies have started engaging in dialogue processes with international civil society groups. International Rivers has in recent months also met with companies such as the China Three Gorges and Datang Corporations.

Meanwhile, important challenges remain:

- Environmental policies set the standards by which companies want to be measured, but they are only as good as their implementation on the ground. As decades of experience with other institutions show, implementing environmental policies is always a challenge. In Sinohydro’s case the process has been slowed down by a lengthy corporate restructuring exercise.
- Transparency and civil society engagement remain challenges. Companies are meeting with international NGOs, but have often been reluctant to engage with local civil society groups in their host countries. Sinohydro has openly shared information with International Rivers, but has never published its 2011 Sustainable Development Policy Framework on its website.
- Some companies have made significant efforts to strengthen their social and environmental performance, but many others are lacking behind. “Different entities have behaved differently”, the governor of the People’s Bank of China, admitted in May 2014. “There may have been some phenomena of Chinese investors [that were] not so good, not so satisfactory.”⁸ Sector-wide minimum standards by the Chinese government or international bodies would prevent that responsible companies are being undermined by the environmental laggards.

As the World Biodiversity Outlook and other reports document, critical ecosystems continue to be sacrificed. Destructive dams continue to be built in biodiversity hotspots such as the Amazon, the Mekong, Sarawak and the Horn of Africa, including with Chinese participation, even though people’s water and energy needs could be met without destroying the environment.

Investors and turnkey contractors from China and other countries have an important environmental responsibility. International Rivers’ program has demonstrated that progress in this respect is possible. Yet corporate social responsibility alone will not be sufficient. Governments, businesses, international institutions and civil society organizations all have to accept their responsibility to protect the planet’s ecological foundations.

⁷ China Banking Regulatory Commission, Green Credit Guidelines, February 2012 (English translation by the International Finance Corporation)



⁸ Zhou Xiaochuan quoted in Financial Times, Beijing admits to Africa strains, 23 May 2014

China Minmetals: Protecting Bio-Diversity in Host Countries

XIE, Weijun

General Manager of Resource Development, China Minmetals Corporation

The Corporation follows the natural laws of the locations where it operates, makes efforts to maintain ecological balance and protect bio-diversity to provide a favorable living environment for the local people.

<p>Case: Minmetals Hanxing Mining Co., Ltd. covered the surface of the tailings impoundments with earth to plant vegetation and grasses. Over two years, it added 92,000 m³ of earth and planted 93, 600 sallow thorns suitable for growing in the tailing sand and this has securely fixed the sand and effectively prevented the impoundments surface from being washed away by rainwater. In the shaped vegetation of the sallow thorn, wild animals regularly appear and the natural ecological condition has been restored.</p>	 <p>Tailings impoundments with restored vegetation</p>
<p>Case: The Corporation vigorously carried out the bio-diversity plan in Laos and protected the living environment for the last Siam Crocodile; and in the process of our protection work, we also found a new bird — the bald nightingale. Through the protection of bio-diversity, we have left a precious heritage to future generations.</p>	 <p><i>Siam Crocodile</i> a local wild species on the verge of extinction</p>



Case: Where it operates, MMG pays close attention to the protection of water resources. Sepon mine collects and tests up to 800 water samples per month.

MMG’s aim is to be a leader in environmental best practise in Lao PDR

“In the course of investment in foreign countries, the host countries pay more attention to environmental protection, work safety and contributions to local communities on the part of the investors, thus an enterprise must make its endeavors to promote community harmony. We have made great contributions in such host countries as Peru, Australia and Laos, allowing the members of the community to benefit from economic growth. These are the mutual benefits and win-win outcomes we have been sticking to!”

—— ZHOU, Zhongshu, President of the Corporation

With the constant development of global operation, the scope of social responsibility performed by China Minmetals extends to all corners of the world. In multinational operation, the Corporation strictly follows the laws and regulations of the host countries, operates business lawfully, pays tax honestly, and always pursues equal and non-discriminative employment policy. It continuously increases the proportion of local employees, develops local procurement and community investment, actively participates in local community philanthropy and cultural heritage protection, insists on serving the local communities through various ways and modes, and contributes positively to the local economic development and social prosperity.

The Corporation maintained and expanded the community development projects of the former OZ Company with an investment of approximately AUD 4.4 million in the construction of local communities, community corporation development and educational training.

Case: “Gulf Community Agreement”

The “Gulf Community Agreement” is a community development agreement signed jointly by MMG, Queensland Government and local aborigines. The aim of the agreement is to provide education, training and employment opportunities for residents in the gulf area with a commitment to protect local cultural heritage and environment.

Many of the employees in Century Company of the MMG are aborigines and the Company carries out pre-employment trainings to young aborigines to make them available for various jobs in the local mines. By November 2010, 17 of the 60 trainees had completed the training courses and were appointed to the staff by the Company.

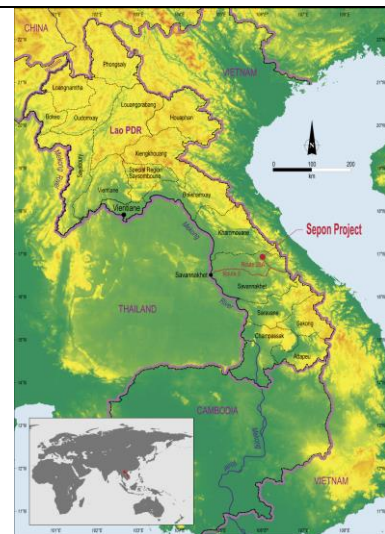
The Company supported the cooperation between Golden Grove and local enterprises, providing skills training to the enterprises and helping young people seek employment opportunities in mining and other industries.

The implementation of projects by the Corporation in Laos increases incomes of community residents, and improves their living standards through purchasing foods and work clothes locally and signing such contracts as transportation, air service and energy contracts with local enterprises. The Corporation has established a USD 3 million community trust fund jointly managed by the Corporation, Government and community leaders, and provides infrastructure construction, health, education, agriculture and micro-credit for communities together with UN-Habitat and related NGOs. In the operation, the Corporation emphasizes environmental protection and has passed the ISO14001 environmental certification, and formulates biodiversity protection plans to protect the endangered animals.

Case: Sepon community trust fund

The community development project is managed by Sepon community trust fund in the Sepon mine in Laos. Since 2003, MMG provided USD 500,000 to assist the government annually with accumulative funds up to USD2.90 million so far, mainly applied to community construction, including highway construction, laying of cables, hospital construction, education, tourism and manual manufacture in 73 villages currently.

Meanwhile, the Corporation has set up a rural construction fund to assist rural construction, guiding local residents to develop and improve their current environment. At



present, two villages have combined to use the funds and built a road to the school to ensure safe travel to and from school.

The fund provided apprenticeships lasting for six years for high-school students since 2006. Up to now, there are 43 students taking part in the apprenticeship program. The MMG has sponsored pediatric training courses in the local area together with the Royal Children's Hospital of Melbourne and other NPOs.

Sepon community fund provided not only more education opportunities and better infrastructures for community residents, but also reduced their dependence on resources, helped them acquire more skills to increase incomes and improve living standards.



MMG builds village primary schools in Sepon



MMG provides clean water for local villages in Sepon

Case: Supporting the Development of Indigenous Australia Employees

During my 13 years working at Century, I have seen more than 300 local Indigenous people start or continue their careers at the mine. I have seen the opportunities that working at the Century have given these people. The skills they gained have allowed them to improve their lifestyle, find work in their own communities or even gain employment at other operations. I've also seen some of our trainees and apprentices recognized for excellence within the industry.

China Minmetals Corporation, through their ownership and support of MMG, have enabled local people like me to continue to access these wonderful opportunities.

— Corrie Richardson from MMG Century Mine

Case: Cultural Integration between China Minmetals and MMG

In 2011, China Minmetals continued to develop relationships with MMG and undertook a program to deepen connections between corporate cultures. By launching the MMG secondmet program, China Minmetals helps trainees learn about the practices and cultural attitudes of advanced foreign mining enterprises. In 2011 two seconders worked at MMG's

operations in Australia. The project has promoted cultural integration with the merged and acquired enterprises, thereby enhancing their cohesion and competitiveness.

“In terms of culture, both sides need to influence and complement each other. Only by so doing is it possible to achieve deeper integration.”

—— China Minmetals President ZHOU, Zhongshu

“Actually, the close of a transaction is only a good start. What matters is the subsequent integration. Whether the integration succeeds or not is the magnifier by which the western world views the degree of internationalization Chinese enterprises, especially the state-owned Chinese enterprises.”

—— JIAO, Jian, China Minmetals Assist President and General Manager of China Minmetals Nonferrous Metals Holdings Co., Ltd.



Trainees of China Minmetals Nonferrous overseas management project taking a study tour of a mining area

Case: Training Program for Local Employees at Sepon mine, Laos

A training program run in collaboration with the Royal Melbourne Institute of Technology (RMIT) has been operating since 2006, with the first apprentices and employees graduating in 2011. The graduates received the qualification in one of seven trades - carpentry, fabrication, refrigeration, mechanical, electrical, automotive or instrumentation – following four years of studies and at least one year of on-the-job training at the mine site. This means that the graduates will hold certificates recognised in both Australia and Laos. Those who successfully completed the training will now go on to work at the mine. The result of this is to maximize mine-related income and increase skill levels amongst host community members.

“Graduating with a high qualification was very important for me. It will bring many changes for my future, especially related to my performance in the job I do.”

—— Ms BounGneun Phononavongdeuane from Ban Nasalor in Vilabouly District, gained her certificate in refrigeration and will work with the mine’s maintenance department.

“I am very proud to be one of the local community members selected to join this high-standard study program. I would like to thank the company for providing an excellent training scheme for local people.”

—Fellow graduate Mr. Viengkham Maphangvong, from Ban Bounkham in Vilabouly District, trained as a carpenter.



Ms BounGneun Phonenavongdeuane receiving her certificate from Mr. Chris Barnes (RMIT) and Mr. Khamphoun Touphaitoun (Director of Savannakhet Provincial Education Service)

Case: Sepon mine provides clean water for local communities

Almost 3,400 community members living around MMG LXML Sepon, the copper and gold mine in Savannakhet province, have been provided with safe and sustainable water supplies. The project, which cost more than US\$800,000 and took 15 months to complete, uses solar-powered pumps to draw water from bore holes. The use of solar energy reduces the cost of using the system, as well as making it more environmentally friendly.

MMG LXML Sepon has also contributed approximately US\$250,000 to the cost of a UN Habitat project which will provide an urban water supply for Vilabouly’s district capital.

Case: Providing financial support for the Annual Conference of Laotian pediatricians

MMG LXML Sepon has renewed its agreement with the NGO Health Frontiers to provide funding for an annual conference of Lao pediatricians. The agreement was signed on February 16th, 2011 at Health Frontiers office in Vientiane. Every year for the next five years, AUD \$10,000 will be provided for the conference. The main objective of this assistance is to build human resource capacity in order to improve health care services.

“We are committed to supporting initiatives that benefit Lao society.”

—Mr. Saman Aneka, Director of MMG LXML Sepon.

Case: Flood Relief Donations to Queensland

As the operator of the Century mine in north west Queensland, MMG has a strong connection and commitment to the state of Queensland. On 10 January MMG made a contribution of \$80,000 to the Queensland Premier's Flood Relief Appeal to support the recovery of communities affected by the widespread flooding in Queensland.

The torrential downpours affected more than 200,000 Queenslanders, with thousands made homeless. These floods were devastating for many people living in Queensland and it has taken considerable time for communities to rebuild.

“These floods have certainly been devastating for many people living in Queensland and we understand that it is going to take some time for communities to rebuild.

——Andrew Michelmore CEO of MMG

To strengthen the environmental and social risk management of Chinese outward foreign direct investment

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Abstract:

The rapid growth of the Chinese economy and accompanying huge resources consumption in recent years has led to a significant rise in the volume of outward foreign direct investment (OFDI) by China. OFDI was seen as one way to relieve the pressures of China's fast accumulation of foreign exchange reserves, and the consequent upward pressure on the currency. Therefore, OFDI received wide and strong support from the Chinese government and enterprises, and was triggered in particular by the Chinese government's adoption of its "Going Global" strategy, which marked the beginning of China's remarkable increase in OFDI. Today, Chinese transnational corporations (TNCs) are on the rapid overseas expansion in a variety of ways: moving into both rapid growth and developed markets, revising their business models, exploring growth through greater business efficiencies and carrying out mergers and acquisitions. From 2004 to 2012, China's outward direct investment grew from US\$5.5 billion to over US\$100 billion per year. Once viewed by Western multinationals primarily as a source of low-cost labor and manufacturing, Chinese players are now international players in their own right.

Like other countries that invest overseas, through the projects it finances and executes, China can bring great benefit to host countries. However, as Chinese OFDI projects have become larger and more numerous, they have also inevitably posed environmental and social risks to both host and investor countries. Therefore, risk forecasting and mitigation, as well as encouraging responsible overseas business conduct on the part of Chinese TNCs are essential for building Chinese future OFDI strategy. It is clear that, protecting the host country's environment, plus promoting local social and economic development is not only a responsibility but also a challenge for the Chinese enterprises. China has already issued some environmental and social policies aim at identifying and mitigating some of the OFDI risks that can undermine the long-term financial success of a project, thus finally improving China's national reputation. However, there is still a lack of a systematic approach to addressing OFDI's environmental and social impacts in both academia and practice.

1. Outward foreign direct investment and the Environment

Foreign Direct investment (FDI) is the net inflows of investment made to acquire a lasting interest in or effective control (10 percent or more of voting stock) over an enterprise operating outside of the economy of the investor.¹ FDI is the sum of equity capital, reinvestment of earnings, other long-term capital, and short-term capital as shown in the balance of payments. FDI net outflows are the value of outward direct investment made by the residents of the reporting economy to external economies, including reinvested earnings and intra-company loans, net of receipts from the repatriation of capital and repayment of loans.² For investor countries, FDI net outflows is an important indicator of these countries' outward FDI (OFDI).

Over the past two decades, the growth rate of OFDI from developing and transition economies has increased significantly. Global FDI outflows are continue rising in recent years, which is significantly contributed by investors from emerging markets, especially from China. In 2013, global FDI outflows rose to \$1.41 trillion, up from \$1.35 trillion in 2012.³ TNCs from developing and transition economies continued their expansion abroad, in response to faster economic growth and investment liberalization as well as rising income streams from high commodity prices. In contrast, TNCs from developed economies continued their “wait and see” approach, and their investments remained at a low level.⁴

With increased FDI flows all around the world, one of the most contentious issues debated today is whether OFDI could deteriorate the environment of host countries. The “pollution haven” hypothesis and “race to the bottom” effect, played out in discussions about the appropriate relationship between trade and environmental protection has its counterpart in the literature on OFDI.^{5,6} While the relationship between trade and environment is heavily focused on by official actors, nation-states, regional trading blocs and global regulatory institutions such as the WTO, the environment-OFDI debate focuses primarily on non-state actors, including transnational corporations (TNCs), non-governmental organizations (NGOs) and the international financial institutions (IFIs) that facilitate flows of OFDI to developing and emerging markets. The ongoing debate over the environmental impacts of OFDI has focused primarily on the role of TNCs in implementing diverse standards in countries at varying levels of social, economic and political development.⁷

¹ UN. Foreign Direct Investment net inflows and net outflows as share of GDP.

² World Bank. <http://data.worldbank.org/indicator/BM.KLT.DINV.GD.ZS>

³ UNCTAD. World Investment Report 2014. http://unctad.org/en/PublicationsLibrary/wir2014_en.pdf

⁴ *Ibid.*

⁵ Dean, Judith Myrle, Mary E. Lovely, and Hua Wang. Foreign direct investment and pollution havens: evaluating the evidence from China. Office of Economics, US International Trade Commission, 2004.

⁶ Petrović-Randelović, Marija. "Foreign direct investment and sustainable development: An analysis of the impact of environmental regulations on investment location decisions." *Facta universitatis-series: Economics and Organization* 4, no. 2 (2007): 183-190.

⁷ Denise Leung, Yingzhen Zhao, Athena Ballesteros and Tao Hu. Environmental and Social Policies in Overseas Investments. WRI, 2013

2. Key players in the environmental and social governance of OFDI

There is a lack of a systematic approach to addressing OFDI's environmental and social impacts in both academia and practice. The discourse on OFDI and the environment has been dominated by the nexus between OFDI and the environment, which shows no determinate relation between the two. However, dire environmental and social consequences caused by OFDI in some regions of the developing world are real and call for urgent solutions. Lessons learned from various case studies do shed light on how to resolve but are hardly to be generalized elsewhere.

As “a cross-border expansion of production”, OFDI's governance essentially involves three levels along the supply chain, i.e., host countries, investor countries and international regimes.⁸ Bringing varying business, political, environmental and social forces, all the three levels exert influences on the environmental and social impacts of OFDI in host countries, despite with different effects.

Host countries play a critical role in governing environmental and social dimensions of OFDI. It is widely agreed that the environmental and social policies in place in host countries as well as the political will and capacity of the institutions that enforce and implement the policies are the determining factors to OFDI's environmental and social impacts. Market and industrial norms on environmental and social issues can influence OFDI's choices on the level of environmental and social standards to use in host countries, which can be higher or lower than investor countries or international practices.⁹ Pressures from local communities and civil society can drive OFDI to adopt good environmental and social practices.

Investor countries can also play a role in directing OFDI's environmental and social performance. On one hand, investor countries can establish environmental and social policies for OFDI to ensure that they meet expected environmental and social standards in host countries. On the other hand, investor countries can help host countries build capacity and find synergies in regulating environmental and social dimensions of OFDI.¹⁰ Business forces in investor countries can use their commercial ties to push OFDI for better environmental and social performance in host countries. Environmental and social forces can be an advocate for environmental and social interests of host country communities and draw domestic attention to environmental and social misconduct of OFDI.

Besides the investor and host countries, other countries can also deeply engage into the investment projects in the host countries. Unlike the host country or investor country, the

⁸ Gallagher, Kevin P., and Lyuba Zarsky. "No Miracle Drug: Foreign Direct Investment and Sustainable Development." In *International Investment for Sustainable Development: Balancing Rights and Rewards*, by Lyuba Zarsky, 13-45. London & Sterling, VA: Earthscan, 2005.

⁹ Hansen, Michael W. *Cross Border Environmental Management in Transnational Corporations: An Analytical Framework*. Frederiksberg: Corporate Business School, 1999.

¹⁰ Araya, Monica. "FDI and the Environment: What Empirical Evidence Does—and Does Not—Tell Us." In *International Investment for Sustainable Development: Balancing Rights and Rewards*, by Lyuba Zarsky. London & Sterling, VA: Earthscan, 2005.

third country is often not directly involved in the investment projects, but due to historical, political, cultural, economic, or other reasons, the third country can often exert specific influences to both host and investor countries. For example, the U.S. has a close tie with Latin American countries, especially in the trade and investment fields, so it is not surprised that people can always see the shadow of US companies behind other countries' investment activities in Latin America.

International regimes are crucial in OFDI's environmental and social governance. International laws can define environmental and social responsibilities of OFDI and pose legal liabilities on OFDI's environmental and social misbehaviors. With an overarching global government absent, international organizations can take the lead in improving international rule regime on OFDI, disseminating best practices of OFDI's environmental and social governance, and helping build capacities of host countries in governing environmental and social dimensions of inward FDI.¹¹ The growing green demands in the international markets can further drive OFDI towards environmental and social sustainability.¹² Large international environmental and social groups have been—and likely continue to be—an important force that makes OFDI accountable for environmental and social controversies and assist victims in host countries in seeking recourse.¹³

Generally speaking, host countries are the key to environmental and social impacts of OFDI, as OFDI is normally expected to follow laws, regulations and norms in host countries in current international investment practice. In contrast to host countries, the role of investor countries is not as significant but becomes critical in directing environmental and social performance of OFDI when environmental and social governance in host countries is weak. International regimes can have a pivotal role complementing environmental and social governance of OFDI in host countries. Nevertheless, host countries, investor countries and international regimes with different business, political, environmental and social forces should be considered and examined in a holistic way in addressing OFDI's environmental and social issues.

At the core of OFDI, transnational corporations (TNCs) are the central player in the environmental and social governance of OFDI (Fig. 1).¹⁴ Essentially, OFDI's environmental and social impacts in host countries can be boiled down to environmental and social consequences of TNCs' operations at the micro level. TNCs' environmental and social performance in host countries can be influenced by an array of external stakeholders in

¹¹ Kondo, Seiichi. "Foreign Direct Investment and the Environment: Lessons from the Mining Sector." In *Foreign Direct Investment and the Environment: Lessons from the Mining Sector*, by Organisation for Economic Co-operation and Development, 7-8. Paris: Organisation for Economic Co-operation and Development, 2002.

¹² Hansen, Michael W. *Cross Border Environmental Management in Transnational Corporations: An Analytical Framework*. Frederiksberg: Corporate Business School, 1999.

¹³ Tay, Simon, and Iris Tan. "Sustainable Development and Foreign Direct Investment: The Emerging Paradigm in Asia." In *International Investment for Sustainable Development: Balancing Rights and Rewards*, by Lyuba Zarsky, 97-121. London: Earthscan, 2005

¹⁴ United Nations Conference on Trade and Development. *Making FDI Work for Sustainable Development*. New York and Geneva: United Nations, 2004.

business, political, environmental and social realms that affect or are affected by 'TNCs' operations.

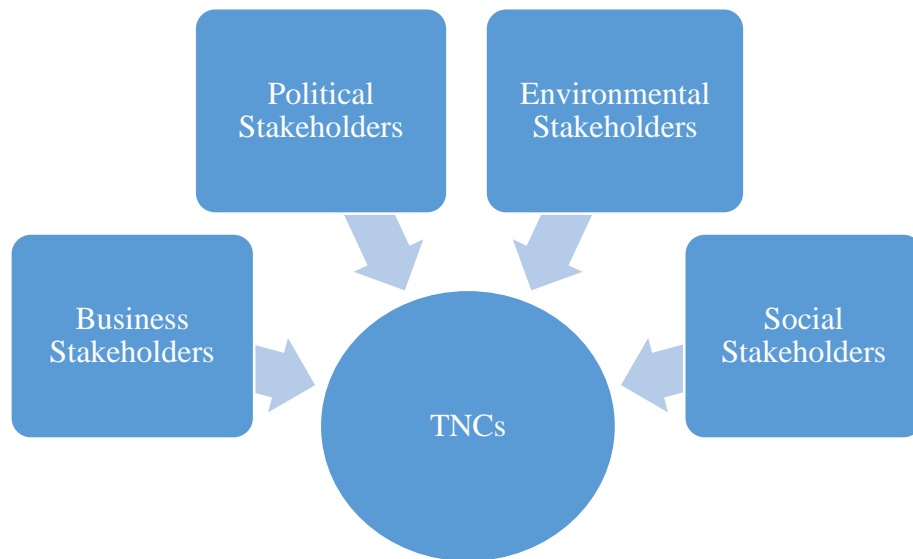


Fig. 1 Relations between stakeholders and TNCs in the environmental governance of OFDI

Business stakeholders involve a number of business actors along the supply chain of TNCs who have commercial interest in TNCs, such as suppliers, competitors, consumers, clients and financial institutions. Whereas it is not common, suppliers have been found to have affected TNCs' environmental behaviors in some cases.¹⁵ Competitors may affect the level of environmental and social standards adopted by TNCs. TNCs may need to consider the level of standards generally used by competitors as well as costs and benefits associated with the use of higher standards prior to the decision on what environmental and social standards to use.

Consumers and clients can use their purchasing power to drive up TNCs' environmental and social performance. Major clients of TNCs, especially governments and large companies, may have screening procedures in place to ensure procurement of environmental and social sustainable products, which can push TNCs to use good environmental and social standards. Consumers can be powerful in publicly backlashing or boycotting products against TNCs' environmental and social misconduct, which can force TNCs to improve their environmental and social behaviors, although consumer pressures are usually fragmented and hard to organize.

Among business stakeholders, financial institutions, including banks and insurance companies, are crucial actors that can considerably leverage TNCs' environmental and social performance through their lending power. It makes a business case for financial institutions to address environmental and social risks of projects they finance, as these risks would jeopardize

¹⁵ Hansen, Michael W. *Cross Border Environmental Management in Transnational Corporations: An Analytical Framework*. Frederiksberg: Corporate Business School, 1999

financial returns and reputation.¹⁶ Financial institutions can establish environmental and social policies and procedures to screen projects and assess credit, thus creating pressures on TNCs and forcing them to improve environmental and social performance.¹⁷

Due to market failures to address OFDI's environmental and social externalities, political stakeholders, mainly referring to national governments and international organizations, can be regarded as the most critical players that can significantly impact TNCs' environmental and social performance through their rule setting and regulatory power.¹⁸ They can craft, enforce and implement environmental and social policies that stipulate TNCs' environmental and social obligations and make them liable for environmental and social misconduct. Among the political stakeholders, it is important to identify key institutions and the regulatory framework for OFDI's environmental and social governance.

Environmental stakeholders include communities and environmental NGOs that are directly or indirectly affected by TNCs' environmental impacts. Communities on TNCs' operation sites are the ones that directly bear the consequences of TNCs' impacts on local ecosystems. Their opposition to TNCs' operations out of environmental concerns is likely to cause difficulties to TNCs' business or worse, legal liabilities and financial loss. Environmental NGOs are an important environmental player that scrutinizes TNCs' environmental practices, advocates against misconduct and stands up for affected communities.¹⁹

Social stakeholders include communities, social NGOs and media that can be related to social consequences of TNCs' operations. Communities on TNCs' operation sites can suffer from social disruptions caused by TNCs' operations, such as displacement, loss of land and livelihoods, unfair compensation, public health issues arising from environmental pollutions, etc. TNCs' social misconducts are likely to cause tensions with communities or even protests that can lead to business interruption, legal liabilities and financial loss. Social NGOs play an important role in monitoring TNCs' social practices, exposing social controversies and defending community rights.

As a crucial social player, media—especially the internet and emerging social media—is a powerful information channel that can have significant implications on public perceptions and attitudes of TNCs. Media can empower stakeholders to unite quickly under common objectives and mobilize resources to lobby against TNCs' environmental and social controversies. However, media can have its own bias, that is, its interest, discretion and selectivity in the environmental and social information it communicates to the public and

¹⁶ WWF-UK. *Shaping the Future of Sustainable Finance: Moving from Paper Promises to Performance*. Surrey, UK: WWF-UK, 2006

¹⁷ Grieg-Gran, Maryanne. "Financial Institutions and the "Greening" of FDI in the Mining Sector." In *Foreign Direct Investment and the Environment: Lessons from the Mining Sector*, by Organisation for Economic Co-operation and Development. Paris: Organisation for Economic Co-operation and Development, 2002.

¹⁸ UNCTAD Secretariat. "An Overview of the Issues." In *The Development Dimension of FDI: Policy and Rule-making Perspectives*, by United Nations Conference on Trade and Development, 1-25. New York and Geneva: United Nations, 2003.

¹⁹ Mabey, Nick, Richard McNally, and Lyuba Zarsky. *Foreign Direct Investment and the Environment: From Pollution Havens to Sustainable Development*. Surrey: WWF-UK, 2003.

