

Merging Business and Human Rights in China: Still A Long Way to Go

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Bridging Human Rights Principles and Business Realities in Northeast Asia, Jefferson R. Plantilla (e), Vinlin Press Sdn Bhd, Malaysia, 2014, p.21-53.

The high-speed economic growth of China for more than three decades has lifted the economic condition of many of its people. Many Chinese business companies have developed into huge corporations that operate in different parts of China and the world. Modern facilities and infrastructures are now available in urban and other parts of the country; and many Chinese enjoy the comfort of modern living.

And yet, there is another side to this rosy picture of China. Its infamous sweatshops and environmental pollution problems, and the recent series of scandals involving substandard products, are some of the problems that have to be faced by a modernizing and developing China.

Respect for human rights by Chinese business companies is a new concept that has to be incorporated into the Chinese corporate culture amidst the continuing high-speed growth of Chinese industries. Ironically, the image of Chinese corporate irresponsibility may become the main driver for Chinese business to link its operations to human rights.

This paper presents a general map of the current legal and business issues in China that impact on human rights. It explains the expansion and development of the notion of corporate social responsibility in Chinese law, and the gap between law and practice. A case study on PetroChina Company Limited, one of the leading state-owned enterprises in China, presents efforts on improving its corporate social responsibility system and on using international framework on business and human rights in its operations. However, challenges concerning respect for human rights in its operations within China and overseas are prominent as well. Thus, there is a discussion on concrete measures with respect to specific human rights issues. Finally, based on the current situation, general comments on advancing human rights-based access to justice in business practices in China are provided at the last part of the paper.

Legal Policy

The 2004 amendments to the Constitution of the People's Republic of

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China include guarantees regarding private property¹ and human rights. Article 33 of the chapter on fundamental rights and duties of the Constitution provides: “The state respects and guarantees human rights.”²

The Chinese government sees these new constitutional provisions as a step towards Chinese democracy and a sign of recognition by the Communist Party of China (CPC) of the need for change in view of the rise of upper and middle classes, who want protection of their property, due to the booming Chinese economy. Then President Hu Jintao said that “these amendments of the Chinese constitution are of great importance to the development of China We will make serious efforts to carry them out in practice.”³

However, constitutional rights in China are not bases for legal action since constitutional court and judicial review mechanism do not yet exist. This is deemed to be the greatest defect of the Chinese legal system, showing gap between legal rhetoric and judicial practice. Nevertheless, the constitutional provisions on private property and human rights stipulate that the Chinese government shall endeavor to respect and promote the property and human rights of the individual. They form a strong constitutional basis supporting the development of link between business and human rights.

In 2009, the Chinese government adopted the National Human Rights Action Plan of China (2009-2010), a “document explaining the policy of the Chinese government with regard to the promotion and protection of human rights during the period 2009-2010, covering the political, economic, social and cultural fields.”⁴

The Plan explains the rationale for its adoption:

Since the founding of the People's Republic of China in 1949, under the leadership of the Communist Party of China, the Chinese government, combining the universal principles of human rights and the concrete realities of China, has made unremitting efforts to promote and safeguard human rights. Hence, the fate of the Chinese people has changed fundamentally, and China has achieved historic development in its efforts to safeguard human rights. It is worth mentioning that, since the introduction of the reform and opening-up policy at the end of 1978, China has enshrined respect for and

¹ Article 13 of the Constitution states: “The lawful private property of citizens is inviolable.”

² The full text of the Constitution is available at http://english.gov.cn/2005-08/05/content_20813.htm.

³ See Hu Jintao, *Honor Constitution's Guarantee for Citizens' Rights*, available at www.humanrights.cn/zt/magazine/200402004823153254.htm.