TNCs' stakeholders, which may accurately reflect TNCs' actual environmental and social performance.^{20,21}

3. Environmental and Social Risks of China's OFDI

Chinese companies, whether state-owned or private, are facing consistent pressure to grow, so in addition to doing business in the domestic market, Chinese companies are actively seeking revenue growth by investing in other markets. Companies expand outside their home markets for six main reasons: (1) growth, (2) diversification, (3) routes to market, (4) access to resources, (5) access to skills, and (6) access to technology.²² China's "Going Global" (Going Out) strategy, formally adopted by the Chinese central government in 2000, marked the beginning of China's remarkable increase in OFDI. In line with China's Going Out strategy announced, from 2004 to 2011, China's outward direct investment grew from US\$5.5 billion to over US\$65 billion per year, and is predicted to reach US\$150 billion by 2015.²³ The total value of China's outward OFDI in 2013 is \$192 billion (including OFDI outflows from Hong Kong SAR and Macau SAR), ranked second in the world, behind only the US.²⁴

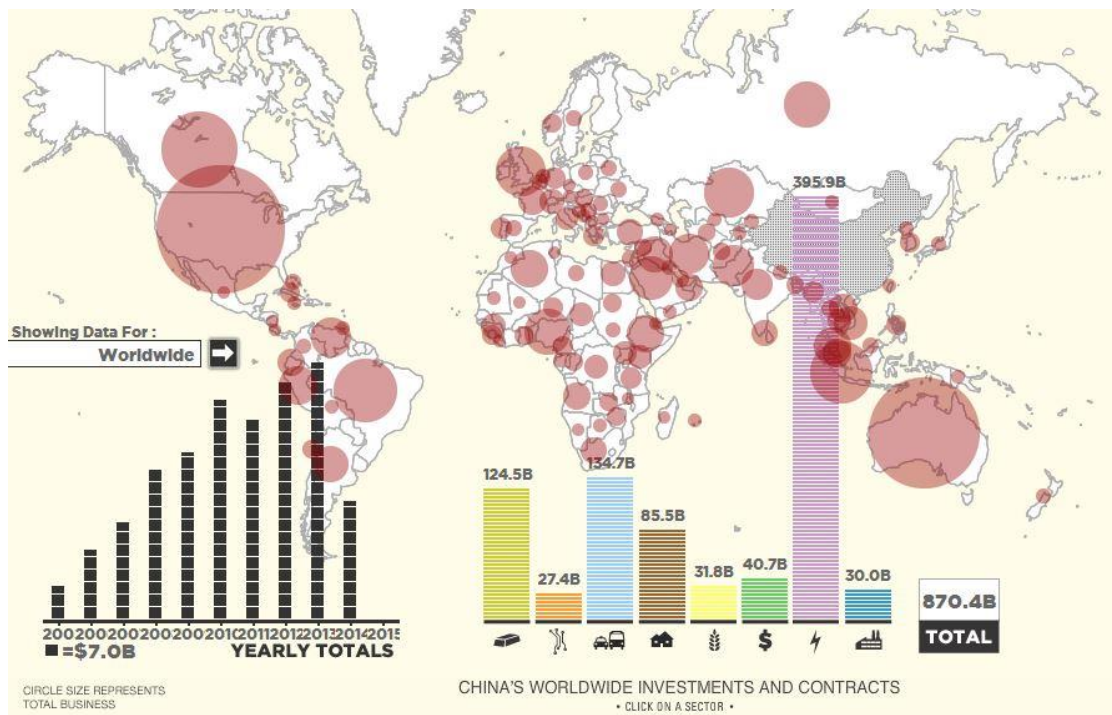


Fig.2 China's worldwide investments and contracts (2005-2014). Source: China's global investment tracker, the Heritage Foundation, 2014.

²⁰ Chaher, Santiago, and James David Spellman. Corporate Governance and Social media: A Brave New World for Broad Directors. Washington, DC: International Finance Corporation, 2012.

²¹ Dyck, Alexander, Natalya Volchkova, and Luigi Zingales. "The Corporate Governance Role of the Media: Evidence from Russia." *The Journal of Finance* 63, no. 3 (2008): 1093-1135.

²² Beyond Asia: strategies to support the quest for growth. Ernst & Young, 2012.

²³ Nathalie Bernasconi-Osterwalder, Lise Johnson, and Jianping Zhang (eds.), *Chinese Outward Investment: An emerging policy framework – A Compilation Of Primary Sources* (IISD and IIER, 2013).

²⁴ UNCTAD, *World Investment Report 2014* (UN, 2014).

From 2005-2014, around a half of China’s outward OFDI projects are concentrated in the *Energy* and *Metals* field.²⁵ According to the 2010 statistical bulletin of China’s OFDI, China’s OFDI net flows in 2010 reached 68.81 billion USD. Among the outflows, 5714.86 million USD belongs to the mining industry, accounted for 8.3% of China’s total OFDI flows; mining industry is also China’s No.1 non-financial OFDI sector.²⁶ Asia is still China's dominant OFDI destination, followed by Latin America (Table 1).

Table 1. Structure of China’s OFDI flows, 2010.

Region	Sum (Billions of USD)	Share (%)
Asia	44.89	65.3
Africa	2.11	3.1
Europe	6.76	9.8
Latin America	10.54	15.3
North America	2.62	3.8
Oceania	1.89	2.7
Total	68.81	100.0

As the world’s second largest source of OFDI, China’s investments have been becoming more widespread, inevitably some have been made in more risky environments; in addition, some countries have seen growing local resistance against Chinese labor and business practices. China is often considered as a welcomed investor or donor due to its massive investment or aid package with no strings attached, which provides other developing countries with leverage towards traditional investment sources. However, compared to developed countries, the Chinese enterprises have only been taking part in international competition for a relatively short time, they lack experience; as a result, when doing overseas business, Chinese TNCs often ignore environmental and community well-beings, which makes their overseas projects become more risky, and that’s why China’s overseas OFDI is often criticized as blindness and disorderliness in the overseas investment process. This even results in some damage to the reputation of Chinese enterprises, and loss of business opportunities in other countries.

The Chinese government has increasingly focused on means of reducing the risks inherent in investment decisions: the key policy slogan is: “government guidance, enterprise decision-making.” This has included including making more efforts to encourage responsible business conduct on the part of Chinese companies abroad, particularly in terms of the environmental and social impacts of their activities and including compliance to domestic laws and regulations. These risks not only belong to China, but may occur in all investors from other countries. The environmental and social risks of interacting with four kinds of key stakeholders have been summarized by Fig. 3.

China has already issued some environmental and social policies aim at identifying and mitigating some of the OFDI risks that can undermine the long-term financial success of a project, thus finally improving China’s national reputation. However, there is still a lack of a systematic approach to addressing OFDI’s environmental and social impacts in both academia and practice.

²⁵ Appendix I: China’s global investment tracker.

²⁶ 2010 statistical bulletin of China’s OFDI. Ministry of Commerce of People’s Republic of China

Environmental & Social Impacts			
Communities	Government	Investors & Financial Organizations	NGOs and Media
<ul style="list-style-type: none"> • Risks of political influences • Risks of construction and operation 	<ul style="list-style-type: none"> • Risks of Project Termination/Suspension in host countries • Risks of government's formalities in investor countries 	<ul style="list-style-type: none"> • Financing Risks • Operational Risks • Reputation Risks 	<ul style="list-style-type: none"> • Reputation Risk • Trigger or amplify other risks

Fig. 3 Environmental and social risks of interacting with stakeholders.²⁷

²⁷ Tao Hu, Yinzhen Zhao, Lihuan Zhou, and Denise Leung. Managing Environmental Impact International Experience and Lessons in Risk Management for Overseas Investments. World Resources Institute, 2014.

Analytical framework of OFDI's environmental and social impacts

Tao Hu

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TNCs' environmental and social performance in host countries is influenced by business, political, environmental and social stakeholders in host country (e.g., Peru), investor country (e.g., China), third country (e.g., U.K.), and international regimes (e.g., Equator Principles, EPs). Hence, in addressing TNCs' environmental and social impacts in host countries, the four types of shareholders at all the four levels should be examined as a whole to get the big picture of the problem at hand and identify the key players that need to be leveraged to solve the problem. Therefore, this research creates a 4×4 conceptual matrix, as showed below (Table 1), based on Dr. Tao Hu's previous work, to guide the analysis and understanding of different types of stakeholders in different levels with a goal of identifying the key players that can exert significant influences on the environmental and social performance of TNCs in host countries.

Table 1. Conceptual matrix of analyzing the key players which exert significant influences on the environmental and social performance of TNCs in host countries.

	Business Stakeholders	Political Stakeholders	Environmental Stakeholders	Social Stakeholders
Host country	1	2	3	4
Investor country	5	6	7	8
Third country	9	10	11	12
International regime	13	14	15	16

The previous created matrix is a 3×4 table, without the third country level. In the newest revised conceptual matrix, in order to comprehensively evaluate the influences of stakeholders from different levels, we added the third country level into the matrix and finally formed this evaluation tool.

Therefore, the newest matrix includes four levels: host country, investor country, third country, and international regime. Each of the matrix boxes in the conceptual matrix gives a brief discussion and provides guidance on how to understand the stakeholders' roles, relations and dynamics with TNCs and identify key players among them.

Box 1: Business stakeholders in host country

Main goals of this box are:

- (1) Understand the level of environmental and social standards generally accepted by the market of the host country, particularly in the TNC's industry;
- (2) Identify the key business players in the host country that can substantially influence the TNC's environmental and social performance and understand their roles, relations and dynamics with the TNC.

Optimally, the level of environmental and social standards in host countries should not be lower than investor countries so that it is unlikely for TNCs to take advantage of weaker environmental and social standards in their operations in host countries. Yet, there are at often differences between the levels of environmental and social standards in host and investor countries. Evidence has showed cases where TNCs from developed countries were drawn to host developing countries with lax environmental and social standards.¹

With shared commercial interests, key players among TNCs' business stakeholders in host countries can have significant roles in affecting TNCs' environmental and social performance in their operations. Ideally, these key players have established environmental and social policies and are sensitive to environmental and social risks in their business. Hence, they have the incentive to push business partners—including TNCs—to align with their organizational environmental and social interests.

Regarding the business stakeholders of the TNC in question in the host country, the following aspects should be considered and examined to achieve the main goals here:

- (1) Identify and understand the TNC's key clients in the host country, particularly government agencies and large firms. Find out the clients' environmental and social policies and understand their roles, relations and dynamics with the TNC;
- (2) Identify and understand the TNC's key financiers in the host country. Find out the financiers' lending policies regarding environmental and social issues and understand their roles, relations and dynamics with the TNC;
- (3) Understand the TNC's other business stakeholders in the host country and identify any key player. Understand the general attitudes of the TNC's suppliers, consumers and competitors on environmental and social issues as well as their roles, relations and dynamics with the TNC. In particular, understand the level of environmental and social standards adopted by the TNC's key competitors and how it has affected the TNC.

Box 5: Business stakeholders in investor country

Main goals:

- (1) Understand the level of environmental and social standards generally accepted by the market of the investor country, particularly in the TNC's industry;

¹ Organisation for Economic Co-operation and Development. Foreign Direct Investment and the Environment: An Overview of the Literature. Paris: Organisation for Economic Co-operation and Development, 1997.

- (2) Identify the key business players in the investor country that can significantly influence the TNC's environmental and social performance in the host country and understand their roles, relations and dynamics with the TNC.

The levels of environmental and social standards used in different investor countries can be varied. While there is a general concern on TNCs' environmental and social standards in host countries, the concern on the consequence of weaker standards adopted by TNCs headquartered in emerging markets is especially pronounced.² Hence, it is necessary to understand the level of environmental and social standards used in the investor country in contrast to the host country and international standards, which is likely to impact TNCs' environmental and social performance in host countries.

As to TNCs' business stakeholders in investor countries, ideally, they have a stake in TNCs and thus should have the incentive to press TNCs for good environmental and social management in host countries in order to minimize environmental and social risks in their own business and avoid potential reputational risk. With shared stakes with TNCs, the business stakeholders may also be able to exert influences on TNCs' environmental and social performance in host countries, depending on the salience of business ties.

Regarding the business stakeholders of the TNC in question in the investor country, the following aspects should be considered and examined to achieve the main goals here:

- (1) Identify and understand the TNC's key clients in the investor country, particularly government agencies and large firms. Find out the clients' environmental and social policies and understand their roles, relations and dynamics with the TNC;
- (2) Identify and understand the TNC's key financiers in the investor country. Find out the financiers' lending policies regarding environmental and social issues and understand their roles, relations and dynamics with the TNC;
- (3) Understand the TNC's other business stakeholders in the investor country and identify any key player. Understand the general attitudes of the TNC's suppliers, consumers and competitors on environmental and social issues of outward OFDI in general and the TNC as well as these players' roles, relations and dynamics with the TNC.

Box 9: Business stakeholders in third country

Main goals:

- (1) Understand the level of environmental and social standards generally accepted by the market of the third country, particularly in the TNC's industry;

² Sauvart, Karl P., Wolfgang A. Maschek, and Geraldine McAllister. "Foreign Direct Investment by Emerging Market Multinational Enterprises, the Impact of the Financial Crisis and Recession and Challenges Ahead." OECD Global Forum on International Investment. Paris: Organisation of Economic Co-operation and Development, 2009. 1-28.

- (2) Identify the third country's key business players that can significantly influence the TNC's environmental and social performance in the host country and understand their roles, relations and dynamics with the TNC.

An examination of environmental and social standards on OFDI used in the third country's business practice can help a better understanding of environmental and social standards used in host and the investor countries. While the current third country's standards cannot be directly used in the host countries, but some of them have been widely adopted by businesses, and even influence the legislation and enforcement in both investor and host countries, and behaviors of business players from both sides.

With shared stakes with TNCs, the third country's business stakeholders may also be able to exert influences on TNCs' environmental and social performance in host countries, depending on the salience of business ties.

Regarding the third country's business stakeholders of the TNC in question, the following aspects should be considered and examined to achieve the main goals here:

- (1) Identify and understand the TNC's key clients in the third country, particularly government agencies and large firms. Find out the clients' environmental and social policies and understand their roles, relations and dynamics with the TNC;
- (2) Identify and understand the TNC's key financiers in the third country. Find out the financiers' lending policies regarding environmental and social issues and understand their roles, relations and dynamics with the TNC;
- (3) Understand the TNC's other business stakeholders in the third country and identify any key player. Understand the general attitudes of the TNC's suppliers, consumers and competitors on environmental and social issues of outward FDI in general and the TNC as well as these players' roles, relations and dynamics with the TNC.

Box 13: Business stakeholders in international regime

Main goals:

- (1) Understand international environmental and social standards on FDI, particularly in the TNC's industry;
- (2) Identify the key international business players that can significantly influence the TNC's environmental and social performance in the host country and understand their roles, relations and dynamics with the TNC.

An examination of prevalent international environmental and social standards on OFDI used in international business practice can help a better understanding of environmental and social standards used in host and the investor countries. While most of the current international standards are voluntary, some of them have gained global prominence and are widely adopted by businesses, for example, Global Reporting Initiative and ISO 20006-Social Responsibility. It is worthwhile to pay attention to international standards in TNCs' sectors. Industries with

high environmental and social sensitivity, such as mining, are normally subject to higher standards.³

The recent decade has seen growing awareness of sustainability in international business realm. International markets have been demanding more environmentally sustainable and socially responsible products. Many business actors have taken initiatives in incorporating good environmental and social management practice and fulfilling social responsibilities. However, the sustainability movement in international business is still weak in general.

Regarding the international business stakeholders of the TNC in question, the following aspects should be considered and examined to achieve the main goals here:

- (1) Identify and understand the TNC's key international clients, particularly national governments and large firms. Find out the clients' environmental and social policies and understand their roles, relations and dynamics with the TNC;
- (2) Identify and understand the TNC's key international financiers. Find out the financiers' lending policies regarding environmental and social issues and understand their roles, relations and dynamics with the TNC;
- (3) Understand other international business stakeholders and identify any key player. Understand the general attitudes of the TNC's international suppliers, consumers and competitors on environmental and social issues in general and on the TNC as well as their roles, relations and dynamics with the TNC. Particularly, understand the level of environmental and social standards used by the TNC's key international competitors and how it has affected the TNC' operation in the host country.

Box 2: Political stakeholders in host country

Main goals:

- (1) Find out and understand the environmental and social policies in inward FDI made by the host country government;
- (2) Identify the key institutions in the host country that draft, implement and oversee the policies and understand their roles, relations and dynamics with the TNC as well as the regulatory framework.

Optimally, host country governments should establish environmental and social policies for inward FDI and ensure full enforcement and implementation of these policies. From the outset of the policymaking process, the governments should make sure that the policies fit into national development strategies, balance the need to attract FDI for economic development and the need to regulate for the public's environmental and social interests, and

³ Kondo, Seiichi. "Foreign Direct Investment and the Environment: Lessons from the Mining Sector." In *Foreign Direct Investment and the Environment: Lessons from the Mining Sector*, by Organisation for Economic Co-operation and Development, 7-8. Paris: Organisation for Economic Co-operation and Development, 2002.

harmonize the interests of the State and local communities.⁴ These considerations are particularly of significance when host countries negotiate bilateral investment agreements (BITs) with investor countries or foreign investors. To date, BITs generally favor foreign investors and restrict host countries' rights to regulate for the public good.⁵ Furthermore, the governments should set up a good regulatory framework, place capable human resources and build sufficient institutional capacity to enforce and implement the policies.

In practice, however, many host country governments, especially developing countries, have a narrow focus on economic interests and lack the political will to regulate inward FDI's environmental and social issues. Even with environmental and social policies in place for inward FDI, many host country governments have a weak regulatory framework and lack the capacity to implement the policies and achieve the desirable effects.⁶

Regarding the political stakeholders of the TNC in question in the home country, the following aspects should be considered and examined to achieve the main goals here:

- (1) Understand the FDI policy in the home country. First, understand the home country's national sustainable development strategy and the role of FDI in the strategy. Secondly, find out existing environmental and social policies for inward FDI;
- (2) Identify the key institutions in the home country that craft, implement and oversee the environmental and social policies for inward FDI and understand their roles, relations and dynamics with the TNC. Additionally, understand the regulatory framework on environmental and social governance of FDI.

Box 6: Political stakeholders in investor country

Main goals:

- (1) Understand the environmental and social policies in OFDI made by the investor country government;
- (2) Identify the key institutions that draft, implement and oversee the policies and understand their roles, relations and dynamics with the TNC as well as the regulatory framework.

Optimally, investor country governments should have environmental and social policies in place for OFDI. It is in the interest of investor countries in regulating their OFDI. It is a way to minimize environmental and social risks facing their OFDI that are likely to undermine the economic interests of their TNCs' with overseas operations as well as the countries' political

⁴ Zarsky, Lyuba. "Introduction: Balancing Rights and Rewards in Investment Rules." In *International Investment for Sustainable Development: Balancing Rights and Rewards*, by Lyuba Zarsky, 1-10. London: Earthscan, 2005.

⁵ Sauvart, Karl P. "The Regulatory Framework for Investment: Where Are We Headed?" In *The Future of Foreign Direct Investment and the Multinational Enterprise*, by Ravi Ramamurti and Niron Hashai, 407-433. Bingley: Emerald Group Publishing, 2011.

⁶ UNCTAD Secretariat. "An Overview of the Issues." In *The Development Dimension of FDI: Policy and Rule-making Perspectives*, by United Nations Conference on Trade and Development, 1-25. New York and Geneva: United Nations, 2003.

and economic interests overseas. There have been many cases where TNCs suffered financial losses due to their environmental and social controversies in host countries.

Investor country governments also have an important role to play in regulating OFDI. The environmental and social policies they establish can exert an influence on the location, scale and quality of their outward FDI as well as the level of environmental and social standards used by the FDI.⁷ Moreover, investor country governments can provide financial and technical assistance and help host countries build the capacity in governing FDI and maximize FDI's economic, environmental and social benefits in host countries.

However, in the current international investment practice, it is rarely the case for investor country governments to establish environmental and social policies for their OFDI. Investor countries mainly seek to protect OFDI's rights and interests and don't have much appetite for restricting them. Furthermore, investor country governments are reluctant to step in the environmental and social governance of OFDI in host countries, as it is generally viewed as the jurisdiction of host countries. While there are some investor country initiatives in governing OFDI in recent years due to increasing awareness on the issue, investor country actions remain sporadic and uncoordinated.

Regarding the political stakeholders of the TNC in question in the investor country, the following aspects should be considered and examined to achieve the main goals here:

- (1) Understand the OFDI policy made by the investor country. First, understand the investor country's national development strategy and the role of OFDI in the strategy. Secondly, find out the existing environmental and social policies for OFDI;
- (2) Identify the key institutions in the investor country that craft, implement and oversee the environmental and social policies for OFDI and understand their roles, relations and dynamics with the TNC. Additionally, understand the regulatory framework on environmental and social governance of OFDI.

Box 10: Political stakeholders in third country

Main goals:

- (1) Understand the environmental and social policies in OFDI made by the third country government;
- (2) Identify the key organizations in the third country that set these laws and rules and understand their roles, relations and dynamics with the TNC.

There are many environmental laws and social policies in the third country. Although these standards may be much more stringent than the host and investor countries, for TNCs, these

⁷ Kline, John M. "Enhancing the Development Dimension of Home Country Measures." In *The Development Dimension of FDI: Policy and Rule-making Perspectives*, by United Nations Conference on Trade and Development, 101-113. New York and Geneva: United Nations, 2003

standards are voluntary and don't have binding force on TNCs' environmental and social conduct in host countries.

Developed countries usually maintain close relations with some developing countries, either with the political or economic reasons. For example, some of these developing countries are the previous colonies of those western countries, therefore their previous metropolitan states often have big impacts to host countries government, and can further impact the behaviors of TNCs.

Regarding the international political stakeholders of the TNC in question, the following aspects should be considered and examined to achieve the main goals here:

- (1) Find out and understand the third country's laws that apply to the TNC and pay special attention to the related laws in the TNC's sector;
- (2) Identify the key third country's organizations⁸ that make these laws and understand the environmental and social stipulations they have imposed on OFDI if any. Understand their roles, power and relations with the TNC.

Box 14: Political stakeholders in international regime

Main goals:

- (1) Find out and understand international laws with environmental and social rules that can apply to the TNC;
- (2) Identify the key international organizations that set these laws and rules and understand their roles, relations and dynamics with the TNC.

Given the extraterritorial nature of OFDI, the international law regime regulating OFDI plays a pivotal role in environmental and social governance of OFDI. However, very few international laws have addressed environmental and social issues of OFDI to date. As the main body of international investment laws, regional, interregional and partial multilateral agreements⁹ do not include environmental and social provisions for OFDI. Among international environmental laws, the Montreal Protocol (1987) and the Basel Convention (1989) are the only few binding international environmental agreements that are applied to OFDI, albeit with very narrow environmental focuses. Many international initiatives have been made to address environmental management and transparency of TNCs. However, they are voluntary and don't have binding force on TNCs' environmental and social conduct in host countries.

⁸ "International organizations" here mainly refer to multilateral organizations, regional organizations and international development agencies of a third country other than the host and investor countries of the TNC in question.

⁹ They mainly include such as Chapter 11 of the North American Free Trade Agreement (NAFTA), the Agreement on Trade-related Investment Measures (TRIMS) and the General Agreement on Trade in Services (GATS) under the framework of WTO and OECD instruments (Sauvant 2011, United Nations Conference on Trade and Development 2004).

In recent years, there is an increasing voice calling for a reform in the international law regime governing OFDI to incorporate sustainable development provisions. In this regard, international organizations can fill the void as the rule-maker and move the international law regime regulating OFDI towards a new regime that will balance the rights of foreign investors and host countries and secure host countries' rights to regulate for environmental and social interests of the public. Additionally, international organizations can take pivotal leadership in environmental and social governance of OFDI by providing resources and advice to host countries and help them build the capacity to regulate OFDI and by engaging investor countries in assisting and partnering with host countries.

Regarding the international political stakeholders of the TNC in question, the following aspects should be considered and examined to achieve the main goals here:

- (1) Find out and understand international laws that apply to the TNC and pay special attention to the related laws in the TNC's sector;
- (2) Identify the key international organizations¹⁰ that make these laws and understand the environmental and social stipulations they have imposed on OFDI if any. Understand their roles, power and relations with the TNC.

Box 3 & 4: Environmental and social stakeholders in host country

Main goals:

- (1) Understand the local communities' relations and dynamics with the TNC;
- (2) Identify the key environmental and social NGOs that work on the TNC's environmental and social issues and understand their roles, relations and dynamics with the TNC;
- (3) Identify the key media outlets that cover inward FDI's environmental and social issues and understand their roles, relations and dynamics with the TNC.

Local communities on OFDI project sites in host countries are at the center of FDI's environmental and social impacts. While usually receiving a small share of the benefits associated with OFDI projects they are the group that bears the most direct consequences of OFDI's environmental and social disruptions on the local ecosystems and livelihoods. Optimally, these adjacent communities should have a strong voice on all the public decision-making related to OFDI projects and have the ability to protect their rights and secure due share of benefits from these projects.¹¹

However, in practice, many of those affected communities are vulnerable and marginalized groups in the society of host countries. On one hand, they don't have the resources and

¹⁰ "International organizations" here mainly refer to multilateral organizations, regional organizations and international development agencies of a third country other than the host and investor countries of the TNC in question.

¹¹ Weber-Fahr, Monika, Craig Andrews, Leo Maraboli, and John Strongman. "An Asset for Competitiveness: Sound Environmental Management in Mining Countries." In *Foreign Direct Investment and the Environment: Lessons from the Mining Sector*, by Organisation for Economic Co-operation and Development, 105-119. Paris: OECD, 2002.

capacity to track and fight against FDI's environmental and social damages and secure their legal rights. On the other hand, they are often in an environment where there is no formal mechanism to ensure that local communities' rights are protected and they are fully informed and consulted throughout OFDI projects.

Environmental and social NGOs in host countries can play a crucial role in the environmental and social governance of inward FDI. They can sway FDI's environmental and social performance by scrutinizing FDI's environmental and social practices and draw publicity on their environmental and social misconducts, or by directly building partnership with FDI and improving their environmental and social management. They can also exert an influence on the decision-making of host and investor country governments and international organizations, which can strengthen environmental and social regulation on FDI. Additionally, they can help and represent affected communities and seek their legal rights out of damages caused by FDI. Nevertheless, many environmental and social NGOs in host countries face political, financial and staffing challenges, which restrain their capacities to effectively advocate against FDI's environmental and social damages.

Media in host countries can be a significant leverage on environmental and social performance of inward FDI by shaping and influencing public perceptions. On one hand, it can bring publicity on the environmental and social damages caused by OFDI on the local communities and raise public awareness on FDI's environmental and social issues in host countries. On the other hand, it can serve as a useful platform for other stakeholders to disseminate and share FDI's environmental and social information and mobilize resources to work against FDI's environmental and social misconduct. A caveat is that media may have its own agenda and may or may not objectively reflect FDI's environmental and social performance in host countries.¹²

Regarding the environmental and social stakeholders of the TNC in question in the host country, the following aspects should be considered and examined to achieve the main goals here:

- (1) Understand the local communities on the TNC's operation site. First, understand community rights protected by the host county laws. Secondly, learn the local communities' perspectives on the TNC in general and particularly on its environmental and social performance. Thirdly, understand the local communities' relations and dynamics with the TNC;
- (2) Understand the environmental and social NGOs in the host country. First, understand the scale, strength and activities of the civil society in general in the host country. Second, identify the key environmental and social NGOs addressing the TNC's environmental and social issues. Understand these groups' roles, relations and dynamics with the TNC.
- (3) Understand the media in the host country. First, learn the mainstream media's perspectives on inward FDI and their environmental and social issues. Second, identify the key media

¹² Chaher, Santiago, and James David Spellman. *Corporate Governance and Social media: A Brave New World for Broad Directors*. Washington, DC: International Finance Corporation, 2012.

outlets that cover environmental and social issues of inward FDI, particularly of the TNC. Understand their roles, relations and dynamics with the TNC.

Box 7 & 8: Environmental and social stakeholders in investor country

Main goals:

- (1) Understand the relations and dynamics between the communities in the investor country and the TNC;
- (2) Identify the key environmental and social NGOs that work on the TNC's environmental and social issues in the host country and understand their roles, relations and dynamics with the TNC;
- (3) Identify the key media outlets that cover outward FDI's environmental and social issues in the host country and understand their roles, relations and dynamics with the TNC.

Communities in investor countries can play a role in influencing environmental and social performance of outward FDI in host countries. Public opposition and pressure from domestic communities in case of TNCs' environmental and social controversies overseas can put TNCs' reputation at risk and thus are likely to drive up their environmental and social performance in host countries. Yet, investor country communities may not be aware of TNCs' environmental and social issues overseas due to lack of information, or simply not be interested in environmental and social damages issues across borders.

Depending on their interests and strength, environmental and social NGOs in investor countries have the potential to substantially affect environmental and social impacts of outward FDI in host countries. They can inform domestic communities of outward FDI environmental and social issues overseas and leverage investor country governments to regulate. They can also assist and partner with weak or oppressed environmental and social groups and affected communities in host countries and advocate for their rights.

Media in investor countries also have the potential to impact outward FDI's environmental and social performance in host countries. Media's coverage on environmental and social disruption caused by outward FDI overseas can inform domestic communities and raise their awareness on the issue. Additionally, media provides different stakeholders of FDI with an efficient way to share information on outward FDI's environmental and social issues and mobilize resources. The role and involvement of the media in investor countries in environmental and social governance of outward FDI depends on the media's agendas and appetite on the issue.

Regarding the environmental and social stakeholders of the TNC in question in the investor country, the following aspects should be considered and examined to achieve the main goals here:

- (1) Understand the communities in the investor country. First, understand the public awareness and major perspectives on environmental and social issues of outward FDI. Secondly, learn the public perceptions and attitudes on the TNC and its environmental

and social issues in the host country and understand the communities' relations and dynamics with the TNC;

- (2) Understand the environmental and social NGOs in the investor country. First, understand the scale, strength and activities of the civil society in general in the investor country. Second, identify the key environmental and social NGOs working on the TNC's environmental and social issues in the host country. Understand their roles, relations and dynamics with the TNC;
- (3) Understand the media in the investor country. First, understand the mainstream media's perspectives on outward FDI and their environmental and social issues overseas. Second, identify the key media outlets that cover environmental and social issues of outward FDI, particularly of the TNC. Understand their roles, relations and dynamics with the TNC.

Box 11 & 12: Environmental and social stakeholders in third country

Main goals:

- (1) Understand the main public opinions and perceptions from the third country on the TNC and understand how that impact the TNC;
- (2) Identify the key environmental and social NGOs from the third country addressing the TNC's environmental and social issues in the host country and understand their roles, relations and dynamics with the TNC;
- (3) Identify the key media outlets from the third country covering OFDI's environmental and social issues in the host country and understand their roles, relations and dynamics with the TNC.

Communities across the third country, especially in TNCs' major markets, can create public pressures on TNCs regarding TNCs' environmental and social controversies in host countries, which are likely to prompt TNCs to take remedies and improve. TNCs with big market shares in the third country are vulnerable to reputational risk, and care much about the news report by the third country media of their environmental and social performances in host countries. Exposure on media can put tremendous pressures on TNCs and push them to improve environmental and social management in host countries.

Regarding the third country's environmental and social stakeholders of the TNC in question, the following aspects should be considered and examined to achieve the main goals here:

- (1) Learn the main public opinions and perceptions internationally on the TNC and understand how that impact the TNC;
- (2) Identify the key international environmental and social NGOs working on environmental and social issues of the TNC in the host country and understand their roles, relations and dynamics with the TNC;

Identify the key international media outlets covering environmental and social issues of FDI in the host country, particularly of the TNC, and understand their roles, relations and dynamics with the TNC.

Box 15 & 16: Environmental and social stakeholders in international regime

Main goals:

- (1) Understand the main public opinions and perceptions internationally on the TNC and understand how that impact the TNC;
- (2) Identify the key international environmental and social NGOs addressing the TNC's environmental and social issues in the host country and understand their roles, relations and dynamics with the TNC;
- (3) Identify the key international media outlets covering FDI's environmental and social issues in the host country and understand their roles, relations and dynamics with the TNC.

Communities across the world¹³, especially in TNCs' major markets, can create public pressures on TNCs regarding TNCs' environmental and social controversies in host countries, which are likely to prompt TNCs to take remedies and improve. TNCs with a global brand are particularly vulnerable to reputational risk. Nevertheless, the communities' awareness on environmental and social issues of TNCs in host countries, interest in getting involvement and the impact of an engagement will be widely varied from country to country.

International environmental and social NGOs have been a vital force in the international arena on the front line of addressing environmental and social issues of FDI in host countries. They take legal actions against TNCs' environmental and social disruptions in host countries, educate and leverage the public to boycott TNCs and press world governments to regulate TNCs. They also directly work in the field and provide financial and technical assistance to affected communities and environmental and social groups in host countries.

International media, especially influential media outlets with global reach, can be a crucial player that can sway environmental and social performance of TNCs in host countries. They can quickly reach international audience and create buzz on environmental and social issues of TNCs in host countries. Owing to growing new technologies and lowering cost, media has virtually become a standard outreach tool for different stakeholders to reach out, mobilize resources and organize actions. Increasing exposure on media can put tremendous pressures on TNCs and push them to improve environmental and social management in host countries.

Regarding international environmental and social stakeholders of the TNC in question, the following aspects should be considered and examined to achieve the main goals here:

- (1) Learn the main public opinions and perceptions internationally on the TNC and understand how that impact the TNC;
- (2) Identify the key international environmental and social NGOs working on environmental and social issues of the TNC in the host country and understand their roles, relations and dynamics with the TNC;
- (3) Identify the key international media outlets covering environmental and social issues of FDI in the host country, particularly of the TNC, and understand their roles, relations and dynamics with the TNC.

¹³ "Communities" here mainly refer to the general public across the world.

Finally, all main goals of each box have been summarized and listed in Table 2.

Table 2. Main goals of each box in the conceptual matrix

Level	Box	Main goals
Host country	1	<ul style="list-style-type: none"> Understand the level of environmental and social standards generally accepted by the market of the host country, particularly in the TNC's industry; Identify the key business players in the host country that can substantially influence the TNC's environmental and social performance and understand their roles, relations and dynamics with the TNC.
	2	<ul style="list-style-type: none"> Find out and understand the environmental and social policies in inward OFDI made by the host country government; Identify the key institutions in the host country that draft, implement and oversee the policies and understand their roles, relations and dynamics with the TNC as well as the regulatory framework.
	3&4	<ul style="list-style-type: none"> Understand the local communities' relations and dynamics with the TNC; Identify the key environmental and social NGOs that work on the TNC's environmental and social issues and understand their roles, relations and dynamics with the TNC; Identify the key media outlets that cover inward OFDI's environmental and social issues and understand their roles, relations and dynamics with the TNC.
Investor Country	5	<ul style="list-style-type: none"> Understand the level of environmental and social standards generally accepted by the market of the investor country, particularly in the TNC's industry; Identify the key business players in the investor country that can significantly influence the TNC's environmental and social performance in the host country and understand their roles, relations and dynamics with the TNC.
	6	<ul style="list-style-type: none"> Understand the environmental and social policies in outward OFDI made by the investor country government; Identify the key institutions that draft, implement and oversee the policies and understand their roles, relations and dynamics with the TNC as well as the regulatory framework.
	7&8	<ul style="list-style-type: none"> Understand the relations and dynamics between the communities in the investor country and the TNC; Identify the key environmental and social NGOs that work on the TNC's environmental and social issues in the host country and understand their roles, relations and dynamics with the TNC; Identify the key media outlets that cover outward OFDI's environmental and social issues in the host country and understand their roles, relations and dynamics with the TNC.
Third country	9	<ul style="list-style-type: none"> Understand the level of environmental and social standards generally accepted by the market of the third country, particularly in the TNC's industry; Identify the third country's key business players that can significantly influence the TNC's environmental and social performance in the host country and understand their roles, relations and dynamics with the TNC;
	10	<ul style="list-style-type: none"> Understand the environmental and social policies in outward OFDI made by the third country government; Identify the key organizations in the third country that set these laws and rules and understand their roles, relations and dynamics with the TNC.

	11&12	<ul style="list-style-type: none"> • Understand the main public opinions and perceptions from the third country on the TNC and understand how that impact the TNC; • Identify the key environmental and social NGOs from the third country addressing the TNC's environmental and social issues in the host country and understand their roles, relations and dynamics with the TNC; • Identify the key media outlets from the third country covering OFDI's environmental and social issues in the host country and understand their roles, relations and dynamics with the TNC.
International regime	13	<ul style="list-style-type: none"> • Understand international environmental and social standards on OFDI, particularly in the TNC's industry; • Identify the key international business players that can significantly influence the TNC's environmental and social performance in the host country and understand their roles, relations and dynamics with the TNC.
	14	<ul style="list-style-type: none"> • Find out and understand international laws with environmental and social rules that can apply to the TNC; • Identify the key international organizations that set these laws and rules and understand their roles, relations and dynamics with the TNC.
	15&16	<ul style="list-style-type: none"> • Understand the main public opinions and perceptions internationally on the TNC and understand how that impact the TNC; • Identify the key international environmental and social NGOs addressing the TNC's environmental and social issues in the host country and understand their roles, relations and dynamics with the TNC; • Identify the key international media outlets covering OFDI's environmental and social issues in the host country and understand their roles, relations and dynamics with the TNC.

Analysis of Key Players in China's Outward Foreign Direct Investment based on the Conceptual Matrix

Part I: Case Study in Latin America

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Due to a lack of systematic approach, it was difficult to address OFDI's environmental and social impacts, since the mixed nexus between stakeholders, TNCs and the environment on different levels is delicate and needs to be dealt with carefully. With the help of this conceptual matrix, we can quantify and integrate the influences exerted by different stakeholders on TNCs' environmental and social performance, and then better understand such relations between them.

As discussed before, around a half of China's outward OFDI projects have been concentrated in the Energy and Metals field from 2005 to 2014. Therefore, in this research, we selected the Rio Blanco Copper-molybdenum Mine project in Peru developed by Zijin Mining Group Ltd., a leading Chinese gold, copper and non-ferrous metals producer and refiner.

1. Background Information

1.1. Overview of Zijin

1.1.1. Zijin's overseas investment

The *Zijin Mining Group Co., Ltd.* (hereinafter "*Zijin*") is a leading global gold, copper and non-ferrous metals producer and refiner. Zijin is one of the largest Chinese gold producers in China, which now operates the Zijinshan Gold Mine, the Chinese largest open pit gold mine in Fujian Province. Started from this mine in 1993, Zijin has gradually developed an extensive product portfolio of gold, copper, lead and zinc, tungsten, iron and other base metals in the past two decades. By the end of 2013, Zijin has become a large state holding mining group specializing in gold and mineral resource exploration and development with subsidiaries in more than 20 provinces, municipalities, autonomous regions across China and 7 countries.¹ Today, Zijin is China's largest gold producer, second largest mining copper producer, the fifth-largest zinc

¹ <http://www.zijinmining.com/tabid/1116/InfoID/32450/frtid/1106/Default.aspx>

producer and important tungsten, iron manufacturers. Zijin is also one of the largest enterprises which controls most of metal mineral resources in China.²

One recent overseas business action of Zijin happened in South America. In 2007, Zijin acquired 89.99% interest of British Moten Riko plc, and controlled the Río Blanco Copper S.A, which is a wholly owned subsidiary in Peru by British Moten Riko plc. So after that, Zijin obtained the mining right of the Río Blanco Copper mine. Río Blanco Copper main asset is Río Blanco extra-large Copper-Molybdenum mine located in Piura region, northern Peru, close to the Ecuador border, on the eastern side of Andes (Fig. 1). However, due to the strong oppositions from local civil societies, the commissioning date has been repeatedly postponed, which brought huge economic losses to Zijin. Suffered huge pressure from many stakeholders, Zijin made a concession and promised to strengthen its communication with local communities, in order to launch this project as soon as possible.

This is not only an important overseas story of Zijin, but also a representative case for all Chinese TNCs in the metal sector. According to the analysis of this case, combined with the discussion of impacts from stakeholders based on the created conceptual matrix mentioned before, this case study will sum up the experiences and lessons from the aspect of environmental risk prevention, and provide strategic recommendations to TNCs, government, media and NGOs for risk alleviation when doing overseas business.



Fig. 1 Location of the Río Blanco Copper-molybdenum Mine in Peru

Today, Zijin Mining Group Co. is actively expanding its overseas investment all around the world. Its mining operations extend overseas, with a presence in countries including Russia, Canada, Peru, South Africa and Vietnam.

1.1.2. Environmental records of Zijin in China

However, as China's biggest gold miner by market value, its environmental disasters have overshadowed the firm's meteoric rise. Today, the firm, whose polluting ways and local

² <http://www.zjky.cn/new/About.asp?id=9>

government connections have been the subject of a flurry of recent media reports. Zijin Mining also topped a list of 11 firms found to have severe environmental problems, published by China’s Ministry of Environmental Protection in May 2010.³ Researchers criticized that, Zijin’s fast expansion coupled with huge profits are mostly at the expense of local environment.

The environmental records of Zijin from 2006 to 2010 in mainland China are showed by the following Table 1:

Table 1. Bad environmental records of Zijin in China from 2006 to 2010.

Year	Location	Event
2006	Zhenfeng Gold Mine, Guizhou	200,000 cubic meters of waste water containing potassium cyanide spilled from tailings
2008	-	Failed to pass the Green Securities ⁴ approval due to bad environmental records
2009	Zhangjiakou, Hebei	Tailing spill occurred at the Dongping Mine backwater system
2010	-	One of eleven listed companies failed to fulfill the environmental rectification announced by MEP
2010	Shanghang, Fujian	Copper acid waste leakage incident

However, as a big taxpayer, Zijin Mining had not received severe punishment from local environmental protection agencies until 2010, then things began to change after the Zijinshan copper acid waste leakage incident. On September 26, 2010, the Fujian DEP made the penalty decisions under article 83 of the “*Water Pollution Prevention and Control Law of the People’s Republic of China*” as follows: Ordered the company to rectify, take control measures to eliminate pollution, and imposed a penalty of CNY 9,563,130 (around USD 1,500,000)⁵. However, this announcement caused an uproar in this area, not only because this penalty was too low compared to Zijin’s annual profit and the economic loss in this accident, although this was the largest penalty in the history of China’s environmental enforcement; but also that those people who were responsible for this accident had not been punished at all. According to Zijin’s Annual Report 2010, its total profit of FY2010 was CNY 7,331,571,772 (around USD 1 billion), so the penalty only took up a very little share of its annual profit (0.1%), that’s why Zijin didn’t really care about this penalty at all.⁶ Besides, this accident also attracted the attention of China’s central government, and then the MEP sent a special expert team to investigate the truth of this accident. On May 4, 2011, the Longyan City Intermediate People’s Court upheld the decision issued by a district court in late January. The Longyan court announced the final judgment about this accident: Zijin committed a felony of severe

³ Why Chinese firms don’t apologise. <https://www.chinadialogue.net/article/show/single/en/3787-Why-Chinese-firms-don-t-apologise>

⁴ The “Green Securities” policy was launched by MEP in February 2008 in partnership with the China Securities Regulatory Commission (CSRC). The policy aims to make it harder for polluters to raise capital by requiring companies listed on the stock exchange to disclose more information about their environmental record. The “Green Securities” policy was enhanced by the issuance of the “Green IPO” in June 2008. The policy document (“The Management Roster of Listed Companies Environmental Verification Industry Categories”) requires enterprises in *liang gao* (high pollution and high energy consumption) industries to undergo an environmental assessment by MEP before initiating an IPO or obtaining refinancing from banks.

⁵ http://www.fjepb.gov.cn/action/article/articleShow_articleAction.action?aid=63806

⁶ <http://www.cninfo.com.cn/finalpage/2011-03-31/59207370.PDF>

environmental pollution, and was sentenced to pay for a fine of CNY 30 million (around USD 4.7 million)⁷. Five managers that directly responsible for this incident were sentenced to 3-3.5 years' imprisonment (including some of the defendants who were sentenced to probation).

This is not the end. On April 20, 2012, China's securities regulator, the China Securities Regulatory Commission (CSRC), issued a “Notice of Administrative Penalty Decisions” to Zijin. The CSRC announced that on 3 July 2010, the leakage of the waste water caused a serious pollution to the quality of water at its nearby downstream of Ting River and made a great damage to the local environment⁸. The Company should have immediately announced this significant incident to the public, even though it may affect the Company's share price. However, the Company simply decided not to disclose the incident and its subsequent progress on time, constituting in a breach of the requirement of article 67 of the “Securities Law” and committing an offence under article 193 of the “Securities Law”. So warned and ordered the company to rectify, and imposed a fine of CNY 300,000 (around USD 48, 000); and held six key officers directly responsible for the breach of the company with a fine from 50,000 to 100,000 respectively⁹.

1.2. Overview of Río Blanco Copper-molybdenum

Roughly the size of France, the country of Peru is endowed with valuable natural resources. It is the world's second largest producer of copper, after Chile, and holds the second-largest known copper reserves. Peru is also the second largest producer of silver in the world, and the sixth largest global producer of gold. The country also has significant reserves of coal, iron ore, silver, tin, sulfur and zinc. Mineral exports account for about 60 percent of Peru's total shipments abroad.¹⁰ Given its strong mining potential, Peru has been attracting the world's major mining companies to expand activities in the country. In 2013, the Peruvian Mines and Energy Ministry estimates the production of copper will soon reach 1.57 million tons, an 18 percent increase over 2012 that stemmed from a 7.8 percent increase the year before. FDI is pouring into the country, of which the mining sector contributes over 13 percent. The current value of mining investment is in the neighborhood of \$US10 billion.

Peru is one of China's most important OFDI host countries, ranks second in China's OFDI flows destinations among Latin American countries. In 2003, China's total OFDI in Peru was only 0.12 million USD, while after 2005, China's OFDI has been rocketing in Peru year by year. By the end of 2010, China's annual OFDI flows to Peru had already reached 139.03 million USD, increased nearly 1000 times since 2003.

For Peru, most of China's OFDI flows are entering into its domestic mining sector (Fig. 2), owing to China's increasing consumption of metals and minerals such as copper, which has

⁷ Because Zijin had already paid CNY 9.56 million for administrative penalty in October 2010, it still need to pay CNY 20,436,870. See <http://china-wire.org/?p=11523>

⁸ “Securities Regulator Probes Zijin's Acid Wastewater Leak”, available at <http://english.caixin.com/2010-07-20/100162658.html>

⁹ For more details, please see: “Announcement in relation to the receipt of ‘Notice of Administrative Penalty Decisions’ issued by the China Securities Regulatory Commission”, <http://www.zjky.cn/Portals/1/LTN20120510579.pdf>

¹⁰ <http://www.kpmg.com/ca/en/industry/mining/pages/country-mining-guides.aspx>

increased to 6 Mt by 2010 from 4 Mt in 2005. Currently, two Chinese companies, Baosteel Co., Ltd. (Baosteel) and Aluminum Corp. of China Ltd. (Chalco) are planning to have joint ventures with Latin America's leading copper mining companies such as Companhia Vale do Rio Doce (CVRD) of Brazil, and Corporación Nacional del Cobre (Codelco) of Chile. China Minmetals Corp. also planned to invest in metals and minerals mainly in Brazil, Chile, and Peru.

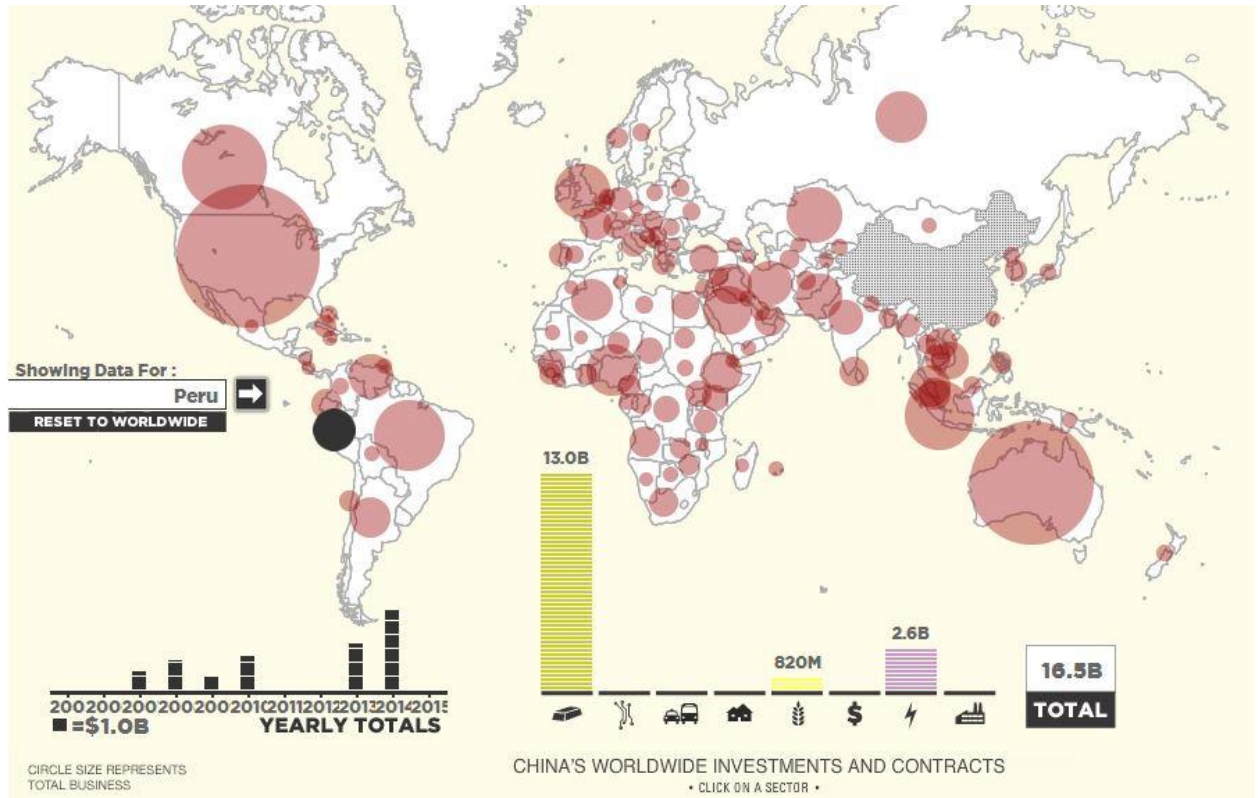


Fig.2 China's OFDI (2005-2014) in Peru. Source: China's global investment tracker, the Heritage Foundation, 2014.

Located in the mountainous Piura region of Northern Peru along the border with Ecuador, the Río Blanco mine is a 6,473 hectare copper and molybdenum concession at an altitude of 2,200 m to 2,800 m in the lower Andes (Fig. 3).¹¹ With an estimated 1,257 million tons (mt) of reserves with a cut-off grade of 0.4% copper, this planned open pit mine will be amongst the 20 largest copper mines in the world, if developed. Proven reserves are approximately 146 mt with 0.73% cut-off copper grade. Centered primarily on Henry's Hill, the mine also receives a small contribution from the adjacent Soho deposit. It is predicted to produce about USD 1 billion worth of copper per year for at least twenty years.

¹¹ <http://www.mining-technology.com/projects/rio-blanco/>

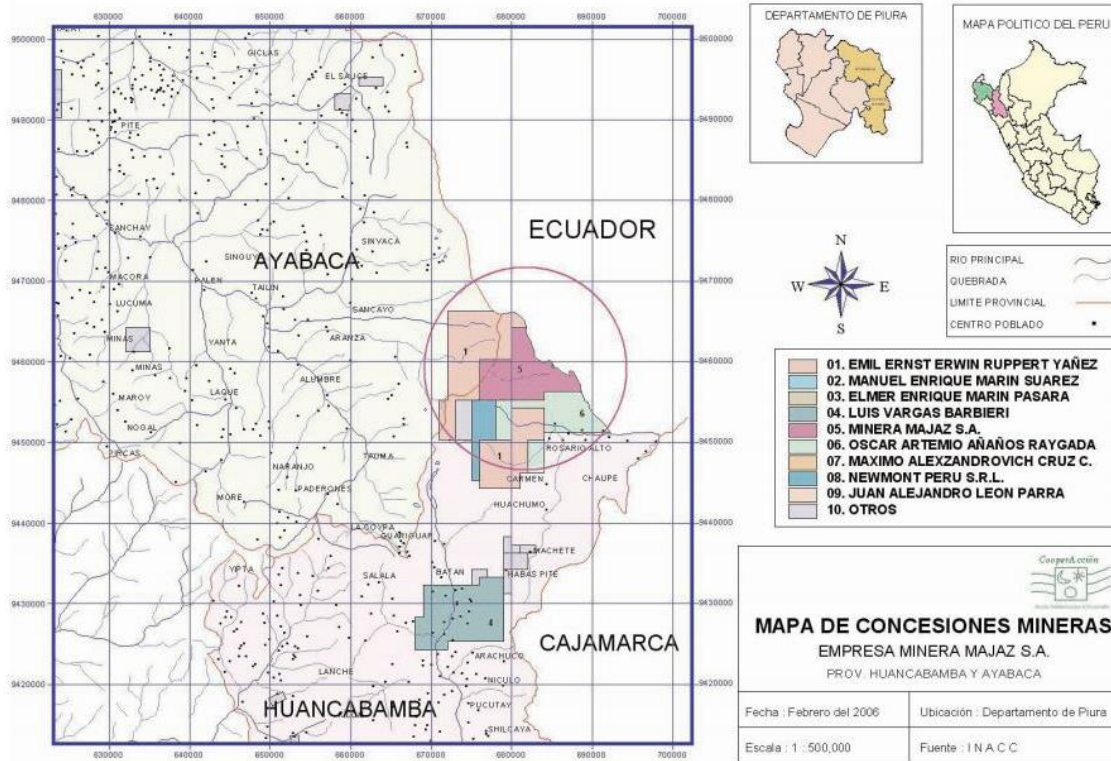


Fig. 3 Distribution of the Río Blanco Project

The copper deposit at the Río Blanco site was identified in the early 1990s. In 2001 Minera Majaz S. A., a subsidiary of the English company Monterrico Metals, obtained eight concessions in the North of Peru, including the 6,472 hectares Río Blanco mine, for the exploitation of copper and molybdenum. Thousands of farmers, local community representatives, Mayors, provincial administrators together with social and environmental organizations opposed the project, demanding the cancellation of environmental certification granted to Minera Majaz S. A. for exploratory operations.

Then, rights to Río Blanco's exploration have passed among diverse companies until being fully acquired by UK-based Monterrico Metals in 2003. In subsequent years, Monterrico has established that this is a very large deposit centered on a site named Henry's Hill. However, at that time the company failed to get permission to mine from local communities, which is required by Peruvian law, before beginning exploration. Citizens upset by the mine's illegal exploration activities held demonstrations throughout 2004 and 2005, during which two people were killed and many were arrested. In one of the worst incidents happened in 2005, one protester was killed and two dozen others were tortured when townspeople mobilized to stop construction of the mine, which they said would cause pollution and hurt water supplies. In 2006, Peru's Ombudsman confirmed the position of the communities that the company failed to get citizen approval. In 2007, a joint venture of Xiamen Zijin Tongguan Investment Development Co., Ltd was incorporated by Zijin Mining Group (45%), Tongling Nonferrous Metals Group (Xiamen) Co., Ltd. and Xiamen Jianfa Group Co., Ltd. Finally, Zijin Tongguan acquired 89.99% of British Moten Riko plc. That same year, the local governments of several districts held non-binding referenda to allow citizens to voice their opinions on allowing mining in their communities. Not surprisingly, voter turnout was strong and the majority voted

against the proposed mine.¹² In September 2008, Zijin Tongguan sold 10% interest of British Moten Riko plc to South Korean LS-Nikko Copper Inc. At present, Zijin Tongguan holds 79.99% interest of British Moten Riko plc. The capital cost of project development is expected to be \$1.44 billion.

The Río Blanco mine is now owned and operated by Zijin Mining Group. Zijin-owned Monterrico Metals began exploration of the mine following purchase in April 2007. Mining method is open-pit by traditional shovel-truck system. Ores of higher grade will be extracted first. As the level of deleterious elements in the concentrates is expected to be very low, all ore types at Río Blanco will be easy to process. Separate copper and molybdenum concentrates will be produced through the conventional process of flotation. The planned operation capacity is 25 million tons of ores annually, and mill can produce 526,000 tons of 28% Copper concentrates in which contains 830 tons of 35% Molybdenum concentrates. According to Zijin's previous plan, production was expected to begin in 2011, and Zijin planned to invest \$1.44 billion in the following project.

However, conflict has continued between the communities and Río Blanco's new management. Tensions between the mine and sectors of the local population emerged soon after exploration began in 2003. Three factors can help to explain the tensions: the work of activists in the area; Minera Majaz generated much distrust of mining in the local population; and the nature of the agreements that the company had secured and that had since been challenged. Several violent conflicts erupted at the end of 2009, leading to more casualties on both sides. On November 1, 2009, the mining camp at Zijin's Río Blanco copper project was invaded by 15 armed people and two workers were killed during this attack. According to Reuter's report, the attack may have been an act of revenge for the killed people in 2005.¹³

1.2.1. Impacts from this project

Most criticism from local residents to this project stem from environmental concerns, while this project may also produce significant social-economic impacts to local communities. These potential impacts has become the focus of current intense public debates, and should be carefully considered before the development of this project. This section describes the potential environmental and social-economic impacts caused by Zijin's investments, and a variety of risks due to the reactions from different stakeholders.