⁴ The Information Office of the State Council, or China's Cabinet, published the National Human Rights Action Plan of China (2009-2010) on 13 April 2009. Visit http://english.gov.cn/official/2009-04/13/content_1284128.htm.

protection of human rights in its Constitution as a major principle of government, and has taken effective measures to promote the cause of human rights, while enhancing the material and cultural life of the Chinese people and providing firm guarantees for their political, economic, cultural and social rights. Thus, a new chapter has opened in the history of the development of the cause of human rights in China.⁵

The Plan also states that:

[National and provincial governments] and government departments at all levels shall make the action plan part of their responsibilities, and proactively implement it in line with the principle of “each performing its own functions and sharing out the work and responsibilities.” All enterprises, public institutions, social and non-governmental organizations, press and media agencies, and the general public shall give vigorous publicity to this action plan, and expedite its implementation.⁶

In 2012, the Chinese government adopted the 2012-2015 National Human Rights Action Plan and explained that

[Th]e formulation of the National Human Rights Action Plan is an important measure taken by the Chinese government to ensure the implementation of the constitutional principle of respecting and safeguarding human rights. It is of great significance to promoting scientific development and social harmony, and to achieving the great objective of building a moderately prosperous society in an all-round way.⁷

Similar to the 2009-2012 Plan, the 2012-2015 Plan covers the following human rights:

I. Economic, Social and Cultural Rights

1. Right to work;
2. Right to basic living standards;
3. Right to social security;
4. Right to health;
5. Right to education;
6. Cultural rights;
7. Environmental rights;
8. Safeguarding farmers' rights and interests.

II. Civil and Political Rights

1. Rights of the person (against torture, illegal detention; regarding death penalty);
2. Rights of detainees;
3. Right to a fair trial;

⁵ The National Human Rights Action Plan of China (2009-2010), http://english.gov.cn/official/2009-04/13/content_1284128.htm.

⁶ Ibid.

⁷ The National Human Rights Action Plan of China (2012-2015), http://news.xinhuanet.com/english/china/2012-06/11/c_131645029.htm.

4. Freedom of religious belief;
 5. Right to be informed;
 6. Right to participate;
 7. Right to be heard;
 8. Right to supervise administrative and judicial processes.
- III. Rights of Ethnic Minorities, Women, Children, Elderly People and the Disabled
1. Rights of ethnic minorities;
 2. Women's rights;
 3. Children's rights;
 4. Senior citizens' rights;
 5. The rights and interests of the disabled.⁸

The 2011 assessment of the 2009-2010 Plan states, among other matters, that:

[O]ver the past two years, the National People's Congress and its Standing Committee have adopted 30 laws and resolutions closely related to human rights. By the end of 2010, China had enacted 236 laws, over 690 administrative laws and regulations, and over 8,600 local laws and regulations (all are currently in effect). A legal system with Chinese socialist characteristics has been basically established, covering all sectors of social life and all aspects of human rights protection.⁹

The National Human Rights Action Plan has become a basis for assessing the work being done by the Chinese government on human rights.

During the past two decades, a relatively integrated labor law system mainly consisting of the Labor Law (promulgated on 5 July 1994) and the Law on Employment Contracts (adopted at the 28th Session of the Standing Committee of the 10th National People's Congress on 29 June 2007, effective from January 1, 2008) has been adopted, along with the administrative regulations enacted by the State Council, and the ministerial rules and the judicial explanations of the Supreme People's Court on detailed rules concerning various aspects of employment.

The protection of labor rights has greatly improved in a general way during the past years, especially since violation of labor laws has become subject of judicial action.

Social Harmony Approach

⁸ Ibid.

⁹ *Assessment Report on the National Human Rights Action Plan of China (2009-2010)*, www.china.org.cn/china/2011-07/14/content_22989895_2.htm.

The Scientific Outlook on Development is one of the guiding socio-economic principles of the CPC. These socio-economic principles include scientific socialism, sustainable development, social welfare, humanistic society, increased democracy, and, ultimately, the creation of a Socialist Harmonious Society.

Since China faced increasingly serious social problems and continuously rising inequality due to rapid economic growth for almost twenty years, then President Hu decided as one of the main goals of his administration to fill the ideological vacuum left by China's leadership since Deng Xiao Ping's economic growth-oriented policies opened a conceptual gap with the orthodox Marxist-Leninist ideology. The "Scientific Outlook on Development" idea was therefore developed as a response to the problems by shifting the focus of the official agenda from "economic growth" to "social harmony." The idea was first embraced by the Third Plenary Session of the 16th Central Committee of the CPC, which convened in Beijing on 11-14 October 2003.