1.1.1.1. Environmental impacts

Much of the initial opposition to this project stemmed from fears that copper extraction would result in significant environmental damage. As the proposed project involved building an open-cast mine and extracting the whole of Henry's Hill to reach the deposit, the environmental impact would undoubtedly be considerable. Many peasant farmers, whose livelihoods depended on the water captured in the surrounding moorlands, voiced concern about the project's possible effects on the delicate local ecosystem.

¹² <http://www.mining-technology.com/projects/rio-blanco/>

¹³ <http://www.reuters.com/article/2009/11/02/metals-peru-attack-idUSN0243465420091102>

From the beginning, the concerns about the environmental impacts of this mining project have marked the tone and character of the public debate. According to previous researches, this project may cause many environmental problems including air pollution, biodiversity loss (wildlife, diversity), food insecurity (crop damage), loss of landscape/aesthetic degradation, soil contamination, deforestation and loss of vegetation cover, surface water pollution / decreasing water (physical-chemical, biological) quality, groundwater pollution or depletion, and so on.¹⁴

The spatial footprint of this mining project was estimated. If Zijin started to develop this mine, the mining concession area will cover a total of 6,473 hectares of deserts and cloud forests. The forests act like a sponge, collecting rain water and feeding it into the rivers that flow into the agricultural basins. The local communities, under whose territories the copper deposit lies, immediately expressed their worries about the potential destruction of these fragile ecosystems and the effect on their agricultural lands. Not only the local residents, but also the rich biodiversity of the area will be impacted. The preliminary results of a recent study confirmed that a mine with an open pit of 1,000 hectares would cause alarming degrees of destruction because it would cut connections among eco-systems (biological corridors), transcending impacts of local dimensions, and endangering species already threatened.

Besides the above environmental impacts which stem from the significant mining land footprint, the vast majority of mining problems result in the contamination of coupled surface water/groundwater systems down-gradient from the mine site. The Río Blanco mining site is located on the east side of the continental divide and ultimately drains into the Amazon River and the Atlantic Ocean. Many people were convinced that the Río Blanco mining activity would contaminate the rivers on the west side of the continental divide and drain into the Pacific Ocean. But according to Bebbington's report, there appears to be no threat of contaminated waters to these areas by discharge from the Río Blanco mining activity.

Mining activities also have the potential to perturb air quality in the surrounding area. Open-pit mining generates large amounts of dust for several reasons: removal of protective vegetative cover, disturbance by mining equipment, milling of ore into small-diameter particles that are easily transported by wind, etc. But the most widely known problem may be the chemical contamination during the separation process, which is also one of the most public familiar viewable problems reported by the media. Based on the survey in local areas, the potential dangers from chemicals used in the separation process are highly concerned by residents. Chemicals such as mercury and cyanide are often used during the separation process. The Río Blanco Project proposes to extract minerals using the froth-flotation process. This process involves extensive use of xylene as a frothing agent. Xylene is easily volatilized, and inhalation of xylene may cause cough, dizziness, and headache. It can be re-absorbed through the skin, causing a burning sensation. Ingestion is often accompanied by abdominal pain, nausea, vomiting, diarrhea, dizziness, headache, and finally shock or collapse. Finely dispersed particles of xylene form explosive mixtures in air. Release of xylene into the environment has an unknown potential to affect downwind ecosystems, farming activities, and human

¹⁴ The Peru Support Group (PSG). Mining and Development in Peru - With Special Reference to the Río Blanco Project, Piura. 2007.

health. However, the truth is that residents over-estimate the potential dangers from chemicals used in the separation process, while are largely ignorant of other severe risks.¹⁵

The biggest environmental risk comes from the contamination from tailings piles and waste rock. The other big problem is the leaching of acid mine drainage (AMD) from the mine site, tailings piles, and waste rock storage is the primary concern. The area receives 2,000 mm or more of rain annually, concentrated in a wet season. The large amount of precipitation provides the very real possibility of infiltrating rain moving through tailings and waste rock piles and transporting contaminated metals into surface and ground waters. Reduction of infiltration causes a separate problem of surface runoff. Rainfall running along the surface of tailings and waste rock is likely to transport AMD drainage and/or contaminated sediments directly to streams. The depth of the open-pit mine is also of concern. It is likely that the depth of the open-pit mine will be below the local water table. That water will need to be pumped from the mine site. It is highly likely that this water will be contaminated with AMD. Treatment of this potential AMD is imperative. Furthermore, another big potential environmental impact is that both the tailings and waste rock piles will overlay large streams. There is the possibility that these areas could leach toxic AMD into the headwaters of the Amazon River for centuries after mine closure.

Catastrophic slumping of tailings and waste rock piles is also a possibility. The high amounts of precipitation can cause water-logging and wet debris flows if there is significant infiltration of rain. Shaking by earthquakes and subsequent slope failure and flows of tailings and/or waste rock piles into water courses is a very real possibility that must be taken into account with appropriate engineering practices. A combination of wet tailings/waste rock piles and an earthquake is of particular concern.

Zijin has been blamed for the violation of Peruvian environmental laws-including drilling beyond the approved limits and improperly disposing of toxic waste-which has fostered distrust among the communities and has drawn fines from the Peruvian government. To control the environmental impacts, Zijin promised that all tailings will be dried and arranged in a valley adjacent to the open pit, a process that will reduce environmental impact and operating costs. The concentrates will be initially transported from the mine to port using trucks. A pipeline will be constructed to transport concentrates. To minimize environmental impact the pipeline will be constructed parallel to the road in upland areas wherever possible. Almost 25 km of new road will be constructed. The existing road, which is 176 km long, will also be upgraded. Facilities for storage and loading will be constructed at the port of Bayovar, 800 km north of Lima.

1.1.1.2. Social-economic Impacts

In addition to the environmental worries, social and economic problems caused by this project must also be considered. The potential negative impacts include: increase in corruption, violence and crime; lack of work security, labor absenteeism, firings, unemployment; loss of traditional knowledge/practices/cultures; violations of human rights, and so on.

¹⁵ Ibid.

First, the project should consider local people's fear that water and air contamination would compromise their agricultural economies (economies with a significant component of organic coffee production). Deposition of dust and other aerosols, combined with waste water generated by mining activities on coffee plants may cause local producers of organic coffee to lose their certification. Certified organic coffee is the major cash export for surrounding communities, which can be sold at a premium in the international market. Loss of the organic certification would cause economic harm.

Without proper measures to deal with such potential environmental and economic concerns, the relationship between companies and local residents has become very tense. More than 90 percent of farmers opposed the Majaz Río Blanco project and asked the Government to respect their decision. Residents of the districts of Ayabaca, Pacaipampa, and Carmen de la Frontera in Piura initiated a referendum and voted overwhelmingly on September 16, 2007, to reject investment in the nearby Majaz copper mine via the Río Blanco project. The social conflict reached its most critical moments in 2004 and 2005, when two demonstrations of thousands of community members coming from several miles around confronted police forces. Several peasants were injured in violent confrontations—some of them severely. Two died and more than 200 had lawsuits brought against them by local government for taking part in the protests. From a legal point of view, the most important aspect of the conflict between Minera Majaz and the communities is the lack of consent from the communities, required by law, authorizing mining explorations in their territories. In its report No. 001-2006/ASPMA-MA, released in November 2006, the Peruvian Ombudsman declares that the Law of Peasant and Native Communities states that all use of lands for mining activities, including exploration, must have the authorization of the communities who own the surface property, granted in general assembly and registered in an act signed by two thirds of the accredited members. If the community authorization is not obtained, the firm must wait until the state carries out a "serving procedure," in which the government of Peru gives the authorization and pays compensation to the community. According to the Ombudsman, this legal requirement has not been completed, because Majaz has not obtained the authorization of two thirds of the members of the communities over whose territories the concession is located. However, as for the legal status of the referendum, the Nacional Jury of Elections (JNE), in a communiqué dated August 15th, 2007, stated that the referendum has no official character, and is also illegal because "no person, sector of the population, or organization, including a city hall, can arrogate the exercise of exclusive and non-transferable faculties that constitutionally belong to the electoral bodies." Later, Peru's Energy & Mines Ministry and PROINVERSION on behalf of Peruvian government signed an agreement on judicatory stability with Majaz Mining Company, a subsidiary of Zijin Mining Group. The agreement is a sort of judicatory protection and a favorable policy exerted by Peruvian government which protects, promotes and supports large-scale foreign or domestic investments. According to the agreement, Peruvian government guarantees to keep constant the taxation, labor law and the policy of government protection and support for Majaz Mining Company for 10 years. This agreement indicates that Majaz Mining Company will develop and operate the Río Blanco Project in Peru under stable legal framework.¹⁶

¹⁶ Peruvian government signs agreement with Majaz Mining Company.
<http://www.zjky.cn/publish/english/tab973/info29093.htm>

According to above analysis, it is clear that in terms of the Río Blanco project, local residents/government and Peru's central government hold opposite attitudes, therefore the mine project has been delayed with the existence of such serious disputes and conflicts.

1.2.2. Current situation

Despite the unresolved social conflicts and environmental violations, Chinese media announced in July 2010 that Zijin will seek to increase its investment in the Río Blanco Mine. Subsequently, there were reports that the Zijin Consortium was making preparations for the exploitation phase of the project, in an effort to meet its goal of commencing production in 2011. But it is reported that due to security reasons and high opposition from local communities, the Río Blanco Mine has been suspended, and this situation might continue in 2014.¹⁷

2. Analysis of key stakeholders based on the conceptual matrix

This section provides a comprehensive analytical framework for the cross-border investment in environmental and social risk control case study. As discussed above, TNCs' environmental and social performance in host countries is influenced by business, political, environmental and social stakeholders in host countries, investor countries and international regimes. Hence, in addressing Zijin' environmental and social impacts in Peru, the four types of shareholders at all the four levels should be examined as a whole to get the big picture of the problem at hand and identify the key players that need to be leveraged to solve the problem.

OFDI not only involves the interests of corporate shareholders, but also the interests of many stakeholders. Stakeholder engagement is a critical process that helps companies understand their key environmental and social impacts and identify sustainability risks and opportunities. Depending on the focus of interest, different stakeholders are divided into four categories by this research: business, political, environmental and social stakeholders. Business stakeholders involve a number of business actors along the supply chain of TNCs who have commercial interest in TNCs, such as suppliers, competitors, consumers, clients and financial institutions. Political stakeholders including legislators, governments and law enforcement agencies. Individuals and communities on TNCs' operation sites are the ones that directly or indirectly bear the dual consequences of TNCs' environmental and social impacts, so that they are belong to the environmental and social stakeholders. NGOs and media may belong to environmental or social stakeholders according to their attention to different events.

Box 1: Business stakeholders in Peru

There are little reports about the environmental and social standards generally accepted by Peruvian mining industry. Big mining companies in Peru are either controlled by the state, or foreign TNCs, so the standards accepted by these two categories are usually different. Generally speaking, companies controlled by foreign TNCs accept more stringent standards,

¹⁷ <http://www.americasquarterly.org/learning-the-ropes-0>

or comply better with Peru's domestic standards, compared to state owned mining companies in Peru.

Before conducting their exploration, all mining companies in Peru should obtain a concession from the Ministry of Energy and Mines (MINEM)¹⁸. Apart from getting such concession, a mining company must submit and receive approval for an environmental impact study that includes a social relations plan, certification that there are no archaeological remains in the area, and a draft mine closure plan. In addition, the mining company has to separately obtain water rights from the National Water Authority and surface lands rights from individual landowners.

Box 2: Political stakeholders in Peru

The Peruvian Constitution establishes equal protection for domestic and foreign investors who may enter into agreements with the Government and guarantees free access, possession, and disposal of foreign currency. The Peruvian laws have attempted to ensure more-favorable minerals exploration and production contract terms for investors. Legal procedures to obtain mining rights were made easier by the enactment of complementary legislation Supreme Decree No. 018 of July 9, 1992. The Government relinquished exclusive control over exploration, mining, smelting, and refining of metals and fuel minerals. Individuals and private companies are allowed to hold mining permits in Peru. In the legal framework for investment and taxation, no distinction is made among domestic and foreign investors, corporations, joint ventures, and consortia formed in Peru or abroad. Municipalities and Regional governments in areas where mineral resources (metals and industrial minerals) are exploited will receive 50% of the taxes collected to be invested in education and social programs (health, housing, and others) in conformance with the Canon Minero (Ministry Resolution No. 266-2002-EF/15 of May 1, 2002). The remittance of dividends, depreciation, and royalties abroad has no restrictions. Contracts can be signed by investors, and the Government guarantees the stability of legal commitments and taxes. To increase protection of investors' interests, Peru signed agreements with the World Bank's Multilateral Investment Guarantee Agency in April 1991, which was authorized by Legislative Decree No. 25312 and with the Overseas Private Investment Corporation in December 2002, which was authorized by Legislative Decree No. 25809.

The Dirección General de Asuntos Ambientales (DGAA)¹⁹ of MINEM has the responsibility to address environmental problems that result from energy and mining activities and is mandated to implement the laws and regulations of the environmental legal framework, such as Legislative Decree No. 613 of September 1990 (the environmental code) and Supreme Decree No. 016-93-EM of April 28, 1993 (the environmental regulation). The sustainable development model for the mining and energy sectors began in 1993 with regulations and procedures for the gradual reduction of pollution, which include economic development policies and environmental protection. The mining industry must comply by adjusting its ongoing operations to permissible effluent levels and its new operations by using cleaner technologies. The DGAA evaluates and proposes the environmental regulations for the

¹⁸Ministerio de Energ í y Minas (MINEM)

¹⁹ General Directorate of Energy and Environmental Affairs (DGAA)

mining and energy sectors, which include the maximum emission levels that are compatible with the internationally accepted limits set by the United Nations and the World Bank, approves environmental impact assessments for new operations and environmental adjustment and management programs for ongoing ones, and administers the national environmental information system. The MEM is authorized to manage environmental affairs in the minerals sector, such as establishing the environmental protection policy and maximum allowable levels for effluents, signing environmental administrative stability agreements, overseeing the impact of operations determining responsibilities, and imposing administrative sanctions. Peru has also taken steps to address climate change by reducing carbon emissions. These carbon emissions primarily come from Land-Use Change and Forestry (LUCF) due to deforestation of the Peruvian Amazon through power generation and industrial processes.

The mining sector in Peru has been associated with pollution. Locals' complaints about the Río Blanco project and/or the corporate conduct of Monterrico largely failed to produce positive results during the presidency of Alan García. Elected in 2006, García put renewed emphasis on the exploitation of Peru's natural resources and was generally unsympathetic to the objections of local communities to large investment projects. There have been instances of industrial pollution affecting the environment that have led to major protests in the country. As a result, the Peruvian government is planning to strengthen environmental enforcement in the country. Recently it introduced measures to double the fines for companies polluting the environment. Currently, these fines range from 2 million PEN (US\$769 thousand) to 30 million PEN (US\$11.535 million). Despite the government's enactment of stringent environmental laws, there are still instances of companies that are permitted to operate in the country while seemingly violating environmental regulations.

In April 2012, Peru's Government approved "Prior Consultation Law" that requires prior consultation with indigenous communities before any infrastructure or projects, especially mining and energy projects, are developed in their areas. The law is expected to prevent social conflicts, similar to the social unrest that occurred in 2009, that resulted in the deaths of 24 police officers and 10 indigenous people. The president also signed a new mining law in 2011 that is expected to generate \$US1 billion every year. This money will be directed toward social improvement for the poorest sections of the country.

On October 31, 2012, Peru's congressional committee on the economy approved the creation of a new oversight institution, known as SENACE (the national environmental certification service), within the Ministry of Environment. This new institution that comprises representatives of six ministries and is chaired by the environment ministry has the principal function of reviewing and approving environmental impact assessments (EIAs) for large-scale investment projects. Previously, the Ministry of Energy and Mines (MINEM) was responsible for both rewarding mining concession agreements and approving EIAs. As SENACE is still in the early stages of implementation, there is currently no clear timetable to officially transfer the EIA approval responsibilities from MINEM to SENACE.

Box 3 & 4: Environmental and social stakeholders in Peru

Much of the initial opposition to Zijin's operations stemmed from fears that copper extraction would result in significant environmental damage. Peruvians opposed to the mine say it will

pollute the already meagre water resources used for farming and drinking in this rugged highland. As a result, according to the views of the Ecumenical Foundation for Development and Peace in Peru, polluting this area could bring about an environmental disaster for the entire region. There have already been breaches of Peruvian environmental laws, for which Zijin was fined, and local consent to operate the mine – required by Peruvian law – was never obtained. As the proposed project involved building an open-cast mine and extracting the whole of Henry's Hill to reach the deposit, the environmental impact would undoubtedly be considerable. Many peasant farmers, whose livelihoods depended on the water captured in the surrounding moorlands, voiced concern about the project's possible effects on the delicate local ecosystem.²⁰ Affected communities rejected to sign communal assembly resolutions which allows mining activity on their territory. Yet the government ignored their demands for mining firm to withdraw from the area. Consequently, the communities and other civil society groups organized protest marches to the mine site since 2004. Large numbers from a wide variety of organizations and nearby villages participated in this peaceful demonstration. Local Peruvian media *Expreso* Wednesday quoted Peruvian Prime Minister Jorge del Castillo as saying that the public consultation lacks the minimum requirements for a referendum, as the positions of both parties have not been adequately represented by local media. Moreover, local Peruvian media, *El Comercio*, Tuesday reported the regional president of Piura, Caesar Trelles, as saying that various anti-mining NGOs are behind the local communities' protest against the Rio Blanco Project.

After these incidents, relations between the communities on the one hand, and the mining firm and state officials on the other, deteriorated further. Investigations into the protestors' allegations only began in earnest once Fedepaz (Ecumenical Foundation for Peace and Development), a legal NGO, formally accused a number of police officers, Monterrico employees and mine security staff of torture, kidnapping and other crimes. In March 2009 however, most of these cases were shelved by the local public prosecutor in Piura.

In March 2011, two Peru NGOs - CooperAcción and FEDEPAZ, cooperated with other two foreign NGOs - Friends of the Earth (US) and CATAPA (Belgium) to send a letter to the Hong Kong Stock Exchange (HKEx) regarding Zijin Mining's disclosure of environmental and social risks in relation to Rio Blanco. The letter called on the Exchange to ensure that Zijin Mining discloses its "material" risks, citing the Exchange's rules. On September 2, 2011, anxious to distance itself from the company's previous owners, Zijin released the following statement in London “[O]n 27 April 2007 the Zijin Consortium completed its acquisition of Monterrico Metals plc, thereby becoming the new operator of the Río Blanco Project. To mark a new chapter in the company's history and to differentiate ourselves from previous managers and, crucially, from past conflicts, the company has been renamed Río Blanco Copper S.A. We do not accept any responsibility for the alleged acts committed by the company prior to our 2007 equity purchase (of Minera Majaz SA), as neither the Zijin Consortium nor its current directors or managers had any involvement with the company at the time. Our policy today is to amicably resolve past conflicts. This includes the recent agreement reached in London.”

²⁰ CooperAcción, *Informe de Conflictos Mineros: Los Casos de Majaz, Las Bambas, Tintaya y La Oroya* (2006)

While Zijin's payment of compensation to the victims was welcomed by human rights groups, the settlement has not resolved all the outstanding issues related to the Río Blanco project. Many in Piura continue to express concern over the likely environmental impact of the mine and further tensions between the local communities and mine operator cannot therefore be ruled out. It remains to be seen whether or not Zijin will keep its pledges to deal with any such conflicts in a more responsible manner than Río Blanco's previous owners.

Box 5: Business stakeholders in China

The Rio Blanco mine in the mountainous Piura region of northern Peru is one project that deserves more careful environmental and social consideration by China's financial institutions. China's financial institutions have long played a key role in bankrolling industrial development within China, and today they are also becoming important players in financing environmentally and socially sensitive activities around the world.²¹

In this case, Bank of China, China Construction Bank and ICBC made it possible for Chinese copper miner Zijin to buy this mine and its other global projects. Zijin bought the mine from UK-based Monerico Metals in 2007 amid allegations that the mine's management tortured local community members who opposed the scheme. Other involved Chinese financial institutions including: The Export-Import Bank of China (China Exim Bank), Agricultural Bank of China (ABC), Bank of China (BOC), China Construction Bank (CCB), Industrial and Commercial Bank of China Ltd. (ICBC), China Export & Credit Insurance Corporation (SINOSURE), Hong Kong Exchanges and Clearing Ltd. (HKEx), etc.

(1) China's "Green Credit" Policy

On May 14, 2007, China Banking Regulatory Commission (CBRC) issued the Guidelines on Compliance Risk Management of Commercial Banks, requiring commercial banks to take into consideration the interrelatedness between compliance risk and credit risk, market risk, operational risk and other risks, so as to ensure the consistency of different risk management policies and procedures. Commercial banks were also asked to foster a compliance culture. CBRC monitors commercial banks' management of compliance risk according to law and reviews as well as assesses its effectiveness.²²

On July 12, 2007, SEPA, the People's Bank of China and CBRC jointly issued the Opinions on Implementing Environmental Protection Policies and Regulations to Prevent Credit Risks, requiring environmental protection bureaus and financial institutions at all levels to fully understand the significance of credit policies as tools for environmental protection, and to strengthen environmental monitoring and credit management of construction projects and enterprises. Hitherto the basic framework of China's green credit policies took shape.

On June 6, 2009, MEP and the People's Bank of China jointly issued the Circular on Full Implementation of Green Credit Policies and Further Improvement of Information Sharing, requiring environmental protection authorities and financial institutions at all levels to fully

²¹ <http://www.foe.org/news/archives/2008-10-chinese-banks-still-have-a-long-way-to-go-on-environ>

²² http://www.zhb.gov.cn/info/gw/huanfa/200707/t20070718_106850.htm

understand the importance of establishing a mechanism for sharing information on green credit, and make use of the Credit Reference Center of the People's Bank of China as a platform to share environmental information. The Circular also described in details what supplementary information environmental protection authorities were supposed to submit, as well as the respective responsibilities of environmental protection authorities and financial institutions. Apart from formulating green credit policies, the state also required environmental protection authorities to establish a communication mechanism to share corporate environmental information with financial institutions at all levels, providing them with a reference for their financing. However, this is a one-way communication which does not require banking financial institutions to provide information about corporate loans to environmental protection authorities at all levels to inform them of the financing status quo of polluting enterprises. The state issued the Measures for Information Disclosure of Commercial Banks, requiring banks to disclose information related to risks. China Securities Regulatory Commission also requires listed banks to disclose environmental information. However, currently the state has not issued any mandatory regulations and standards on environmental information disclosure for the

On February 24, 2012, CBRC updated the Green Credit Guidelines that regulate the environmental performance of Chinese banks. They now stipulate that banks “shall strengthen the environmental and social risk management for overseas projects” and follow “appropriate international practices or international norms” in such projects. Article 21 of the Green Credit Guidelines required that banks shall strengthen E&S risk management for proposed overseas projects, ensure project sponsors are compliant with local environmental, land, health and safety laws and regulations in the project country or region. Banks shall publicly commit to adopt relevant international best practices or standards for the proposed overseas project, ensure the proposed project is consistent with international best practices in essence.

Up to now, Chinese commercial banks have not played an influential role in financing Chinese business activities abroad. Instead, Chinese policy banks have filled this financing space, often with deals arranged at the highest political level. In cases where the Chinese government is not directly involved, Chinese policy banks are increasingly willing to step in, and hence better compete with their international peers. Compared to Chinese policy banks, despite domestic progress, Chinese commercial banks do not yet have policies to address the environmental and social risks of their overseas investments. In contrast, China Exim Bank’s “Guidelines for Environmental and Social impact Assessments of the China Export Import Bank’s Loan Projects” provides a basic synopsis of how environmental and social issues are taken into consideration by the institution and how concerns are addressed. It highlights that host country laws must be followed, impact assessments must be conducted and that the bank has the right to investigate environmental concerns at any point during the lending cycle and call in loans on environmental grounds if need be.

Questions also raised: how well Chinese financial organizations' stated environmental policies are being implemented. For example, China Development Bank (CDB)'s policy summary states that it only finances deals included on an approved project list published by China's State Environmental Protection Agency (now the Ministry of Environmental Protection). But given CDB's rapidly expanding overseas profile, it is unclear how the bank ensures regulatory compliance in its clients' overseas activities.

Few Corporate Social Responsibility (CSR) reports by Chinese banks mention their overseas branches and international project financing. This might be because of the following reasons. First, China's financial market used to be disconnected from the global market. Therefore, most banks and funds do not have a large exposure globally, and relevant financial instruments and policies are designed in a Chinese context. Secondly, Socially Responsible Investment (SRI) and even CSR are new to Chinese companies and it is hard for them to have a global SRI/CSR focus at such an early stage. This is however changing as more Chinese banks and investors get involved in other countries. Some companies, as well as the Chinese government, have experienced pressures from international society and global stakeholders. They will be more careful about their overseas investments in terms of social and environmental impacts in the near future. This provides good opportunities for global stakeholders to engage Chinese companies.

Overseas investment is always subject to rigorous examination at local level, including assessment of its environmental and social impact. This is the inevitable result of international capital flows. As the overseas investment of Chinese banks grows, the environmental risks and controversies they encounter will also increase. If ensuring the right to enjoy natural resources is a priority concern for the Chinese government, then protecting its international reputation is also extremely important. While Chinese banking institutions may disdain the appeals from the international community, in the end they will realize that adopting a lending policy that takes into account world class protection of the natural and social environment is in their best interests.

(2) Key Industrial Peers

Two Chinese mining companies have been selected into the Fortune 500 Companies List since 2008, one is China Minmetals Corporation (CMC), ranked 133 in the year of 2014; the other is Aluminum Corporation of China (Chinalco), the second largest mining company in China, ranked 227 in the year of 2014.²³ Such two giant leading companies have big impacts to China's mining industrial standards development, and both have deeply engaged into the mining industry in Peru.

Aluminum Corporation of China (Chinalco)

One similar overseas mining investment case happened to Chinese companies in Peru is the Toromocho Project, carried out by the Minera Chinalco Perú S.A. ("MCP"), a wholly-owned subsidiary of the Aluminum Corporation of China (hereinafter referred to as "Chinalco"), as shown in Fig. 4. Chinalco is a multinational aluminum company headquartered in Beijing, People's Republic of China. It is the world's second-largest alumina producer (and the only producer in China) and third-largest primary aluminum producer (and the largest producer in China). Chinalco is principally engaged in the extraction of aluminum oxide, electrolysis of virgin aluminum and the processing and production of aluminum as well as traded trading and engineering and technical services.²⁴ The Toromocho Project is also China's largest overseas

²³ http://www.fortunechina.com/fortune500/c/2014-07/07/content_212535.htm

²⁴ <http://www.chalco.com.cn/>

copper project.²⁵ After the project launched, it is reported that Chinalco is now the biggest copper producer in Peru.²⁶

The Toromocho Project is also a highly representative sample of Chinese enterprises "going out" (overseas) projects. The overall project is by far the only project which received targeted legislation by Peruvian Congress to promote the overall relocation of residents. During the project construction process, the aluminum company team actively integrated into the local culture, customs and habits, to improve the living conditions of local residents. The company had even invested over 50 million dollars to build a world-class level of sewage treatment plant before the start of this project, to solve the mine water pollution problems. Chinalco also provided a full range of development support for local residents including employment, health care, education and career training. Chinalco committed that it will actively fulfill its social responsibilities, seeking to share the fruits of development with local residents in the long term. It hopes the copper project in Peru could become a model of cooperation between the two countries, to better promote local economic and social development.²⁷

²⁵ http://www.guancha.cn/economy/2014_03_31_218213.shtml?XGYD

²⁶ <http://www.mofcom.gov.cn/article/i/jyj1/1/201308/20130800274805.shtml>

²⁷ http://www.cs.com.cn/ssgs/hyzz/201312/t20131211_4242192.html



Fig. 4 Location of the Toromocho Project.

However, on March 28, 2014, Organismo de Evaluación y Fiscalización Ambiental (OEFA)²⁸ issued a preventive measure conducive to order MCP paralyze the activities of the Toromocho Project generating effluent discharge in nearby lagoons. This preventive measure aimed to mitigate the environmental impact that was being generated by the dumping of effluent. This situation was found during monitoring actions performed between March 16 and 20.²⁹ After this event, Minera Chinalco Peru SA provided updates on Toromocho Project, and announced that the commissioning operations at the mine of the Toromocho Project had restarted on 11 April 2014 in Peru, following a resolution issued by OEFA. As disclosed in the announcements, MCP held co-ordinations with OEFA and commenced to optimize and improve its water discharge system following the suspension of commissioning operations at

²⁸ OEFA means: Environmental Evaluation and Control Agency.

²⁹ <http://www.oefa.gob.pe/noticias-institucionales/el-oefa-ordena-a-minera-chinalco-peru-s-a-detener-aquellas-actividades-causantes-de-vertimientos-en-lagunas-de-junin>

the mine of the Toromocho Project as notified by OEFA on 28 March 2014 due to an alleged non-compliance with environmental laws relating to certain water discharges.³⁰

Chinalco believes that although this 14-day shutdown of mining activities did not have a significant impact on the Toromocho Project, also did not produce substantial harm to the environment in Peru, but Chinalco still needs to pay high attention this event and learn lessons from this case. Chinalco announced that for the interests of all stakeholders, it will further require all subsidiaries and projects comply with local laws and regulations, and welcome supervisions and help from local communities in Peru.³¹

According to this project, it is clear that even a lot of money and work had been done before the launch of the project, accidents could happen, and cause unanticipated consequences to investor and local environment. This case offers a useful lesson to Zijin that environmental management is essential during the operation period of a project. This case also offers a good model to Zijin: after the accident happened, Chinalco quickly updated its water discharge system and kept in touch with the Peruvian government agencies. That's why the company can quickly resume its actions in Peru, avoiding the potential long-term project shutdown risk.

China Minmetals Corporation (CMC)

Founded in 1950, CMC is a time-honored multinational group specializing in ferrous & non-ferrous metals, finance and real estate, with exploration, mining, smelting, processing and trading for metals and minerals as its core undertaking, and financial services, real estate development, mining and metallurgic technology as its emerging business. With a headcount of 171,000, it has extended its business to 34 nations and regions in the world, and controlled eight listed subsidiaries at home and abroad. CMC took the 192nd place in Fortune Global 500 and ranked 5th among global metal enterprises in 2013. At present, CMC is the global leader in the output of antimony oxide, cemented carbide, and separated middle and heavy rare earths, as well as in the reserve of tungsten, antimony and bismuth.

Upholding the idea of “cherishing limited resources and pursuing sustainable development”, CMC has been developing core competence and proactively undertaking social responsibilities in a bid to become a metal and mineral group providing quality services globally.

CMC adheres to social responsibilities and maintains a proactive presence in local communities when operating overseas. Through production capacity purchases, overseas capital M&A, minerals risk exploration and development, strategic alliance and win-win cooperation, it has been dedicated to a broad engagement in global competition, a reasonable resource allocation in a global dimension, a routine performance of CSR, and a construction of a business conglomerate of global competitiveness. While forging ahead for self-development, CMC also cares about its overseas employees, strives to minimize the impact of its operation on local ecological environment, and marches forward together with its host

³⁰ <http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=51826169>

³¹ <http://www.askci.com/news/201404/16/161412282318.shtml>

countries to bring tangible and sustainable economic and social benefits and create shared values.

In Peru, CMC has (1) partnered with Peruvian Ministry of Energy and Mines to promote rural electrification and guarantee electricity supply for the mine site and more remote areas; (2) partnered with NGOs to increase milk yields and herdsmen's income through optimized livestock genes and improved meadows; (3) partnered with the local government to improve children's health and nutrition through direct subsidy and on-site assistance; (4) renovated school campuses and meadows, subsidized teachers, offered school supplies to students and improved teaching quality.

The performance of social responsibilities is an important way for a company to enhance its competitive edge and promote its sustainable development. While seeking business growth, CMC has been consistently responsibility-minded, managed to strike a balance between economic and social benefits, stimulated sustained development of stakeholders, won recognition from host governments and communities, and built the image of a responsible Chinese enterprise in overseas markets. For example, in 2013, Lumina Copper Corp. under CMC helped to pay salaries to 15 teachers from La Encañada, Peru, taking concrete steps to strengthen local education and bringing benefits to a total of 160 students from all schools in the community.

In order to respond to stakeholders' expectations and requirements, CMC organized a Group-wide survey on CSR management in 2013, issuing 2,179 questionnaires to 12 divisions and business entities. For host government, CMC identified the key expectations and requirements of the host government are boosting employment, tax compliance, and promoting local economic development. In order to meet these expectations, CMC has set up a strategy of actions, including (1) Providing job opportunities; (2) Paying tax voluntarily; (3) Stimulating local industries concerned; (4) Facilitating local infrastructure construction. For industry peers (like Zijin), CMC has tried to enhance industrial communication, involved in industrial standard development.

It is reported that in April 2014, CMC successfully concluded the acquisition of Las Bambas copper project. After the completion of the acquisition, CMC will have two large copper project in Peru - El Galeno project in northern Peru and Las Bambas copper project in southern Peru. Peru has now become CMC's largest overseas investment destination. CMC aims to make its projects in Peru become benchmarks and models of bilateral win-win development.

Box 6: Political stakeholders in China

The Chinese government has developed a host of domestic environmental laws since the 1980s. More recently, it has recognized that Chinese investors and financiers also need environmental policies to guide their overseas operations. In October 2006, the State Council issued principles urging Chinese investors to “pay attention to environmental resource protection” and “support the local community and people's livelihood” abroad. Some Chinese mining, oil and hydropower companies have been criticized for disregarding the interests of workers, host communities and the environment in their overseas operations. In order to

avoid further conflicts in the host countries, the Ministry of Commerce, China Exim Bank and other institutions will need to strengthen the policies guiding the environmental performance of Chinese companies abroad.

Guidelines for Environmental Protection in Foreign Investment and Cooperation

Environmental risks have become business risks for Chinese companies – that’s reflected in official guidelines about overseas investment. Chinese banks, mining and hydropower companies have faced protests and lost multi-billion dollar contracts when their projects destroyed the environment. Chinese investors have started worrying about their long-term acceptance in host countries, and the government, about the country’s soft power. Since 2006, the Chinese government has issued a series of appeals and recommendations calling on companies to respect the environment, community interests and workers’ rights when investing abroad. It has for example requested that investors apply Chinese laws if host country laws are insufficient and that their projects comply with the international treaties China has signed.

On February 18, 2013, the Ministries of Commerce and Environmental Protection issued their long-awaited Guidelines for Environmental Protection in Foreign Investment and Cooperation.³² Their goal is to guide Chinese companies “to identify and preempt environmental risks in a timely manner, lead our companies to actively fulfill their social responsibility in environmental protection, build a good foreign image of Chinese companies and support the sustainable development of host countries.” The new guidelines have not been designed to stop projects, but to mitigate damages and improve projects that go forward. They stipulate that environmental strategies and management plans be developed, environmental impact assessments and mitigation plans for sensitive projects be prepared, environmental information be disclosed to the interested public and environmental aspects be considered in the supply chain. In substance the new guidelines are similar to the environmental recommendations of the OECD Guidelines for Multinational Enterprises.³³ The OECD guidelines are the most important international norms for foreign investors and cover a broad range of topics from human rights to labor relations and corruption. They are wider in scope than the Chinese guidelines, but unlike China, the OECD does not have any specific guidelines for banks and the environment. Brazil, Argentina and numerous other non OECD-countries have endorsed the OECD guidelines for their own companies. In contrast, China is not keen to follow norms prepared by rich countries without its involvement. The new guidelines add to the profusion of international norms, but Chinese enterprises may well take recommendations from their own government more seriously than OECD norms.

Box 7 & 8: Environmental and social stakeholders in China

As such a big and famous company, however, the environmental performance of Zijin in China is terrible. For example, on July 3, 2010, the Zijinshan Copper Mine hydro-metallurgical plant, a branch of the Company, leaked copper acid into the nearby *Ting River* in Shanghang county of Fujian Province, resulting in the poisoning of 1,890 tons of fish and massive

³² <http://english.mofcom.gov.cn/article/policyrelease/bbb/201303/20130300043226.shtml>

³³ OECD: The Organisation for Economic Co-operation and Development

economic losses for local fish farming. On July 16, another huge leak occurred at the same Zijinshan Copper Mine smelting plant, five hundred cubic meters of wastewater leaked into the Ting River. These two incidents caused a total leak of 9179 m³ (around 2.4 million gallons) from Zijin's flagship mine, and caused a serious water pollution to the Ting River and local residents. The direct economic losses, estimated by the Fujian Provincial Department of Environmental Protection (Fujian DEP), were CNY 31.8771 million (around USD 5,000,000). The accident was likened to the Chinese version “BP deep-water oil spill”, because it caused an unprecedented environmental damage of vast area, even residents in the Guangdong Province were influenced by this incident; and attracted the attention of media all around China. This pollution brought a devastating blow to the local aquaculture industry, and led to resignation of several top leaders of this area, including the mayor and local EPB's head. However, due to China's weak environmental enforcement, such bad environmental records has not stopped Zijin's thirsty for bigger profits, while Zijin is initiating more and more overseas business aggressively in the recent years. All these have made the relations between Zijin and local communities became increasingly tense.

Zijin Mining's environmental disasters have overshadowed the firm's meteoric rise. In this context, there was little hope that the local environmental authorities would do anything about Zijin's string of pollution incidents. But civil society activism in this sector offers room for hope. And there are signs that NGOs may be starting, slowly, to prize open that lid.³⁴ Green Watershed was the first of China's NGOs to start advocating for social responsibility and green lending in the banking sector, back in 2002. The latest environmental rankings of the country's listed banks, published by Green Watershed and partners, is a case in point. The existence of these rankings points to growing levels of public supervision over China's financial sector, and is raising hopes for more systemic financial regulation from both industry and government. In 2007, the State Environmental Protection Agency (now the Ministry of Environmental Protection) together with the People's Bank of China and CBRC issued a document on limiting credit to polluting industries, considered the launch-pad for China's green credit policy. Following this, CBRC and the People's Bank of China released a string of guidance documents, in a bid to make loans to energy efficient and low-emissions industries an important factor in the rating of banking institutions.

Though seen as a bold move, the green credit scheme has faltered in implementation. Transparency on lending decisions remains weak and environmental performance a long way from global standards. In this context, NGOs have continued to push for improvements: in 2008 Green Watershed launched a discrete project on “Green Credit Advocacy”, and since 2009 it has carried out an annual assessment of banking performance. Today, Green Watershed's annual reporting project is the only scheme in China to comprehensively investigate and rank the environmental performance of the country's banks. And it should spur China's financiers to take the reins and get their houses in order. For the Rio Blanco project, Green Watershed is also the only Chinese NGO that has paid attention to, and made a case study about this project in its latest 2011 environmental rankings of the country's listed banks.

³⁴ <https://www.chinadialogue.net/article/show/single/en/4922-Keeping-an-eye-on-China-s-bankers>

Besides the reports from NGOs, under intense media scrutiny, Zijin’s pollution record has finally attracted wide attention. China’s news outlets, like CCTV and Xinhua News Agency, made many comprehensive and detailed reports about Zijin’s polluting behaviors in China, and conducted follow-up supervisions. But for Zinjin’s foreign projects, like the Rio Blanco Project, those news outlets only focused on the armed attacks occurred in site, highlighting overseas investment risks for domestic enterprises, while made few other related deep reports.

Box 9: Business stakeholders in the U.K.

According to a 2011 survey of UK industry on environmental protection, gross spending on environmental protection in 2011 by the UK industries was an estimated £2.3 billion, among which the Mining and Quarrying sector spent approximately £265 million in 2011 on environmental protection measures.³⁵ The greatest environmental spend by the mining industry was on air pollution abatement measures, followed by water measures (Fig. 5). Not only in the domestic market, UK companies are doing business all around the world, hence have being brought their advanced environmental and social concepts to other countries.

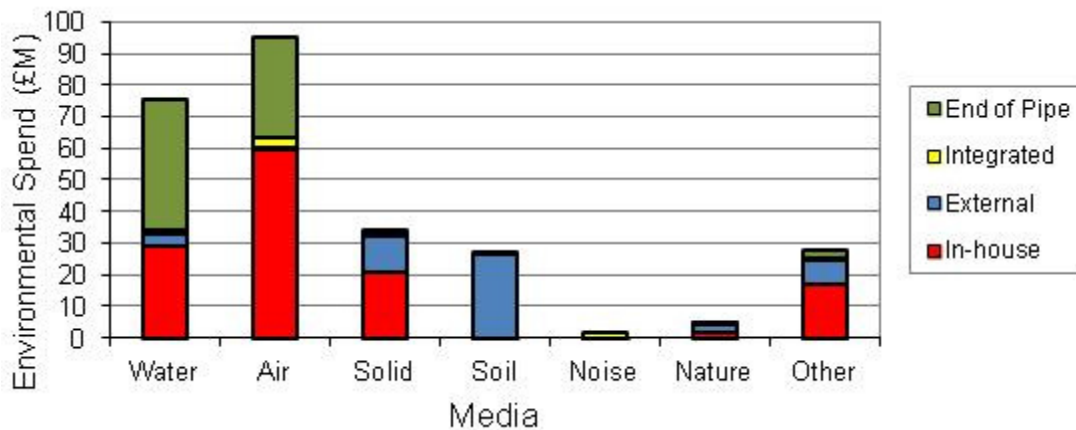


Fig. 5 Environmental expenditure by media for the UK Mining and Quarrying sector, 2011. Source: UK Department for Environment, Food and Rural Affairs

One example is the BHP Billiton, an Anglo-Australian multinational mining company, also the world's largest mining company measured by 2013 revenues. BHP Billiton is a signatory participant of the Voluntary Principles on Security and Human Rights, and has been voluntarily reporting its direct GHG emissions since 1996.^{36,37} BHP has also extended its business to Peru. Antamina is such an important copper mine project invested by BHP, located in the Andes, North Central Peru and is owned by Compañía Minera Antamina SA, in which BHP Billiton holds a 33.75 per cent interest. The remaining interests are held by GlencoreXstrata (33.75 per cent), Teck (22.5 per cent) and Mitsubishi (10 per cent). Antamina said its investment in socio-environmental studies and project reached US\$5,270,000 in 2012,

³⁵ Environmental Protection Expenditure by Industry: 2011 UK Survey. URS Infrastructure & Environment (UK) Limited, 2011.

³⁶ <http://www.bhpbilliton.com/home/society/environment/Pages/Greenhouse-gas-emissions.aspx>

³⁷ Companies and the Voluntary Principles on Security and Human Rights. <http://www.voluntaryprinciples.org/for-companies/>

within which, US\$2 million in studies and research to implement an appropriate Closure Plan in the future, US\$100,000 in biological and toxicology studies, US\$870,000 in air quality projects, and US\$2,300,000 in water quality projects. In addition, Antamina promised all its operations have acquired the ISO 14001 Environmental Management System (EMS), which reflects its commitment and compliance with international and company standards, and the legal regulations in force. Furthermore, Antamina also imparted the Training Program in the Environmental Management System to its workers. Based on these investment and EMS, Antamina had also achieved a 100% compliance with Peruvian standards related to water and air quality.³⁸

Antamina has also set many dialogue channels with its stakeholders, especially with local communities. It built up the Sustainable Development Management Office, which channeled the social contribution of Antamina and the Ancash Association as a driving force of initiatives that contributed to regional identity, cultural and natural heritage. Therefore, Antamina has a good environmental and social performance in Peru, which could serve as a good example for Zijin.

Box 10: Political stakeholders in the U.K.

The United Kingdom is one of the very first countries in the world to develop a comprehensive suite of national environmental laws and established the world's first environment ministry in 1970. On the first page of a 1978 guide to British policy, the Department of the Environment explained to foreign observers that Britain was "at a comparatively advanced stage of development and adoption of environmental protection policies."³⁹

Though legal proceedings in Peru have failed to make real progress, the detainees have had some success outside of the Peruvian jurisdiction. The protestors, with the assistance of law firm Leigh Day, were able to file a civil complaint against Monterrico in the U.K. in June 2009. After a series of delays, chiefly caused by legal challenges mounted by the firm, a trial was eventually scheduled for the high court in October 2011. Approximately 80 witnesses were due to travel from Peru to give evidence.

However, no hearing ever took place as shortly before the scheduled trial Monterrico reached an out-of-court settlement with the claimants. The agreement saw Chinese mining consortium Zijin, Monterrico's owners since April 2007, make compensation payments of an undisclosed size to the victims, but without admitting liability for the events of August 2005.

Box 11 & 12: Environmental and social stakeholders in the U.K.

One of the key environmental and social NGOs is Peru Support Group (PSG), which conducted a deep survey about the Rio Blanco project in Peru, and completed an important report about this project named Mining and Development in Peru - *With Special Reference to The*

³⁸ 2012 Sustainability Report Antamina.

³⁹ Andrew Jordan. The Environmental case for Europe: Britain's European environmental policy. CSERGE, 2006.

Rio Blanco Project, Piura. This report is still the most detailed and comprehensive report about the Rio Blanco copper project. The writer of this report, PSG, was established in 1983 to raise awareness of human rights violations committed during Peru's internal armed conflict. It is a UK-based advocacy organization with a fee-paying membership of approximately 500 people. The organization today campaigns on a wide range of issues including: human rights, indigenous rights, democratic governance and sustainable development, particularly with reference to extractive industries.

Box 13: International business stakeholders

FDI, including outward FDI and inward FDI, is widely recognized as a driving force of globalization, a major catalyst for achieving development and global integration.⁴⁰ International organizations could have a key role to play. Clearly, there is an acute need to work together in an effective and coherent way towards FDI capacity-building in host countries. International financial institutions can help strengthen capacity in those developing countries that lack regulatory capacity or even basic governance systems. International financial institutions can also play a catalytic, demonstration role in financing mining investments, even though they finance only a small share of the total. Beyond this, international organizations can assist developing countries through policy dialogue, sharing experience and identifying best practices.

There is a debate on the relations between the foreign direct investment and the environment. Some commentators were concerned that competition for FDI between countries would lead to a “race to the bottom” in environmental standards (the pollution haven hypothesis). Others thought that FDI would promote the establishment of higher environmental standards through the transfer of technology and management expertise (the pollution halos hypothesis). There is plenty of evidence in support of both hypotheses. But, with opening to trade, the pattern of trade itself may be shifting towards pollution intensive goods.⁴¹

Multilateral development banks (MDBs) are advanced in terms of environmental and social risk management, project financing, especially develop detailed environmental and social risk management regulations for high-risk non-recourse or limited recourse project financing. The World Bank's environmental and social safeguard policies are a cornerstone of its support to sustainable poverty reduction. The objective of these policies is to prevent and mitigate undue harm to people and their environment in the development process. These policies provide guidelines for bank and borrower staffs in the identification, preparation, and implementation of programs and projects. Safeguard policies have often provided a platform for the participation of stakeholders in project design, and have been an important instrument for building ownership among local populations.⁴²

As a member of the World Bank Group, IFC has developed its own Sustainability Framework. It articulates the Corporation's strategic commitment to sustainable development, and is an integral part of IFC's approach to risk management. The Sustainability Framework comprises

⁴⁰ <http://www.cbd.int/financial/interdevinno/g-privatefdimining-oecd.pdf>

⁴¹ http://nysea.bizland.com/nysea/publications/proceed/2012/Proceed_2012_p047.pdf

⁴² <http://go.worldbank.org/WTA1ODE7T0>

IFC's Policy and Performance Standards on Environmental and Social Sustainability, and IFC's Access to Information Policy. The Performance Standards are directed towards clients, providing guidance on how to identify risks and impacts, and are designed to help avoid, mitigate, and manage risks and impacts as a way of doing business in a sustainable way, including stakeholder engagement and disclosure obligations of the client in relation to project-level activities. Together, the eight Performance Standards establish standards that the client is to meet throughout the life of an investment by IFC, including: (1) Assessment and Management of Environmental and Social Risks and Impacts; (2) Labor and Working Conditions; (3) Resource Efficiency and Pollution Prevention; (4) Community Health, Safety, and Security; (5) Land Acquisition and Involuntary Resettlement; (6) Biodiversity Conservation and Sustainable Management of Living Natural Resources; (7) Indigenous Peoples; and (8) Cultural Heritage.

The World Bank Group Environmental, Health and Safety Guidelines (EHS Guidelines) are technical reference documents with general and industry-specific examples of good international industry practice. In particular, it highlights that when host country regulations differ from the levels and measures presented in the EHS Guidelines, projects are expected to achieve whichever is more stringent. If less stringent levels or measures are appropriate in view of specific project circumstances, a full and detailed justification for any proposed alternatives is needed as part of the site-specific environmental assessment. This justification should demonstrate that the choice for any alternative performance level is protective of human health and the environment.⁴³

Besides the internal policies, there are many voluntary standards, protocols and organizations based on best practices that can serve for cross-border investment guidance of environmental and social risk management. For example, IFC and ABN AMRO created the Equator Principles (EPs) together in 2006, requiring using the IFC's Performance Standards during the time of large high-risk project financing. EPs is a risk management framework, adopted by financial institutions, for determining, assessing and managing environmental and social risk in projects and is primarily intended to provide a minimum standard for due diligence to support responsible risk decision-making.⁴⁴ On the one hand, EPs provides guidance to banks for environmental and social risk management; On the other hand, signing EPs also reflects Bank's attention to environmental and social issues, thus easing the potential reputational risk to some extent.

One important aspect of environmental and social risk control is to get the consent from local communities. There is a different understanding among international investors and international institutions about the definition of community consent, and how to get the community consent. The "Free prior and informed consent" (FPIC) is one of such principles that a community has the right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy or otherwise use. FPIC, for years advanced by FPP, is now a key principle in international law and jurisprudence related to indigenous peoples.⁴⁵ The role of indigenous peoples' FPIC in decisions about infrastructure or extractive

⁴³http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/Environmental%2C+Health%2C+and+Safety+Guidelines/

⁴⁴ <http://www.equator-principles.com/index.php/about-ep/about-ep>

⁴⁵ <http://www.forestpeoples.org/guiding-principles/free-prior-and-informed-consent-fpic>

industries developed on their ancestral domain is of concern within international law. Such projects lacking FPIC are called development aggression by indigenous peoples. Indigenous peoples' lack of access to accountability and grievance mechanisms to address human rights violations has been formally raised with the United Nations Human Rights Council.⁴⁶

Besides these international standards, Zijin's international competitors, like BHP Billiton, Rio Tinto Group, and Vale S.A., also have a lot of FDI projects in Peru, and could significantly affect Zijin's operations in Peru.

Box 14: International political stakeholders

The United Nations-supported Principles for Responsible Investment (UNPRI) Initiative is an international network of investors working together for promoting responsible investment into practice. Launched in April 2006 by former UN Secretary General Kofi Annan, PRI consists of a set of voluntary principles for asset owners and investment professionals: 1. We will incorporate ESG issues into investment analysis and decision-making processes; 2. We will be active owners and incorporate ESG issues into our ownership policies and practices; 3. We will seek appropriate disclosure on ESG issues by the entities in which we invest; 4. We will promote acceptance and implementation of the Principles within the investment industry; 5. We will work together to enhance our effectiveness in implementing the Principles; 6. We will each report on our activities and progress towards implementing the Principles.⁴⁷ Such six principles are not prescriptive, but instead provide a framework to incorporate environmental, social and governance issues into mainstream investment decision-making and ownership practices.

Today, 1274 companies or organizations have signed the UNPRI, most of the signatories are from the developed countries, and only two are from China.⁴⁸ As the leading global network for investors to publicly demonstrate their commitment to responsible investment, to collaborate and learn with their peers about the financial and investment issues, and to incorporate these factors into their investment decision making and ownership practices, more and more investors will join UNPRI, and exert influences to Zijin.

The other important international rule related to Zijin's industry is the Extractive Industries Transparency Initiative (EITI), which is a global coalition of governments, companies and civil society working together to improve openness and accountable management of revenues from natural resources.⁴⁹ The EITI encourages multi-stakeholder groups to explore innovative approaches to extending EITI implementation to increase the comprehensiveness of EITI reporting and public understanding of revenues and to encourage high standards of transparency and accountability in public life, government operations and in business.⁵⁰ Peru is one of the EITI Compliant Countries meeting all requirements in the EITI standard. Peru produces EITI Reports that disclose revenues from the extraction of its natural resources,

⁴⁶ http://www.freedomhouse.org/report/special-reports/worst-worst-2012-worlds-most-repressive-societies#.U9f7Q_lDUt4

⁴⁷ <http://www.unpri.org/about-pri/the-six-principles/>

⁴⁸ <http://www.unpri.org/signatories/signatories/>

⁴⁹ <http://eiti.org/eiti>

⁵⁰ <http://eiti.org/node/58/innovations>

while companies should disclose what they have paid in taxes and other payments and the government discloses what it has received.⁵¹

Box 15 & 16: International environmental and social stakeholders

Several international NGOs keep close track of this project, including Friends of the Earth, BankTrack, Business & Human Rights Resource Centre, CATAPA, Oxfam, National Human Rights Coordinator, Reuters etc.⁵²

3. Discussion

In order to clearly illustrate the whole picture of the Rio Blanco case, this paper collected all the important events related to this case from 1994 to 2013 to form the timeline of Rio Blanco case, as shown in the below Fig. 6.

Generally speaking, in the level of host country (Peru), the political stakeholders have the strongest influence that can leverage TNC's (Zijin) actions, and even the relations between TNC and other Peruvian stakeholders. The Peruvian environmental and social stakeholders are not so powerful compared to the Peruvian government, but they have been receiving strong support from the third country (U.K.) and many international sister organizations, therefore they can exert a relative great influence to the TNC, even reshape the performance of local stakeholders, and keep up high pressure to force the TNC to dialogue with local communities. In contrast, business stakeholders of this project are either controlled by the Peruvian political stakeholders or the Chinese TNC, that's why we can hardly hear any public voice about this project from the Peruvian business stakeholders (Table 2).