Subsequently, the Chinese government during the 2005 National People's Congress, adopted the "Socialist Harmonious Society" approach that officially changed China's focus from economic growth to overall societal balance and harmony. The idea is clearly visible in banners all over China.¹⁰ As a result, companies were pressured to consider corporate social responsibility in order to fulfill the new government approach.

In November 2008, then President Hu Jintao further suggested at the Asia-Pacific Economic Cooperation (APEC) Summit Meeting that "[E]nterprises should establish the concept of global responsibility, consciously incorporating social responsibility into business strategy, improving the business model, and therefore realizing the harmony between economic and social interests."¹¹ Consequently, under this political impetus, the National People's Congress enacted various laws and regulations concerning corporate social responsibility.

Relevant Laws

The Company Law

The 1994 Company Law has provisions on labor rights as seen in the following articles:

¹⁰ "China's Party Leadership Declares New Priority: 'Harmonious Society,'" *The Washington Post*, 12 October 2006, available at www.washingtonpost.com/wp-dyn/content/article/2006/10/11/AR2006101101610.html.

¹¹ "Hu Jintao Raised Lively Discussion by Talking About CSR on APEC Conference," see <http://chinawto.mofcom.gov.cn/article/by/ca/200812/20081205963465.shtml>

1. Article 15 - companies must protect the legal rights of employees, strengthen labor protection measures, and realize safe workplace; companies may through a variety of measures support employee education and training, and thereby improve the quality of employees;
2. Article 16 - employees can establish trade unions according to the law to engage in union activities and protect the legal rights of employees; companies shall provide necessary conditions to enable such activities.

The 1994 Company law was criticized for its inability to cope with the changing economy in China. Thus the National People's Congress (NPC) passed a new law on 27 October 2005 that comprehensive revised the 1994 Company Law. The new law, which took effect on 1 January 2006, takes into account social interests such as those of employees, consumers, creditors, local communities, environment, socially disadvantaged groups, and the general public.¹² Article 5 of the 2006 Company Law states that "in the course of doing business, a company must comply with laws and administrative regulations, conform to social morality and business ethics, act in good faith, subject itself to the government and the public supervision, and undertake social responsibility." The 2006 Company Law also stresses the importance of labor protection by providing that "the representative of the trade union may in accordance with the law enter into a collective agreement on behalf of employees with the company in respect of wages, work hours, welfare, insurance, labor safety, etc."¹³

Guide Opinion on the Social Responsibility Implementation for the State-owned Enterprises Controlled by the Central Government

In January 2008, the State-Owned Assets Supervision and Administration Commission of the State Council (SASAC) published the Guide Opinion on Social Responsibility Implementation for State-owned Enterprises Controlled by the Central Government (Guide Opinion).¹⁴ The Guide Opinion is regarded as an important legal document since it explicitly expresses its purpose of comprehensively implementing the "spirit of the 17th CPC National Congress and the Scientific Outlook on Development, and [giving] impetus to state-owned enterprises (SOEs) directly under the central government (CSOEs) to earnestly fulfill corporate social responsibilities, so as to realize coordinated and sustainable development of enterprises,

¹² Ibid., page 70, note 19.

¹³ Article 18 of the 2006 Company Law.

¹⁴ SASAC, Guanyu Zhongyang Qiye Lvxing Shehui zeren de Zhidao Yijian [The Guide Opinion on the Social Responsibility Implementation for the State-owned Enterprises Controlled by the Central Government], available at www.sasac.gov.cn/nl/180/ni566/n259760/n264851/3621925.html.

society and environment in all respects.”¹⁵

The Guide Opinion contains four parts. The first part emphasizes the significance of the CSR and why it is important for the CSOEs. There are four reasons listed for the CSOEs fulfilling CSR. First, CSR is a concrete measure of promoting the “socialist harmonious society”. Second, since the CSOEs are the backbone of China’s economy and have a vital bearing on national security, affecting people’s livelihood in every aspect, implementation of CSR is necessary for the CSOEs to meet public expectation. Third, CSR is an indispensable measure for realizing sustainable development, as it helps organizational creativity, corporate image, staff qualification and corporate cohesion. Fourth, fulfilling CSR is needed to enable the CSOEs to participate in the international economy and society, which is helpful in establishing a “responsible” public image of Chinese enterprises, and further spread an image of China as a responsible nation.