For the investor country (China), the Chinese business stakeholders have deeply engaged into the Peruvian mining industry, and have built up close connections with the Peruvian political stakeholders, especially the central government of Peru, while in contrast generally ignored or attached light importance to building dialogue channels with local communities. There is a common strategy when Chinese TNCs enter into overseas markets: actively develop close relations with upper level officials from the central or local government and gain their support for the investment projects. For a long time, China prides itself on not imposing the sort of rigorous conditions for overseas investment. However, China is now realizing how hard it is to do projects in countries that are not well governed, not to mention in those regions where the Chinese TNCs previously ignored the communications with local people, just like what happened in this case. The good news is, China has been aware of these problems and has issued two important guidelines - "CBRC Green Credit Guidelines" and "Guidelines for Environmental Protection in Foreign Investment and Cooperation"- to regulate the overseas activities of Chinese TNCs. Although these guidelines focus primarily on environmental issues and do not address

⁵¹ <http://eiti.org/Peru>

⁵² <http://www.oxfamamerica.org/explore/stories/rio-blanco-history-of-a-mismatch-in-peru/>

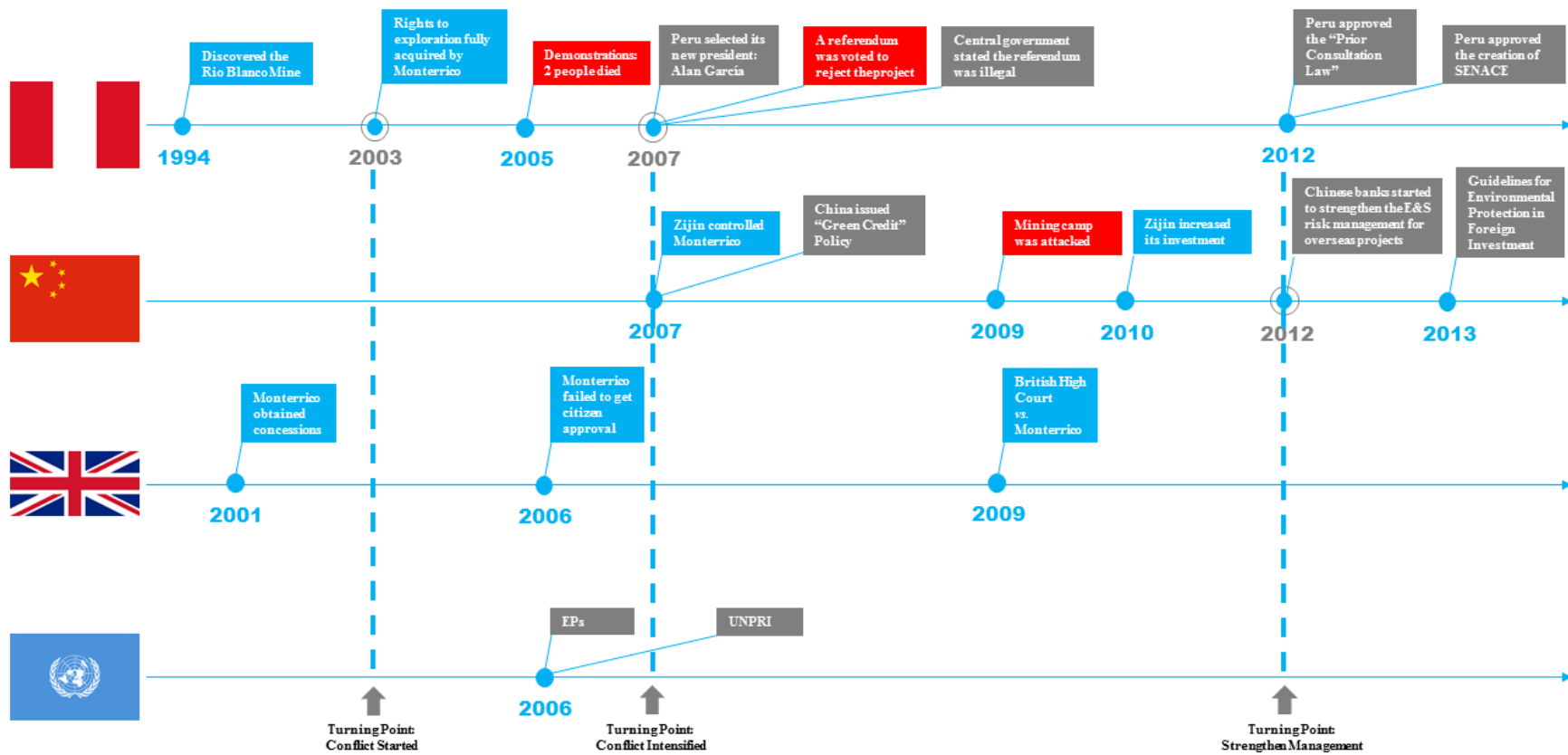


Fig. 6 Timeline of the Rio Blanco Case

many social issues, they represent an important first step toward developing a consistent approach across China's overseas investments.⁵³ China can shape the direction, impact and return on the increasing amounts of OFDI it is investing abroad, which offers China an excellent opportunity to become a new global leader in environmental and social performance. However, these opportunities are coupled with challenges. China is already in the leading position of the regulation of overseas investment environmental and social impacts, so the second vital step for China is effective implementation of these new policies, we hope positive changes can be brought to Chinese 'TNCs' overseas investment projects in the near future. Implementation largely depends on buy-in, training, and coordination across the numerous Chinese ministries and TNCs involved in overseas investment. Strong environmental and social performance can be achieved only if incentives and enforcement mechanisms ensure effective implementation and accountability. Finally, compared to Chinese business stakeholders and political stakeholders, China's domestic NGOs and public media paid little attention to the Rio Blanco project, thus can only exert limited influence to Zijin's performance in Peru.

Table 2. Conceptual Matrix analysis of the Rio Blanco Project

	Business Stakeholders	Political Stakeholders	Environmental Stakeholders	Social Stakeholders
Peru	N.A.	a) DGAA, MEM b) MOE c) Government of Pacaipampa	d) CooperAcción e) FEDEPAZ f) Front for the Sustainable Development of the Northern Frontier of Peru (Frente)	g) FDSFNP h) Andean Air Mail & Peruvian Times
China	a) China EXIM Bank b) ABC c) BOC d) CCB e) ICBC f) HKEx g) SINOSURE h) CMC i) Chinalco	j) PBC k) CBRC l) MOC m) MEP	n) Green Watershed (Yunnan)	o) CCTV p) Xinhua News Agency
U.K.	a) Monterrico Metals plc b) BHP Billiton	c) British High Court d) UK Financial Services Authority (FSA)	e) Peru Support Group (PSG) f) Christian Aid g) Catholic Fund for Overseas Development (CAFOD)	h) BBC i) China Dialogue (London) j) Reuters
International regime	a) IFC	b) UN	c) Friends of the Earth d) BankTrack e) CATAPA f) Oxfam	g) National Human Rights Coordinator

⁵³ Denise Leung and Yingzhen Zhao. Environmental and Social Policies in Overseas Investments: Progress and Challenges for China. WRI, 2013.

Besides Peru and China, the U.K. also plays an important role that cannot be ignored in this case. Although its role can also be considered as a kind of “international influence”, the U.K. engaged much more directly into the Rio Blanco project than international organizations; unlike Peru and China, UK stakeholders from four sectors (business, political, environmental and social) all played as equally important roles in this case, and even played as a spokesman on behalf of local people in Peru, to help them to fight for their own interests. But for stakeholders from the international level, they are often passively involved into cases like this, and there are often lack of binding requirements and responsibilities for these international organizations, so can hardly exert effective impacts to those giant TNCs. Furthermore, there are currently no international laws focus on regulating environmental and social performance of overseas trade and investment. There is a big gap between today’s international law system and a growth global FDI flows, much more work should be done at this level.

Finally, in order to fully display the nexus of stakeholders from different levels, the major stakeholders involved in this case have been collected together, and displayed in Fig. 7. The green color means support/co-operation, while the red color means conflict. The solid line represents direct relations while the dashed means indirect relations.

Through this nexus figure, it is clear to see that there are three major conflict relations and three major support relations exist in this case:

- i. Three major conflict relations:
 - (1) Peruvian Central Government *vs.* Peruvian Local Government and communities
 - (2) Peruvian NGOs, Media and Communities *vs.* Rio Blanco Project
 - (3) British Media and Judiciary System *vs.* Monterrico
- ii. Three major support/co-operation relations:
 - (1) Peruvian Central Government *supports* Chinese OFDI in Peru
 - (2) Chinese Central Government *guides* Chinese TNCs’ overseas investment
 - (3) British NGOs, Media and Judiciary System *fight for* Peruvian local communities’ interests

As illustrated in the conceptual matrix, through the above case study, each box examines one type of stakeholders in one of the four levels and provides guidance on understanding the stakeholders’ roles, interactions and dynamics with the TNC in question. The analysis helps users identify the key players among different types of stakeholders that can have significant influences on the environmental and social performance of the TNC in the host country.

However, the analysis in each box focuses on the relation between the TNC and its stakeholders, which is not sufficient to fully understand the key players as well as their salience to the TNC. The key players can exert indirect influences on the TNC through their interactions with other key players, which is likely to impact the environmental and social conduct of the TNC in the host country. For instance, depending on organizational strength and scope of activities, not only can environmental and social NGOs have a direct impact on the environmental and social performance of the TNC through their direct interactions with the TNC at the local level, but also an indirect impact by leveraging the host country government to regulate inward OFDI.

Hence, it is also important to understand the interactions and dynamics between the key players highlighted in the conceptual matrix and how that can impact the TNC. It is a way to find out the indirect influences the key players have on the TNC, an indispensable step towards a full understanding of the roles the key players can play in the environmental and social governance of the TNC and the magnitude of aggregated impacts they can have on the TNC.

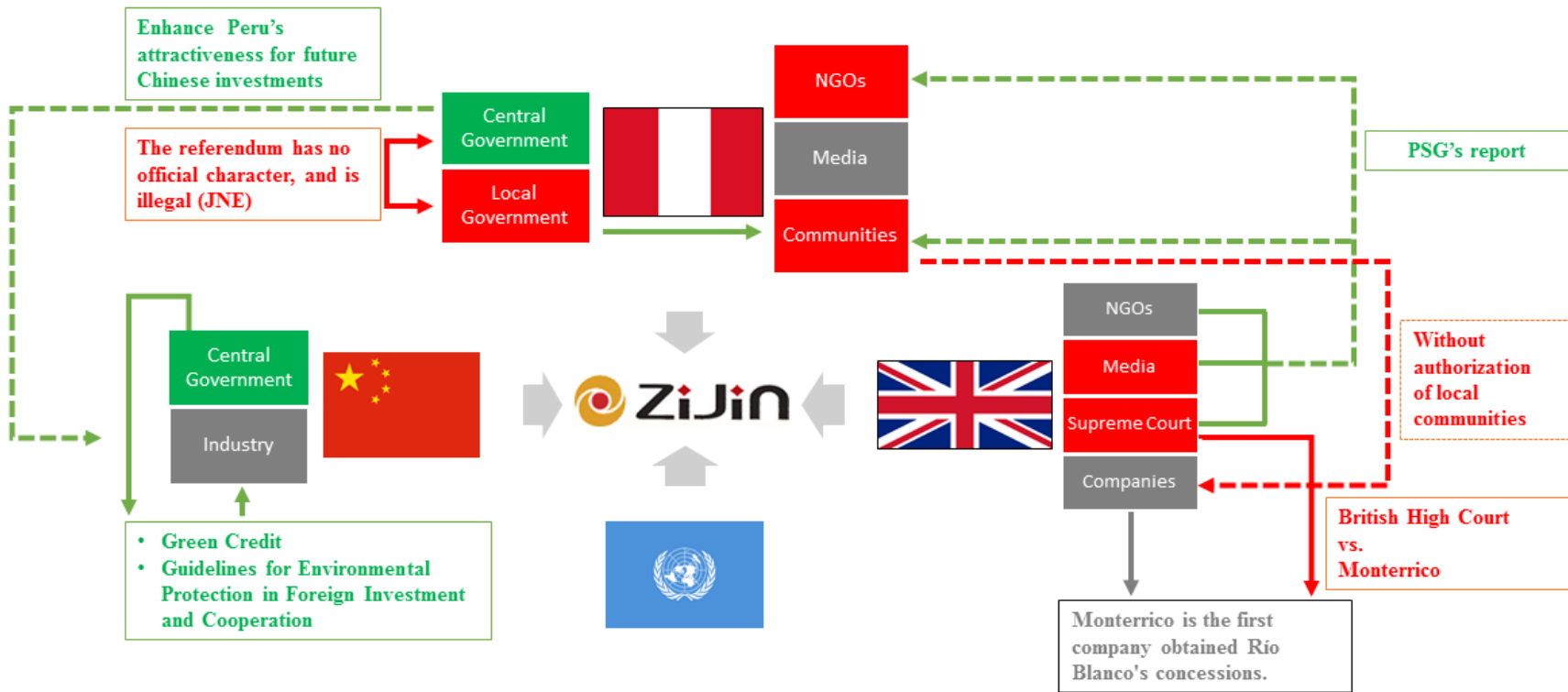


Fig. 7 The main relation links between major stakeholders from different levels in Zijin's case

Analysis of Key Players in China's Outward Foreign Direct Investment based on the Conceptual Matrix

Part II: Case Study in Southeast Asia

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In this research, we selected the Burma-China Myitsone Dam Project case, invested by the China Power Investment Corporation (CPI).

1. Background Information

1.1. Overview of China Power Investment Corporation

China Power Investment Corporation (中国电力投资集团公司, CPI) is one of the five largest state-owned electricity producers in China and a comprehensive energy group integrating industries of power, coal, aluminum, railway and port.¹ CPI was established from part of the constituent businesses of the former State Power Corporation of China (SP). With a registered capital of US\$1.57 billion, CPI has been approved by the State Council to become a pilot state-authorized investment entity and state-owned holding corporation. It is one of China's biggest power producers.² It supplies approximately ten percent of the country's electricity.³ CPI is also one of the three companies in China that can develop, build and operate nuclear power plants.⁴

Besides the Myitsone Dam Project, in early 2007 CPI Southern Branch set up a Myanmar Hydro Division, "highlighting the significance of Myanmar hydropower projects." The president of CPI visited the office of the Division in February 2007, "giving instructions in order to speed up progress of the Myanmar projects" that are "in compliance with the country's strategy on industry development."⁵ In other overseas markets, CPI is planning to build two gas-fired power stations with the installed capacity of 1.5 million kilowatts. The company is the general EPC (i.e., Engineering, Procurement and Construct) contractor of this

¹ http://eng.cpicorp.com.cn/AboutUs/cp/201406/t20140609_233973.htm

² <http://www.burmariversnetwork.org/chinese/2008-12-30-07-16-43/2008-12-30-07-18-21/113--cpi.html>

³ http://en.wikipedia.org/wiki/China_Power_Investment_Corporation

⁴ http://eng.cpicorp.com.cn/AboutUs/cp/201406/t20140609_233973.htm

⁵ <http://burmariversnetwork.org/index.php/investors/chinese#8>

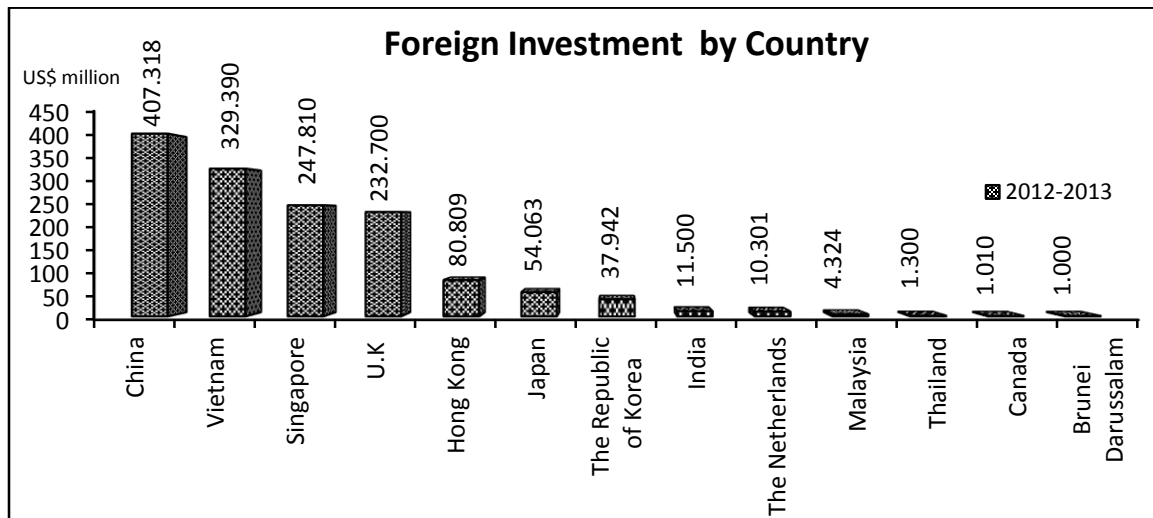
project, with a total contract amount of 1.8 billion USD. In addition, on September 6, 2013, CPI and Guinea government signed the Concessional Right Agreement on CPI's Alumina Project in Guinea. The signing of the Agreement is of strategic significance for CPI to "go global" at a faster pace and explore the African market.⁶

There are not many reports about CPI's environmental records, not to mention its overseas records. The only record we can find is that, China Power Investment Corporation was the owner of one of eight power stations fined for "violations of the law on control of sulfur dioxide emissions" in 2011. A news report on a statement by the MEP and the NDRC stated that "The plants were punished for excessive discharges of sulfur dioxide, deactivating desulfurizing or emission-monitoring equipment, as well as fabricating emissions data."⁷

1.2. Overview of the Myitsone Dam Project

China primarily has three strategic interests in Myanmar (Burma): (1) energy procurement and energy security, (2) access to the Indian Ocean, and (3) security of the border areas and border trade.⁸ Energy procurement and energy security have been concretely realized by projects such as the transportation of crude oil and natural gas from Myanmar to China through a pipeline and the building of hydroelectric power plants in the border area.⁹

Ever since the military regime assumed power in Myanmar, during which time European Union (EU) and the United States began imposing sanctions on the country, Myanmar's economic and political dependence on China began increasing. Most of the foreign investment in Myanmar is from four sectors: manufacturing, power, oil/gas, and hotel/tourism; and now, China is Myanmar's No.1 foreign investor, followed by Vietnam and Singapore, as shown in Fig. 1.



⁶ http://eng.cpicorp.com.cn/NewsCenter/PhotoNews/201309/t20130912_223156.htm

⁷ http://news.xinhuanet.com/english2010/china/2011-11/24/c_131267468.htm

⁸ Kudo, Toshihiro. "China's Policy toward Myanmar: Challenges and Prospects." Institute of Developing Economies Japan External (2012).

⁹ Ibid.

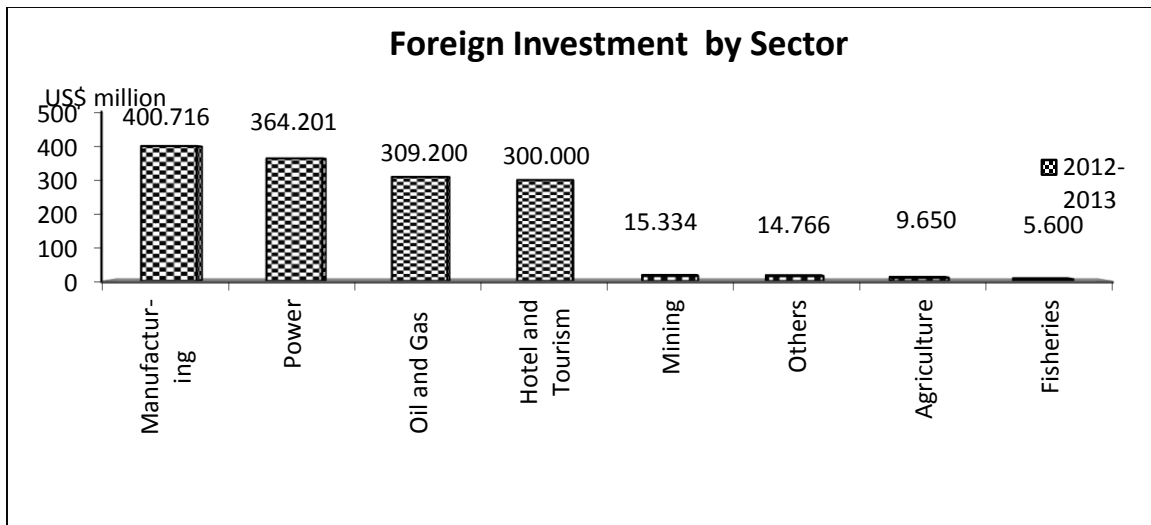


Fig. 1. Current Status of Approved Foreign Investment in Myanmar

Within the Ayeyarwady River basin region despite well documented evidence of the ecological and socio-economic impacts of dam developments, the government of Myanmar has embarked on a strategy to shift reliance on gas to hydropower via making it the sole source of electricity by 2030 which will result in seven large hydropower developments along the waterway. From China's side, the increasing need to meet China's growing thirsty of power is driving the Chinese central government's West-to-East Power Transmission Policy. Dam building in western

According to studies by the United Nations and other sources, the hydropower potential of Myanmar is estimated to be as much as 40,000 MW.¹⁰ The Myitsone Dam is an important part of Myanmar's strategy, and part of a seven-dam cascade that represents a USD\$20 billion investment by China, with project funding from China Export Import Bank. Large-scale infrastructure projects such as the Myitsone Hydropower project, follow the Chinese central government's strategy of building influence through assisting with infrastructure projects in foreign countries where it hopes to build good relations with ruling regimes.¹¹ This dam is a large hydroelectric power development project on the Irawaddy River (Ayeyawady River) in Myanmar. If completed as planned in 2017, it will be the fifteenth largest hydroelectric power station in the world.¹² The dam, planned to be 1,310 m long and 139.6 m high, is being built by Burmese government contractors and the CPI. The majority of total US\$3.6 billion cost was to be covered by the CPI in a joint venture with the Ministry of Electric Power No.1 of Myanmar and the Asia World Company. The Burmese government would get ten percent of the electricity generated and fifteen percent of the project shares for land use. In addition, the government would charge a withholding tax and an export tax on exported electricity to China.

¹⁰ Simmance, A. 2013. Environmental Flows for the Ayeyarwady (Irrawaddy) River Basin, Myanmar. Unpublished. UNESCO-IHE Online Course on Environmental Flows.

¹¹ O'Connor, James. "State Building, Infrastructure Development and Chinese Energy Projects in Myanmar." *The Research Institute on Contemporary Southeast Asia* 10 (2011): 1-22.

¹² http://en.wikipedia.org/wiki/Myitsone_Dam

It is expected to provide between 3,600 to 6,000 megawatts of electricity primarily for Yunnan, China.

The Ayeyarwady River is one of the five great rivers in the Mekong region and flows through the heartlands of Myanmar. The river's basin is 413,674 square kilometers, covering a remarkable 61% of Myanmar's total area and is Myanmar's most important commercial waterway.¹³ The Irrawaddy Myitsone Dam is located on the mainstream Irrawaddy, three miles downstream of the famous confluence of the N'Mai and Mali rivers in Kachin State (Fig. 2). The Myitsone Dam is part of the Confluence Region Hydropower Project (CRHP), which includes seven dams with a total installed capacity of 20,000 MW. The Myitsone, translated into English as "confluence" or "river intersection", is where the Mali (also known as Malikha) and N'mai (Maykha) rivers, fed by the melt of the Himalaya glaciers, meet to become the Irrawaddy River.¹⁴ The confluence is a revered landmark for all of Burma and particularly important cultural site for the Kachin people and will be submerged by the dam.¹⁵



Fig. 2 Irrawaddy Myitsone Dam Site

However, the dam project has been controversial in Burma due to its enormous flooding area, environmental impacts, and uneven share of electricity output between the two countries. There are serious doubts about the quality and independence of the Environmental Impact Assessment for this mega-dam project, as well as concerns regarding the resettlement process and the role of the project in exacerbating the long-standing conflict between the ethnic Kachin people and the military government. A number of prominent people inside Myanmar,

¹³ Simmance, A. 2013. Environmental Flows for the Ayeyarwady (Irrawaddy) River Basin, Myanmar. Unpublished. UNESCO-IHE Online Course on Environmental Flows.

¹⁴ O'Connor, James. "State Building, Infrastructure Development and Chinese Energy Projects in Myanmar." *The Research Institute on Contemporary Southeast Asia* 10 (2011): 1-22.

¹⁵ <http://www.kdng.org/dams/irrawaddy-dams.html>

including writers, scientists and the Nobel Peace laureate Daw Aung San Suu Kyi, had opposed the project.

Things changed in March 2011. 2011 marked a year of significant setbacks for China's relationship with Myanmar. Since then, the China-Myanmar relationship began to show subtle changes when the transition from military rule to civilian rule was realized in Myanmar for the first time in 23 years, and Thein Sein's administration came to the fore. In order to eventually detach itself from its excessive dependence on China, Myanmar's government began to seek out ways to improve its relations with Western countries. On 30 September 2011, amid of democratic reforms in the country, President Thein Sein announced that the Myitsone dam project was to be suspended during his tenure. This was because of strong opposition from the people against its construction, who cited reasons such as environmental destruction, relocation of the inhabitants, and damage of cultural assets owing to construction of the dam. President U Thein Sein suspended the dam's construction saying, "As our government is elected by the people, [our purpose] is to respect the people's will. We have the responsibility to address public concerns in all seriousness. So construction of [the] Myitsone Dam will be suspended [by] our government" (excerpt from President U Thein Sein's message to the Parliament made on September 30, 2011).¹⁶

Although the Myitsone Dam had always been controversial and garnered tremendous public opposition, China did not think that Naypyidaw would dare to jeopardize a project of such large scale and great importance to China. China attributes the suspension decision to both internal and external factors in Myanmar. On the one hand, China feels the dam project is the victim of Myanmar's urge to improve relations with the U.S. On the other hand, while China recognizes there is strong anti-China sentiment in Myanmar, it refuses to acknowledge that such sentiment is indigenous. In China's view, therefore, the cancelation was the result of Western countries and NGOs' instigating the anti-Myitsone movement within and outside Myanmar; Western efforts to sabotage Chinese projects and alienate China-Myanmar relations are primarily motivated by the geopolitical goal of curbing Chinese influence.¹⁷

The Myitsone suspension has a major impact on China's perception of and relationship with Myanmar. It is the first high profile Chinese overseas dam project to be suspended during construction, and is cited as a case of Naypyidaw's openly challenging China's national interest while embarrassing China internationally. Some Chinese analysts believe that the suspension "fundamentally shook Chinese leaders' trust and confidence in Myanmar as a partner, and is going to have a long-term impact over how they perceive Myanmar's reliability and trustworthiness".¹⁸

1.2.1. Impacts from this project

The Myitsone hydropower station in Kachin, constructed by the China Power Investment Corporation, has been met with strong opposition. The Myitsone dam site will flood important

¹⁶ Kudo, Toshihiro. "China's Policy toward Myanmar: Challenges and Prospects." Institute of Developing Economies Japan External (2012).

¹⁷ Yun, S. U. N. "China's Strategic Misjudgment on Myanmar." *Journal of Current Southeast Asian Affairs* 31, no. 1 (2012): 73-96.

¹⁸ *Ibid.*

historical and cultural heritage sites in Kachin, and also cause irreversible ecological change for the Kachin people living in the basin. The Kachin State capital is located 50 kilometers downstream of the dam. Thus the dam has become a security risk for the local residents. Further downstream on the vast plain and delta region of Myanmar, there are ethnic enclaves, where a series of dams will control the most important rivers in Myanmar, leading to changes to agriculture, transport, fishing and breeding patterns that have been in place for centuries. The Myitsone reservoir will flood an area larger than Singapore in one of the world's most disputed biodiversity hotspots. An estimated 47 villages will be inundated in a region recognized as one of the world's eight "hottest hotspots of biodiversity." Approximately 10,000 people will have to be displaced, which will exacerbate the existing environmental and social problems in this area. As a result, since the beginning of construction, Kachin organizations, environmental protection experts, social activists and people in the basin opposed and strongly criticized the dam.

1.2.1.1. Environmental Impacts

The United Nations Environment Program's World Conservation Monitoring Centre lists the Ayeyarwady as one of the world's top thirty high priority river basins due to both its support of high biodiversity and high vulnerability to future pressures. The construction of the Myitsone dam will pose a great threat to the ecological integrity and flow regime of the river basin. The areas along on both sides of the rivers will be inundated and some of the vital habitats of diverse wildlife species will be lost forever.

The Myitsone Dam will block migration route of fish preventing them reaching upstream spawning grounds resulting in substantial losses to downstream fishery production. The disturbance to fish migration patterns also result in a loss of prey to critical species such as the critically endangered Ayeyarwady Dolphin.¹⁹ This will also result in a decline of fisheries and aquatic plants dependent on these nutrients rich ecosystems. In addition, water quality will be reduced resulting in a decline of fish species and knock on impacts to the abundance and diversity of bird populations within the basin.

Furthermore, the Myitsone Dam site is located less than 100 km from Myanmar's earthquake-prone Sagaing fault line, which runs north-south through Myanmar. Earthquakes have been experienced at places along the fault line. Dam breakage would be disastrous for Myitkyina, the capital city of Kachin State, which lies only 40 km downstream.²⁰ Conversely, large dams can trigger earthquakes, which is known as reservoir-induced seismicity, and is related to the extra water pressure created in micro-cracks under a reservoir.

1.2.1.2. Social-economic impacts

The big dam will also result in adverse impacts to the Ayeyarwady flow regime with grave implications to the health of floodplains and delta ecosystems and the ecosystem services they provide to local livelihoods. Total population in the Ayeyarwady basin is 36.1 million, and

¹⁹ <http://www.burmariversnetwork.org/chinese/images/stories/publications/chinese/healthyivers.pdf>

²⁰ Environmental impact assessment (special investigation) on hydropower development of Ayeyarwady River Basin above Myitkyina, Kachin State, Myanmar. BANCA. 2009.

riverbanks along the Irrawaddy River is the key agricultural area, especially the downstream delta which offers nearly 60 percent of the rice production in Myanmar.²¹

The economic fallout of the Myitsone project will affect both the area immediately surrounding the dam and significant areas downstream from the project. The Kachin Development Networking Group underlines the negative aspects of this project. According to this indigenous activist group, one notable consequence will be the submerging of fertile farmland lining the banks of the N'Mai and Mali rivers north of the project site – an important source of both food and income to farmers in the area.

The reservoir area of Myitsone is 26,238 hectare, this will include most of the area lower than 230 meters above sea level. The total watershed area of Myitsone is 11,680 sq-km, covering the huge area of Mayhka and Malihka watershed comprising intact forests (Fig. 3). Unnatural changes in the flow regime of the Ayeyarwady River will result in: riverbank destruction due to increased erosion; altered flood cycles and disruption to the replenishment of wetlands, floodplains and delta ecosystems. Socio-economic conditions will be affected. The changed hydrological regime will reduce the productivity of agriculture, fisheries and the health of forest ecosystems such as mangroves along the Ayeyarwady delta which provides nearly 60% of Myanmar's rice.

The local fishing industry will also be negatively impacted when the dam blocks the path of fish's annual upriver migration, preventing them from spawning and reproducing, drastically cutting their population levels and making fishing no longer a tenable livelihood for locals. Downstream there would be similar consequences, but increasingly more severe. The fertility of the productive fields along the banks of the Ayeyarwady would be highly negatively impacted. Land that makes up the Ayeyarwady's floodplains enjoys the benefit of nutrient-rich sediment that washes over it with each annual rainy season.⁴⁹ The Myitsone Dam would trap a massive amount of sediment that usually flows the length of the Ayeyarwady, depriving downstream floodplains of productivity enhancing nutrients, thus lowering yields and the income of riparian cultivators and communities.

²¹ Simmance, A. 2013. Environmental Flows for the Ayeyarwady (Irrawaddy) River Basin, Myanmar. Unpublished. UNESCO-IHE Online Course on Environmental Flows.

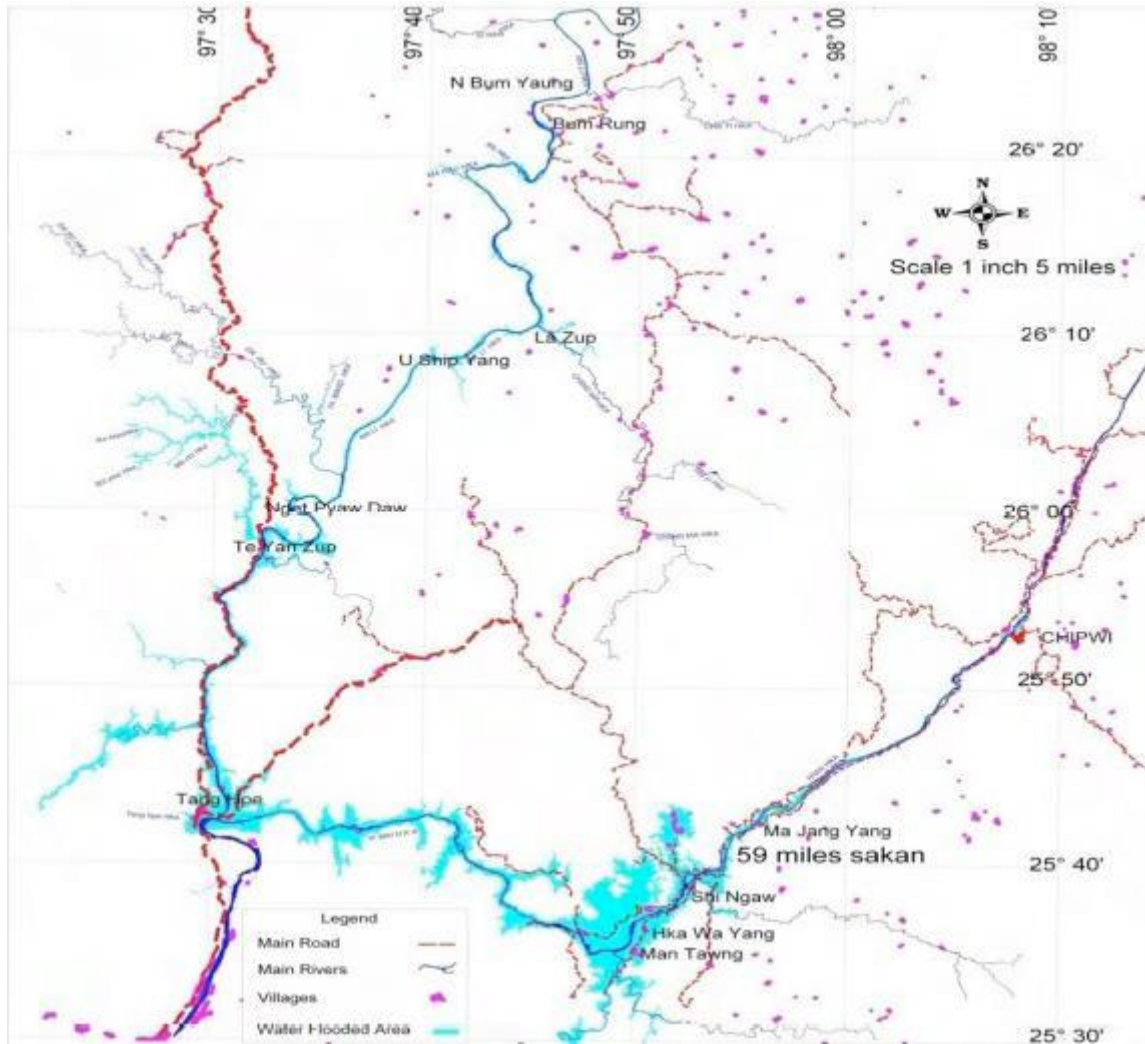


Fig. 3. Myitsone Hydropower Project Flood Area²²

Upon completion of the Myitsone Dam, the primary determinant for the water levels and flooding patterns of the Ayeyarwady would be neighboring China's demands for electricity at any given moment. If the Myitsone dam's generating capacity is needed, then the gates would be opened, the turbines run, and the generated electricity sent to China. It would be unlikely that the situation of downstream inhabitants whose livelihoods depend upon the timely seasonal variations of the river would be taken into consideration.²³

According to another source of reliable local information, if Myitsone Dam were built, 5000 houses from 30 villages will be sunk and 8,000 people will become homeless. Additionally, 18,000 arable acres, forests and natural resources will be submerged. Another big impact is that, the Myitsone Dam Reservoir would flood the area of great cultural significance to the Kachin people. For centuries, the Myitsone has been the source of songs, poems and legends which are not only the heritage of the Kachin but all the people of Myanmar. If this dam were

²² Environmental impact assessment (special investigation) on hydropower development of Ayeyarwady River Basin above Myitkyina, Kachin State, Myanmar. BANCA. 2009.

²³ Ibid.

to go ahead, a national cultural landmark would be permanently submerged and lost to future generations.²⁴

Health concern is another big issue. Health concerns that include an increase in malaria and the release of toxic methyl-mercury from the dam's reservoir will endanger Burma's people, further burdening a healthcare system that is ranked as one of the worst in the world. The critically endangered Irrawaddy dolphin may become extinct in its namesake rivers.²⁵

Although the Myanmar and Chinese States have a vested interest in the Myitsone Hydropower project, such as State building through the development of infrastructure and to meet electricity demand, respectively, it is not clear whether local populations will benefit from the project. Dissatisfaction with the project is likely to grow as its implementation moves forward unless appropriate measures are taken by the Chinese and Myanmar governments, and the private companies involved to reduce economic, social and environmental risk.²⁶

2. Analysis of key stakeholders based on the conceptual matrix

Box 1: Business stakeholders in Myanmar

Due to the lack of funds and technology, there is no company in Myanmar can develop such a big hydropower project independently, so companies in Myanmar need to cooperate with foreign TNCs to build large infrastructures. One Myanmar's company involved deeply into the Myitsone dam project is the Asia World Co., Ltd, run by Burmese drug-lord Lo Hsing Han (罗星汉). The Asia World Co. has a key player in facilitating the project and building preparatory infrastructure at the Myitsone dam site. The Myanmar Company Asia World Co. Ltd also plays a variety of roles in the Myitsone project. Its background in construction has positioned the company to take the lead role in building the resettlement communities that will house the populations of the villages to be submerged by Myitsone's reservoir. Based upon the observed proliferation of Asia World machinery throughout the length of the 43 kilometer-long road leading to the project site from Myitkyina, it can be safely assumed that the company is also in charge of the extensive road renovation that is underway.²⁷

Other Burmese companies involved into the Myitsone project are Myanmar Electric Power Enterprise (MEPE) and Suntac Technologies. MEPE was established in 1997, which was previously under the Ministry of Energy and is now under the Ministry of Electric Power. It is an implementing agency responsible for power generation, transmission and distribution throughout the country. Suntac Technologies is a subsidiary of the Suntac Group of Companies which was established in 1999 and is based in Rangoon. Suntac has been responsible for the National Spatial Database development; it also implements transportation-

²⁴ <http://www.burmariversnetwork.org/images/stories/publications/english/dammingtheirrawaddy.pdf>

²⁵ Ibid.

²⁶ O'Connor, James. "State Building, Infrastructure Development and Chinese Energy Projects in Myanmar." *The Research Institute on Contemporary Southeast Asia* 10 (2011): 1-22.

²⁷ O'Connor, James. "State Building, Infrastructure Development and Chinese Energy Projects in Myanmar." *The Research Institute on Contemporary Southeast Asia* 10 (2011): 1-22.

related engineering studies; highway and railways construction; and studies related to dams and irrigation systems. Suntac is directly linked with SPDC ministries and also works for companies such as Asia World and Htoo Company, known for their corrupt involvement in illegal logging. According to a CPI's publication, Suntac Technologies is in charge of topographical aerial photography for survey maps of the Irrawaddy Myitsone dam site.²⁸

Generally speaking, the strength of Myanmar's environmental regulation is pretty weak, so companies in Myanmar are not too concerned about sustainable business. That means, the level of environmental and social standards generally accepted by the market of Myanmar has little impact to foreign TNCs, like CPI.

Box 2: Political stakeholders in Myanmar

Myanmar is a global biodiversity hotspot and conservation priority. It hosts one of the largest contiguous forest blocks in Southeast Asia and sustains many endangered and endemic species.²⁹ Protection of the country's rich biodiversity and relatively clean environment has rapidly emerged as a key national interest in the face of a potential surge in economic investment and development following recent economic and political reforms.³⁰

The Government of Myanmar assigned to the National Committee for Environment Affairs (NCEA) with the responsibility of managing water and environmental resources in order to reduce these adverse effects and to ensure sustainable development. It was founded in February 1990, to ensure environmentally sound practices in industry and in other economic activities. It is the key coordinating body for environmental protection, conservation and sustainable development. The main duty of National Commission for Environmental Affairs (NCEA) is in order to coordinate for environmental affairs and promote sustainable development.³¹

With the gradual development of a free press and expanded access to information, the country's population has become increasingly aware of its unique biodiversity and valuable natural resources. The desire to protect these assets has become a sentiment dear to virtually all sectors of the population and is reflected in the policies and laws being considered by both the executive and legislative branches of the government. On March 30, 2012, Myanmar issued its first Environmental Protection Law, which was approved by the Federal Parliament and signed by President Thein Sein.³² Also in 2012, Myanmar issued its new foreign investment law, which requires environmental impact assessments for all major development projects.³³ Further, the parliament recently proposed the establishment of an Ayeyarwady River

²⁸ <http://burmariversnetwork.org/index.php/investors/burmese>

²⁹ Webb, Edward L., Jacob Phelps, Daniel A. Friess, Madhu Rao, and Alan D. Ziegler. "Environment-friendly reform in Myanmar." *Science* 336, no. 6079 (2012): 295-295.

³⁰ <http://asiasociety.org/blog/asia/myanmar-rises-challenge-environmental-conservation>

³¹ Soe, Kay Thi, and Mon Mon Yin. "Environmental Management in Myanmar." *Yangon University of Distance Education Research Journal* 1, no. 1 (2009): 253-265.

³² <http://www.mofcom.gov.cn/aarticle/i/jyjl/j/201204/20120408051087.html>

³³ <http://asiasociety.org/blog/asia/myanmar-rises-challenge-environmental-conservation>

Commission to ensure the conservation of the country's main water artery, whose sub-basins house a large percentage of the country's biodiversity hot spots.

However, when we analyze the history of the Myitsone project, Myanmar's political context should not be ignored, and in fact, such political context is an important part of the Myitsone story: the country has seen a change of government since the dam contract was first signed. After decades of military dictatorship, the new regime, which was elected last November and took office in March, is working for change. A string of actions, including the release of political activist Aung San Suu Kyi from house arrest, has led to international recognition that the reforms are genuine. An outside developer dealing with a military government can get away with ignoring other factors – the government has the power to deal with those. But when there is a change of regime to one that has even the slightest public support, ignoring public opinion risks landing foreign investors in trouble. It is also notable that, in the days leading up to Thein Sein's announcement, Aung San Suu Kyi's National League for Democracy held a public meeting in the city of Yangon (Rangoon) to call for the dam to be halted. Aung San Suu Kyi herself wrote a letter in August urging both China and Myanmar to reconsider the project. The facts show that these opposition voices are having an ever-greater influence in Myanmar.³⁴ Although CPI insisted that the project would bring the Burmese government an extra US\$54 billion in tax revenue, as well as indirect benefits such as dam-building experience, jobs and better ability to prevent floods and control river flows. But 90% of the electricity generated would be exported to China – and it's hard to convince the locals that that's a fair deal. Many in Myanmar believe that letting this project go ahead was simply a case of the military junta sacrificing the environment, local ecology and Kachin culture for the sake of the profits, with the people gaining nothing. Decades of dictatorship have left Myanmar's people with a deep mistrust of government. And any foreign company that deals only with the government and ignores the voices of the people risks being deemed guilty by association.³⁵

While in the Kachin state, where the majority of residents are members of the Kachin ethnic group, is home to a strong, separatist movement, led by the Kachin Independence Organization (KIO). The organization opposes the military-backed government and a de-facto state of war exists between the two parties. For many years, the KIO has acted as an autonomous local government, controlling most of the state, where it manages public order and economic development. Unlike the NGO community, the KIO has in the past supported hydropower development. The KIO-governed Kachin State 2nd Special Region, for example, once turned to its only international neighbor, China, for help in this area. In fact, it was the KIO that first attracted Chinese investors to the region's hydropower potential. But the friendship didn't last. Certain Chinese companies, preferring to cozy up to the more powerful Myanmar government, cast the KIO aside, causing the angry separatists to change their stance on several projects. Specifically, in the Myitsone case, while the KIO is by no means “anti-dam”, and was once keen to work with China on hydropower, it has never been in favor of the Myitsone project.

³⁴ <https://www.chinadialogue.net/article/show/single/ch/4574-Lessons-from-the-Irrawaddy>

³⁵ Ibid.

Box 3 & 4: Environmental and social stakeholders in Myanmar

There are now different coalitions forming in Myanmar to oppose the dam, including Myanmar Rivers Network, the Kachin Development Networking Group, the National League for Democracy (NLD) and environmental protection, democracy and media groups. These organizations continue to express their views and concerns.

(1) The Role of Burmese NGOs in the Anti-Dam Movement

The main opposition to the Myitsone project comes from NGOs, especially from the Myanmar's domestic NGOs, including Biodiversity and Nature Conservation Association (BANCA), Kachin Development Networking Group (KDNG), Kachin News Group, New Light of Myanmar, Eleven Weekly, Myanmar Times, etc.

One NGO in Myanmar that deeply participated into the Myitsone project is BANCA. BANCA is a registered NGO since 2004 in Myanmar. Since Myanmar doesn't have many EIA experiences, especially when facing such a huge hydropower project, Myanmar at first want to invite some Japanese or Swiss professional organizations to do EIA for the Myitsone Project. However, due to the high cost, Myanmar finally decided that the EIA report would be written by Chinese companies, and finally should be verified by Myanmar's organizations. According to Myanmar's requirements, CPI commissioned BANCA and China's Changjiang Institute of Survey, Planning, Design and Research (CISPDR) to carry out a joint environmental impact assessment, in order to survey the ecological impacts caused by the Myitsone Dam project. So from December 2007, CISPDR began feasibility survey to prepare for the full environmental impact study. Then, from March to June 2008, CISPDR, in cooperation with BANCA, negotiated Terms of Reference of full impact study with principal investors and governments. The first version of the EIA report, involving 100 researchers in the Chinese and Myanmar (BANCA) teams, was completed in October 2009. This report shows photos of Chinese and Myanmar researchers working together in the river bed and watershed, recording samples and analyzing data. In May 2010, based on the reports from Chinese and Myanmar, CISPDR issued a full EIA report and sent it to the Ministry of Electric Power No. 1 of Myanmar. MOEP approved this report, but asked CPI shouldn't release the EIA report to the public temporarily.³⁶

The other NGO which posed significant influences to this project is the Kachin Development Networking Group (KDNG). KDNG is a network of Kachin civil society groups and development organizations inside Kachin State and abroad. It was established in September 2004. KDNG promotes the formation of a healthy civil society based on equality and justice for local people. It works to document the military government's exploitation of natural resources, collecting information on large scale development including mining, mono crop plantation and hydropower. It also works to promote an alternative to these destructive policies by working with local organizations and community members to assess the needs of villagers and develop local solutions to development problems. In all of this, the organization works to encourage the participation of women in development decisions and activities.³⁷ As

³⁶ <http://d-nb.info/1024416801/34>

³⁷ <http://www.kdng.org/about.html>

a network of residents of Kachin State, KDNG has been monitoring plans by CPI and Burma's military regime to build seven dams on the Irrawaddy River and its two main tributaries. In 2007, KDNG published the report "*Damming the Irrawaddy*" which surveyed the environment and peoples in the affected area and analyzed the negative impacts of these dams.³⁸ In October 2009, KDNG released a report "*Resisting the Flood: Communities Taking a Stand on the Imminent Construction on Irrawaddy Dams*", calling for a halt to the Myitsone dam project on the Irrawaddy River.³⁹ On May 27, 2010, on behalf of the communities suffering from the Myitsone Dam project in Kachin State, KDNG appealed to the then Chinese President Hu Jintao to immediately halt the forced relocation and destruction of villages in the area. KDNG said that the dam construction is against the will of local people and violates China's own dam construction guidelines as well as international standards.⁴⁰

(2) The Role of Burmese Media in the Anti-Dam Movement

Burmese public media played an important role in the anti-dam movement in Myanmar. For example, since 2011, Myanmar's biggest and most famous media company, has been continuously reporting issues related to the Myitsone project.⁴¹ On 2 April 2012, Weekly Eleven news, a private Burmese news journal, broke news of ongoing activities by CPI and Asia World on the Myitsone project site.⁴² Some of the reports were not objective, some didn't give a full coverage of the story. That's why this misunderstanding stimulated Burmese people's sensitive nerve, further triggered the conflicts between CPI and local communities. Some people argued that this is due to the lack of effective communication between media and government, so Burmese media can only get very limited information about hydropower projects from the government.⁴³ However, CPI didn't choose to contact media at first time, but left the public opinions to be misdirected by the media, which further leading the suspension of the Myitsone project. Until CPI is willing to be more transparent and talk with its Burmese opponents. In current circumstances, the Burmese public is likely to assume the impact of the dam will be negative.

CPI didn't aware the importance of media relations until July 5, 2013, when CPI first attended the Chinese firms' press conference in Myanmar. CPI described their CSR performance and indicated their will to engage into the Myanmar's public welfare undertakings in order to promote social development and progress in Myanmar.⁴⁴

Box 5: Business stakeholders in China

CPI has met with several banks and corporations to seek suggestions on the financing and risk management of CPI's investments abroad. These consultations included the China Exim Bank, the China Export Credit Insurance Corporation, and ICBC. Both China Exim Bank and the

³⁸ <http://kdng.org/publication/64-damming-the-irrawaddy.html>

³⁹ http://burmacampaign.org.uk/images/uploads/Resisting_the_Flood.pdf

⁴⁰ <http://asiancorrespondent.com/113155/burma-will-myitsone-dam-project-resume/>

⁴¹ http://www.elevenmyanmar.com/index.php?option=com_content&view=article&id=6015:residents-join-protest-march-against-myitsone-dam&catid=44:national&Itemid=384

⁴² http://en.wikipedia.org/wiki/Myitsone_Dams

⁴³ <http://finance.qq.com/a/20130814/001174.htm>

⁴⁴ <http://www.mmgsmedia.com/localnews/4327-2013-07-08-10-18-56>

CDB have arranged strategic lines of credit with China's major state-owned hydropower companies. These arrangements have enabled Chinese dam builders make themselves more competitive as they are able to tell host country governments that they can secure Chinese financing for their projects.⁴⁵

According to the main project partner, the Yunnan Power Grid Company will transmit electricity generated by the project to China via the Yunnan power network, so the Myitsone Dam is considered as an important component of China's "Developing the West" strategy, aims to transmit cheap electric power from western China to eastern coastal areas.⁴⁶

China's International Contractors Association (CHINCA) also plays a significant role in China's overseas hydropower projects. CHINCA is an industry association of contracting and construction firms, adopted basic social and environmental principles in its "Guide on Social Responsibility for Chinese International Contractors." They include the requirement to conduct an EIA prior to project construction, protect rare and precious flora and fauna, develop community engagement plans and maximize job opportunities for the local community. Sinohydro Corporation, China International Water and Electric Corporation and China Gezhouba Group Corporation have adopted these principles but it is unclear whether they are being implemented.⁴⁷

(1) Yunnan Machinery & Equipment Import & Export Company Limited (YMEC)

Yunnan Machinery Import & Export Co. (in short from YMEC) is the primary supplier of Myanmar's passenger railway system. It has also exported electrical grid management equipment for Yangon city. Its involvement in multiple smaller (less than 4 megawatt capacity) hydropower projects in the early 1990s developed into participation in much larger projects, such as the Shweli I, II, and III dams more recently.

YMEC has been one of the most active Chinese companies in Burma's hydropower sector. The company has extensive experience in constructing hydropower projects, and since the 1990s, YMEC has been involved in more than 25 projects of varying size. The extent of YMEC involvement in these projects, several of which are completed, is unclear, but appears to involve construction and some financing.⁴⁸ Based upon YMEC's past role in Myanmar hydropower projects, its role in the Myitsone project will most likely be one of importing the hardware needed for electricity-conduction and other technology that Myanmar does not have the industrial capacity to manufacture domestically.

⁴⁵ Brewer, Nicole. "The new great walls: a guide to China's overseas dam industry." Berkeley: International Rivers Network (2008).

⁴⁶ <http://www.burmariversnetwork.org/images/stories/publications/english/dammingtheirrawaddy.pdf>

⁴⁷ Brewer, Nicole. "The new great walls: a guide to China's overseas dam industry." Berkeley: International Rivers Network (2008).

⁴⁸ <http://www.earthrights.org/sites/default/files/publications/China-in-Burma-update-2008-English.pdf>

(2) China Gezhouba Group Corporation (CGGC)

China Gezhouba Group Corporation (CGGC hereinafter) is also an important partner of CPI in the Myitsone Dam Project. CGGC is a large state-owned engineering contracting company that builds large dams and other infrastructure projects overseas and at home. CGGC has increased its market share by its competitive tendering for dam projects. As a contractor CGGC has reduced responsibility compared with the project developer, it has continued to associate itself with destructive dam projects such as the Myitsone Dam in Burma.⁴⁹ In 2008, CGGC signed a contract with CPI to build a hydropower plant on the Chipwi Hka, a tributary of the N'Mai River.⁵⁰ The Power Plant for Myitsone and Chibwe Hydropower Station undertaken by CGGC is a preliminary project for cascade development above myitkyina on the Irrawaddy River in Myanmar, intended to provide power for the construction of seven cascades of hydropower stations including the Myitsone Hydropower Station which is the largest in Myanmar in terms of installed capacity.⁵¹

(3) China Southern Power Grid (CSG)

On May 21, 2007, CPI signed a cooperation framework agreement on the co-development of hydropower projects in the “N’mai Hka River, Mali Hka River and Irrawaddy River Basins” with China Southern Power Grid (CSG), signaling that the two companies have become strategic partners on the project. CSG is a state company founded in December 2002, bringing together corporations from the five southern provinces of China. CSG is in charge of the investment, construction and management of China’s southern power grid and the relevant transmission and distribution of power.⁵²

(4) Changjiang Institute of Surveying, Planning, Design and Research (CISPDR)

CISPDR conducts engineering surveys, planning, design, research, consultation, and supervision of large water conservancy and hydropower projects. It is the largest such institute in China. According to the reports, a team from CISPDR finished a five month field visit to the Irrawaddy Myitsone dam site, conducting geological drilling, reservoir inspection, and taking hydrological measurements.⁵³

Box 6: Political stakeholders in China

The Ministry of Commerce (MOC) of China is now the primary government institution that approves, manages and monitors overseas investments initiated by central state-owned enterprises (SOEs). Investment projects over \$100 million in countries deemed by MOC to have high safety risks, or countries without a diplomatic relationship with China must be approved by MOC. Investment projects between \$10 million and \$100 million or initiated by local Chinese SOEs must be approved by the provincial-based MOC departments. MOC has

⁴⁹ Brewer, Nicole. "The new great walls: a guide to China's overseas dam industry." Berkeley: International Rivers Network (2008).

⁵⁰ <http://www.earthrights.org/sites/default/files/publications/China-in-Burma-update-2008-English.pdf>

⁵¹ http://www.cggc.cc/2014-02/23/content_17272491.htm

⁵² <http://www.burmariversnetwork.org/images/stories/publications/english/dammingtheirrawaddy.pdf>

⁵³ Ibid.

taken steps to strengthen the standards that must be followed by Chinese companies investing overseas. In August 2006, MOC issued recommendations urging Chinese companies to hire local workers, respect local customs, and adhere to international safety standards in their projects. Through its Department of Aid to Foreign Countries, MOC manages the aid policy, annual plan and budget, which includes the disbursement of grants and zero interest loans. MOC also approves and manages the entire execution of all Chinese aid projects. When planning aid projects and setting country budgets, MOC will coordinate with the Ministries of Foreign Affairs and Finance, and China Exim Bank.⁵⁴ The Ministry of Finance (MOF) works with MOC to set the budget for China's overseas aid. Through its State Administration of Foreign Exchange office, MOF approves the amount of foreign exchange Chinese companies can use. The Ministry of Foreign Affairs (MFA) manages and provides advice on China's foreign relations. MFA advises MOC on aid matters, and researches overseas markets for Chinese goods and services. MFA also oversees China's Foreign Embassies. Within China's Foreign Embassies, the implementation of Chinese dam projects is monitored through the Economic Counselor's Office, which is staffed by a MOC official. MFA is also concerned with safeguarding China's reputation in foreign countries. In March 2008, China's State Environmental Protection Agency (SEPA) was elevated to ministerial status, which is now named the Ministry of Environmental Protection (MEP). Compared to MOC, NDRC and MFA, the MEP has no role in the approval of overseas dam projects. The MEP's role has been more limited to the development and promotion of standards and guidelines for the finance sector and operation of Chinese companies overseas. In conjunction with NDRC, MEP is responsible for evaluating environmental impact assessments of projects on China's major rivers, including trans-boundary rivers. But overall, the MEP's ability and scope to regulate the environmental impacts of Chinese overseas dam building is limited.⁵⁵

Other political stakeholders in China is similar to the Rio Blanco case, please see the Section 3.1.5., Box 6.

Box 7 & 8: Environmental and social stakeholders in China

In addition to official channels, the real situation in Myanmar could also be communicated to Chinese officials by Chinese NGOs to disclose the truth and promote better overseas investment behavior, especially under current political situation in Myanmar.

According to the report of China Development Brief, from June 23-30, 2011, the environmental NGO, Green Watershed, conducted a study of Chinese investment projects in Myanmar. The group traveled to Yangon, Mandalay, Rakhine and other places, meeting with local NGOs, community representatives, representatives of ethnic minorities, representatives of industry associations, the news media, and staff from Chinese companies with investment projects under construction. During the visit, the armed conflict broke out in the Kachin areas, so the Myitsone hydropower project inspection tour had to be canceled. The group visited Chinese hydropower, oil and gas projects in Myanmar, looking at the influence of the projects on local residents, and listened and exchanged views with stakeholders in the projects. The

⁵⁴ Brewer, Nicole. "The new great walls: a guide to China's overseas dam industry." Berkeley: International Rivers Network (2008).

⁵⁵ Ibid.

final report suggested that Chinese investment in Burma should pay attention to environmental and social impact assessments, conflict risk assessment, and focus on the interests of the people of Myanmar, and the proper handling of relations between the Myanmar government and its citizens. The report also calls for strengthening exchanges and cooperation between Chinese and Myanmar NGOs to jointly promote the sustainable development of China's overseas investment. Based on the survey, the group conclude that: For Chinese investment in Myanmar to smoothly reach its goals, there should be a clearer understanding of Myanmar's national conditions, attention to environmental and social impact assessments, carrying out sustainable development concepts in investment activities, actively fulfilling social responsibilities, and establishing a positive national and corporate image. Furthermore, they point out that the following points are worth noting: (a) Regarding environmental and social impact assessments; (b) On whether to conduct a conflict risk assessment; (c) On paying attention to the core interests of the people of Myanmar; (d) On appropriately handling relations with the Myanmar government and people of Myanmar.⁵⁶

Due to the wide and huge international impacts of the Myitsone Dam Project, the Myitsone case became a good news story for press reports from many Chinese media groups, including CCTV, Xinhua News, Sina, etc. Some reports focus on the responsibility of Myanmar, but more reports focus on the lessons of Chinese enterprises during the process of “Going Global”. For example, in February 2012, Qin Hui, a professor of history at Tsinghua University, published a famous report “*The confusions of Myitsone*” in *The Economic Observer*.⁵⁷ This writing is considered as one of the most comprehensive analysis of the Myitsone case, without fear or favor, and has been reprinted by many Chinese media.

Box 9: Business stakeholders in other countries

The exploration of Myitsone site is initiated from 2002, conducted by a Japanese company. In 2002, Kansai Electric Power Company, Inc. (関西電力株式会社, Kansai Denryoku Kabushiki-gaisha, KEPCO) built a weather station in Tang Hpre.⁵⁸ KEPCO is an electric utility with its operational area of Kansai region, Japan. In 2004, KEPCO did research in dam area with agreement of the Department of Hydroelectric Power (DOHP) of Myanmar. Unlike CPI, KEPCO is familiar with both the military regime of Myanmar and Kachin State, and knew the real situation in Kachin State, so instead of precipitately starting the Myitsone project, KEPCO kept away of this project and patiently waited for a better time point to return.⁵⁹

⁵⁶ This part is directly quoted from the report of China Development Brief China: “Chinese NGOs Travel to Myanmar”, published in 2012. For more details, please visit:

<http://www.chinadevelopmentbrief.org.cn/qikanarticleview.php?id=1315>

⁵⁷ The original report is available at: <http://www.eeo.com.cn/2012/0209/220505.shtml>

⁵⁸ Appendix (2012), Chronology of the Myitsone Dam at the Confluence of Rivers above Myitkyina. *Journal of Current Southeast Asian Affairs*, 31, 1, 141-153.

⁵⁹ <http://baike.baidu.com/view/4469207.htm>

Box 10: Political stakeholders in other countries

The US embassy in Yagon (Rangoon) funded some of the civil society groups in the Burmese region that forced the government to suspend the Myitsone Dam on the Irrawaddy River, according to a US diplomatic cable.⁶⁰

Box 11 & 12: Environmental and social stakeholders in other countries

Due to Myanmar's political situation, most of the organizations involved into the anti-dam movement in Myanmar are located in other countries, especially in Thailand, therefore Thailand has become the stronghold of Myanmar's anti-Myitsone Dam movement, which has significant influences to Chinese entrepreneurs' investment in Myanmar.

One such NGO is the Burma Rivers Network (BRN), located in Chiang Mai, Thailand. Burma Rivers Network is comprised of organizations representing various dam-affected communities in Myanmar, and its mission is to protect the health and biodiversity of river ecosystems, and to protect the rights of communities negatively impacted by large-scale river development in Myanmar. Burma Rives Network published a lot of reports related to the Myitsone project, some of these reports are very famous and produced deep impacts to the public opinions of the Myitsone Dam. In order to expand its influence, the reports on BRN's official website can be transferred into many languages, and due to the special role of China, BRN even built a Chinese BRN website, and published many reports written in Chinese, to help people in China to know more about the Hydropower development on Burmese rivers.

Box 13: International business stakeholders

In the hydropower industry, the International Hydropower Association (IHA) has an important influence to all its members and the whole industry. IHA is a membership organization for the hydropower industry. In November 2011, IHA published the Hydropower Sustainable Assessment Protocol (HSAP), which enables dam builders to participate in a non-binding scoring system to assess the social, environmental and economic sustainability of dams at different stages of the project cycle. HSAP does not define any minimum standard. The Protocol encourages self-performance assessment. Assessments are currently underway and must be published for public comment. Sinohydro, China Three Gorges Project Corporation and Huaneng Lancang River Hydropower Company are all members of IHA and may use HSAP in future projects.

Box 14: International political stakeholders

The World Commission on Dams (WCD) was set up in 1998 by the World Bank and the World Conservation Union (IUCN). The mandate of the commission was to conduct an independent review of the development effectiveness of large dams, to assess alternatives, and to develop practical guidelines for decision-making.⁶¹ WCD published the most comprehensive recommendations on social and environmental standards in the dam sector in

⁶⁰ <http://www.theguardian.com/world/2011/sep/30/us-embassy-cables-burma-myitsone-dam>

⁶¹ http://wwf.panda.org/what_we_do/footprint/water/dams_initiative/dams/wcd/

2000. The WCD's final report puts forward a framework for planning water and energy projects and is intended to protect dam-affected people and the environment, whilst ensuring that the benefits from dams are equitably distributed. The Commission disbanded after the report was published, but work on dams and development continues in many different ways. Shortly after the report, the Dams and Development Project (DDP) was established to broaden awareness of the issues presented and to look at how the WCD recommendations could be translated into action on the ground. The DDP project was hosted by UNEP and supported national as well as global dialogue on the WCD.⁶²

Particularly relevant to Chinese overseas dam building are the United Nations Norms on the Responsibility of Transnational Corporations ("Norms"). Approved in 2003, the Norms state that transnational corporations are responsible for upholding human rights as set forth in the Universal Declaration of Human Rights. The Norms state that transnational corporations must protect human rights as set forth by national and international law, provide equal opportunity employment, ensure safe and healthy working environments, comply with the environmental laws of host countries, and implement sustainable development practices.⁶³

Box 15 & 16: International environmental and social stakeholders

Among the international NGOs, the EarthRights International also plays an important role among river damming in Southeast Asia. In 2008, the EarthRights International issued a report named *China in Burma*. This report identifies 69 Chinese TNCs involved in 90 projects in the hydropower and extractive sectors in Burma.⁶⁴ The EarthRights International also sets up a training program - the EarthRights School Mekong (ERSM) - for civil society advocates from the Mekong Region who are working on environmental and human rights issues. This school is inaugurated in June 2006, which focuses on the impacts of large-scale infrastructure projects, particularly hydropower dams, and how citizens are engaged in advocating for more equitable development in the Mekong region.⁶⁵

In addition to the EarthRights, maybe the most active organization in the anti-Myitsone Dam movement is the International Rivers. International Rivers is an environmental and human rights anti-dam organization based in Berkeley, California, United States. Founded in 1985 by a host of social and environmental activists, International Rivers works with a global network of policy and financial analysts, scientists, journalists, development specialists, local citizens and volunteers to address destructive dams and their legacies in over 60 countries.⁶⁶

On September 30, 2013, International Rivers issued a report "*Independent Expert Review of the Myitsone Dam EIA*", which found that the Environmental Impact Assessment (EIA) made by CPI contains some serious deficiencies and flawed conclusions. It said that the EIA report commissioned by China Power Investment and published in 2011 fails to identify numerous

⁶² Ibid.

⁶³ Brewer, Nicole. "The new great walls: a guide to China's overseas dam industry." Berkeley: International Rivers Network (2008).

⁶⁴ <http://www.earthrights.org/publication/china-burma-increasing-investment-chinese-multinational-corporations-burmas-hydropower-o>

⁶⁵ <http://www.earthrights.org/training/earthrights-school-mekong>

⁶⁶ http://en.wikipedia.org/wiki/International_Rivers

impacts that could reasonably be expected to occur as a result of such large, complex and cascade hydropower scheme. Despite China Power Investment's commitment to abide by international standards and conduct its work in accordance with the highest standards, seven of the eight expert opinions found that the Report falls well below best practice.⁶⁷

All these international organizations keep close relations with Burmese NGOs and some political organizations. They use various forms of propaganda in or outside Myanmar to express their opposition to the construction of the Myitsone dam, exerting high pressure on the Government of Myanmar and China, to finally form public opinions with a broad social base.

3. Discussion

The Chinese stress the fact they have a contract with the Myanmar government. The Burmese meanwhile emphasize the strength of public opinion against the project. The crux of the issue is: does “legal” automatically mean “legitimate”? An outside developer dealing with a military government can get away with ignoring other factors – the government has the power to deal with those. But when there is a change of regime to one that has even the slightest public support, ignoring public opinion risks landing foreign investors in trouble. Therefore, rather than complain about the Myanmar government renegeing on a deal, China should take a crucial lesson from this episode: when working abroad, it is no longer enough to communicate with governments alone.

China's construction industry is the world's biggest, and in 2010 it became the world's biggest overseas contractor. In 2011, Chinese firms signed engineering contracts overseas worth US\$140 billion. In 2012, that rose by more than 10% to US\$156.5 billion.⁶⁸ The Myitsone Dam project is a good proof of China's ambitious expansion of overseas constructions.

⁶⁷ <http://www.internationalrivers.org/resources/independent-expert-review-of-the-myitsone-dam-eia-8129>

⁶⁸ <https://www.chinadialogue.net/article/show/single/ch/7274-Social-instability-is-the-main-threat-to-China-s-overseas-investments>

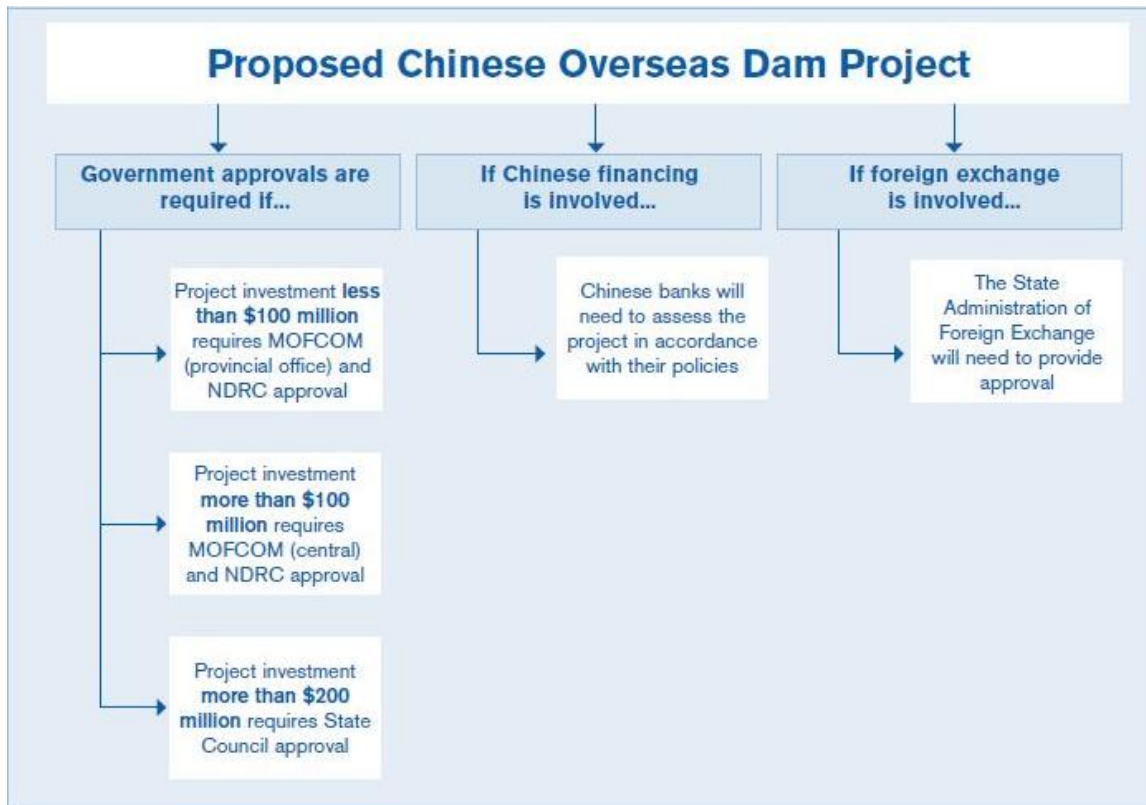


Fig.4 China's OFDI Approval Process. Source: International Rivers, 2012

China's overseas investments take two forms. One is project contracting, the other is direct investments. For the overseas dam projects, Chinese hydropower companies may be involved in overseas dam projects at many different levels and capacities. Responsibilities for environmental and social impacts may differ according to the type of contract. The types of contracts in which Chinese hydropower companies regularly involved are: (1) Equipment, Procurement and Construction (EPC), and Turnkey Contracts; (2) Build-Operate-Transfer (BOT) Contracts; (3) Construction Contracts; and (4) Project Management Contracts. Today, Chinese dam builders are pursuing the BOT contracts more and more, because these projects are more profitable in the long run.⁶⁹

Generally speaking, Chinese firms have high technical and management skills and their overseas investments have developed in a regular way. But there has been some bad investment behavior, which the government should do more about at the macro-level. Fig. 4 shows China's overseas investment approval process by the Chinese central government.

In order to clearly illustrate the whole picture of the Myitsone case, this paper collected all the important events related to this case from 2002 to 2013 to form the timeline of this case, as shown in the below Fig. 5. According to the chronology, the Myitsone case can be divided into three main stages:

⁶⁹ Brewer, Nicole. "The new great walls: a guide to China's overseas dam industry." Berkeley: International Rivers Network (2008).

(1) Planning Phase (before 2007)

The Japanese company KEPCO is the first foreign company entered into the Myitsone area in 2002. During the same time, the Burmese government also started to contact potential Chinese investors.

(2) Construction and Conflict Phase (2007-2011)

During this phase, CPI signed contract with the military government of Myanmar, and started to build the Myitsone Dam. Conflicts were triggered by the construction of the dam all around Myanmar. Other countries like the U.S. and Thailand also played an important role in the anti-dam movement.

(3) Suspension Phase (2011-present)

Due to strong opposition from the Burmese people against the construction, in 2011, President Thein Sein announced that the Myitsone dam project was to be suspended during his tenure. After a year and a half, China finally withdrew all construction units and equipment in March 2013.

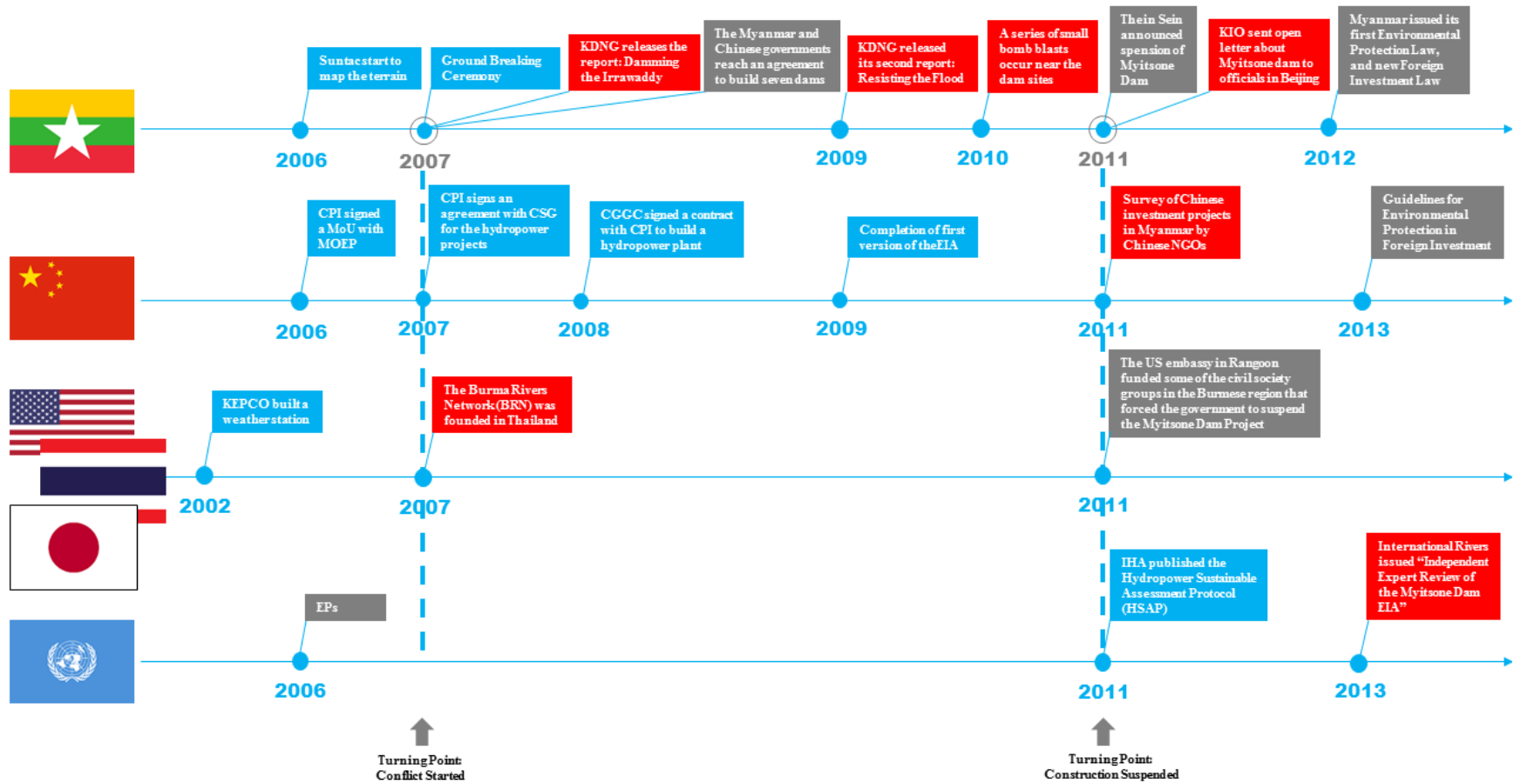


Fig. 5 Chronology of the Myitsone Dam Project

Unlike the Rio Blanco case, the government of Myanmar finally changed their attitude to the Myitsone project due to outside pressures. In countries like Myanmar, one of the biggest risks of FDI is unstable political circumstances in the host nation. This has caused many investments to fail, just like what happened in the Myitsone case. Similar to the former case, NGOs also played an important role in the anti-Myitsone Dam movement. However, CPI failed to recognize the role of NGOs in and outside Myanmar, and failed to assess the risks of political and social instability in Myanmar. However, business runs by its own rules, and political issues should be considered separately, sometimes, it should be the government's responsibility to anticipate, assess the risks, and warn companies. Companies do have social responsibilities, but environmental disputes are a political matter for the host nation to resolve through higher environmental standards and tougher enforcement.¹

Generally speaking, in the level of host country (Myanmar), the political stakeholders have very strong influence that can leverage TNC's (CPI) actions, and even the relations between TNC and other Burmese stakeholders. The Burmese environmental and social stakeholders are also very powerful, and they have been receiving strong support from other countries and many international sister organizations, therefore they can exert a relative great influence to the TNC, reshape the performance of local stakeholders, keep up high pressure to force the TNC to dialogue with local communities, and even force the Burmese military regime to make concessions (Table 1).

For the investor country (China), the Chinese business stakeholders have deeply engaged into the Burmese hydropower industry. Similar to the former case, like other Chinese TNCs, CPI has built up close connections with the Burmese political stakeholders, especially the central government of Myanmar, while in contrast ignored or attached light importance to building dialogue channels with local communities.

Other countries like the U.S. and Thailand also played an important role that cannot be ignored in this case. Besides, the influences from international organizations, like the International Rivers, should not be ignored. Especially in countries like Myanmar where the power of domestic environmental and social organizations is weak, such outside aids or influences are usually essential.

Table 1. Conceptual Matrix analysis of the Myitsone Dam Project

	Business Stakeholders	Political Stakeholders	Environmental Stakeholders	Social Stakeholders
Myanmar	a) Asia World Co., Ltd b) MEPE c) Suntac Technologies Co., Ltd	d) State Peace and Development Council (SPDC) e) MOEP f) Ministry of Environmental Conservation and Forestry g) KIO h) NLD	i) BANCA	j) KDNG k) Kachin News Group l) New Light of Myanmar m) Weekly Eleven n) Myanmar Times

¹ <https://www.chinadialogue.net/article/show/single/ch/7274-Social-instability-is-the-main-threat-to-China-s-overseas-investments>

China	a) CGGC b) China EXIM Bank c) ICBC d) SINOSURE e) CHINCA f) YMEC g) CSG h) CISPDR	i) CBRC j) MOC k) MOF l) MEP m) MFA	n) China Development Brief o) Green Watershed	p) Xinhua News Agency
Japan /Thailand /U.S.A.	a) KEPCO (Osaka, Japan)	b) US Embassy in Yangon (Rangoon)	c) Burma Rivers Network (Chiang Mai, Thailand)	d) BBC e) Burma Rivers Network
International Regime	a) World Bank b) International Hydropower Association (IHA)	c) UNEP	d) International Rivers e) EarthRights International	f) International Rivers g) EarthRights International

Finally, in order to fully display the nexus of stakeholders from different levels, the major stakeholders involved in this case have been collected together, and displayed in Fig. 6. The green color means support/co-operation, while the red color means conflict. The solid line represents direct relations while the dashed means indirect relations.

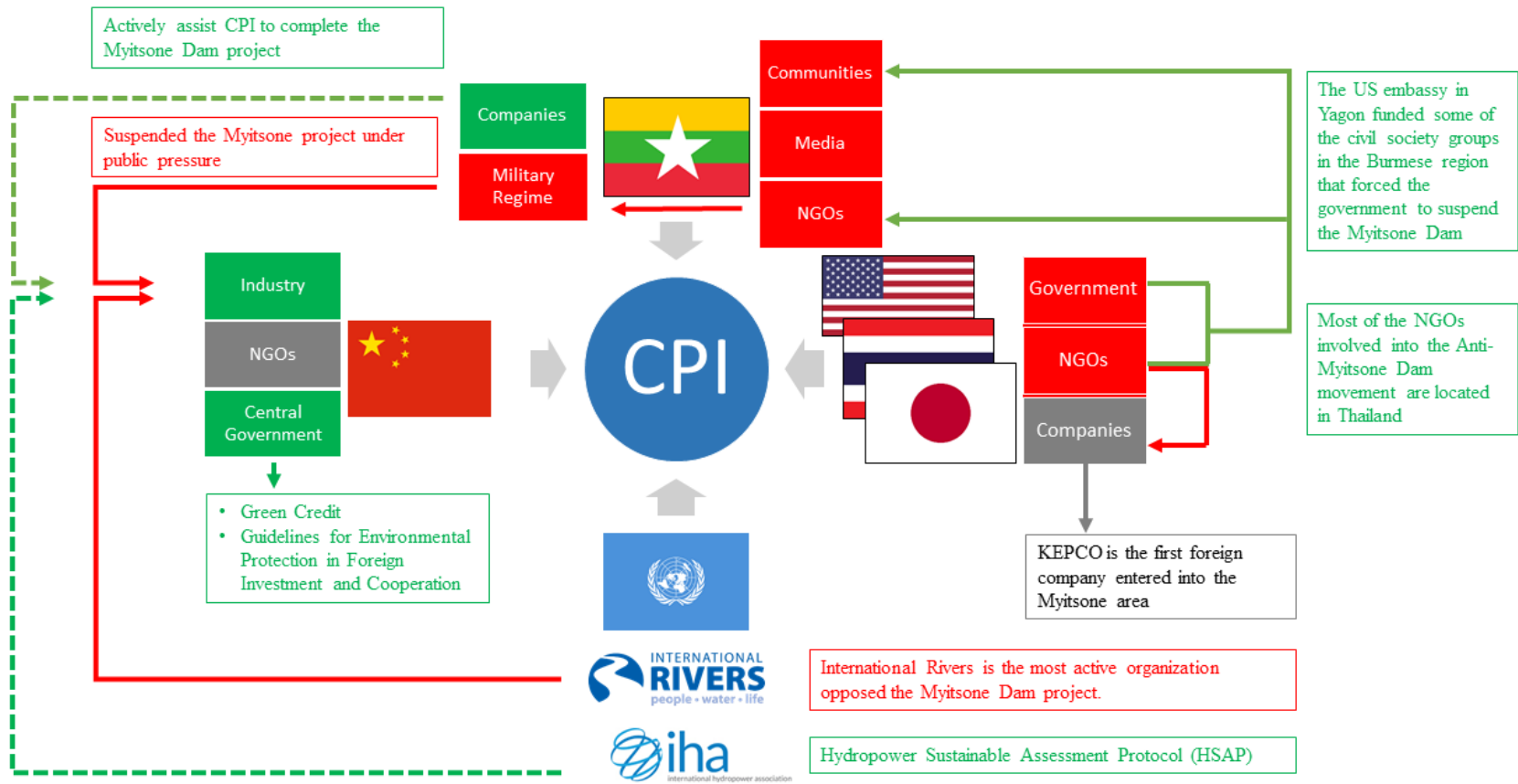


Fig. 6 The main relation links between major stakeholders from different levels in the Myitsone case

Not just in Myanmar, Chinese companies are heavily involved in the rest of Asia, Africa and Latin America. It doesn't matter if it is hydropower, mining, or agriculture. China should have a research process telling companies the state of global markets, where the opportunities are, what kind of cultures will be more receptive.

4. Conclusions

Companies in China are increasingly interested in overseas investment during the recent years. However, without a systematic approach to addressing OFDI, such overseas investment actions are often lack of proper guidance, hence caused a lot of negative environmental and social problems, especially in the host countries.

For Chinese investors, they must change the way focusing on the host country's upper government level before, but communicating with all stakeholders. Meanwhile, attach great importance to the host country's environmental laws and policies. They must carefully comply with the laws and policies in investment destinations. If the host country's legal system is weak, Chinese TNCs should actively adopt the higher environmental and social standards, and seek professional legal advice for environmental and social risk prevention. Not only comply with the laws of the country where the project is located, investors companies should also take the initiative to improve the standards they adopted in order to reduce the negative environmental and social impacts. For Chinese financial institutions, they must comprehensively evaluate the overall risks of the OFDI projects, especially the mining industry, due to the big potential reputational risk to banks and other financial institutions.

For the Chinese government, it should act as the regulator of Chinese OFDI actions, and incorporate the OFDI environmental and social risk management into the country's national environmental management system. The recently issued Guidelines for Environmental Protection in Foreign Investment and Cooperation by Chinese government will play an important role in guiding Chinese TNCs' overseas behaviors, but it is still not a mandatory constraint file. The Chinese government needs to further develop mandatory legal documents to regulate the behavior of Chinese enterprises' overseas actions.

Compared to international NGOs and British NGOs, the power of Chinese NGO is still weak now, but they can act as a bridge between Chinese investors and the local community in host countries. Chinese NGOs can also serve as an important third power (besides government and industry) to promote China's legislation of OFDI environmental and social risk management. In terms of this field, Chinese public media can play a similar role.

Overall, the conceptual matrix serves as an analytical tool that assists users in identifying the key players that have significant roles in affecting the environmental and social impacts of OFDI in host countries and understanding their influences on OFDI. Through the case study, it is clear that the created conceptual matrix provides systematic and fundamental analysis as a basis for users to understand the OFDI issue at hand. However, it eventually depends on the users to set the right targets, formulate strategies and make priorities based on their

organizational capacities in addressing environmental and social impacts of OFDI in host countries.

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Editors' Notes

The report contains synthesis reports, original research, case studies, and policy discussions presented or submitted by participants of Yale-WWF Workshop on Environmental and Social Risk Management of Chinese Transnational Corporations held at Yale University in April 2014, as well as research conducted by WWF and its partners. They are circulated to stimulate timely discussion and critical feedback and to influence ongoing debate on emerging issues. Some papers contained in the proceedings might be eventually published in another form and their content may be revised. The views expressed in this publication are solely of the authors' and do not necessarily reflect the views of Yale University and WWF.