The second part concerns guidelines, requirements and principles in the implementation of CSR. The CSOEs are expected to be “good examples” for all Chinese enterprises during the process of developing “a harmonious and well-off society,” thus they are required to “integrate CSR into corporate reforms,” “implement CSR according to the practical situation of the country and their own circumstances,” and “highlight key issues and make concrete plan.”

The third part sets forth major contents of CSR, which include: 1) complying with laws and regulations, public ethics, commercial conventions, and trade rules; 2) capacity building on corporate governance for gaining sustainable profits; 3) improving product quality and service; 4) strengthening resource conservation and environmental protection; 5) promoting technological advancement; 6) assuring production safety; 7) protecting employee’s rights; and 8) engaging in charity work.¹⁶

In the fourth part, the Guide Opinion provides several measures to fulfill CSR. First, the CSOEs are encouraged to develop the CSR corporate culture by incorporating CSR into their work plans and daily business activities. Second, by identifying a department to cope with CSR affairs and gradually building a statistical index and assessment system, the CSOEs shall establish and improve system and mechanism for fulfilling CSR. Third, the CSOEs are required to build CSR information dissemination system and a regular communication and dialogue mechanism concerning CSR. Fourth, the CSOEs may need to research and learn good CSR practices from home and abroad. Fifth, the Communist Party of China (CPC) branches shall play the political core role in the CSOEs, while the mass

¹⁵ Ibid.

¹⁶ Ibid.

organizations including trade union, the Communist Youth League and the women's federation must also take part in creating a good environment for the enterprise to fulfill CSR.¹⁷ Overall, just like the majority policy documents in China, the Guide Opinion establishes some "broad but still vague"¹⁸ CSR principles for the CSOEs.

In addition, CSOEs ought to give top priority to ensuring work safety, safeguarding the legal interests of employees, and promoting career development of employees. These, as measures to build a harmonious relation between the enterprise and its employees, will also contribute to the China's undergoing program of building a harmonious society.

Through another separate release of the SASAC that explicitly explains the background information relating to the promulgation of the Guide Opinion, it is clear to see that the Guide Opinion was issued to meet the new global trend, namely, proliferation of CSR initiatives including the UN Global Compact, ISO 26000, and multinational companies' codes of conduct and sustainability report. However, as the spokesman of the SASAC stated, the CSR principles for the CSOEs should be in line with the international trend but also be consistent with the national and organizational reality in China.¹⁹

Laws Relating to Consumer Protection, Production Safety and Environmental Protection

1. Law on Consumer Protection

China has a set of laws on consumer protection including the Law on Protection of Consumer Rights and Interests, Product Quality Law, Food Hygiene Law, Drug Administration Law, Standardization Law, Anti-Unfair Competition Law, Advertising Law, Trademark Law, Regulation on Telecommunications, and Criminal Law. The Law on Protection of Consumer Rights and Interests constitutes the basic law on the issue, complemented by other laws and regulations for protecting the consumers.

However, rapid economic and social developments made this basic legal structure inadequate. China amended the Consumer Protection Law in 2013 with the NPC's *Decision on Revising the Consumer Protection Law* (Order No. 7 of the President) of 25 October 2013. The Decision, which took effect on 15 March 2014, improved the Consumer Protection Law by 1) Regulating the e-commerce industry;

¹⁷ Ibid.

¹⁸ Li-Wen Lin, Corporate Social Responsibility in China: Window Dressing or Structural Change, *Berkeley Journal of International Law* 28 (1) 2010, 73.

¹⁹ See SASAC, Press Release, Q&A between the SASAC Official and News Reporters, available at <http://www.sasac.gov.cn/n1180/n1566/n259760/n264866/3621552.html>, last visited 4 March 2014.

2) Strengthening the joint liabilities of false advertisement publishers and e-trade platforms; 3) Placing the burden of proof on service providers in the event of a dispute; 4) Imposing higher compensation; 5) Banning unauthorized disclosures of consumers' personal information; 6) Clarifying the role of consumer associations; and 7) Establishing a file to record illegal acts.²⁰ The new Consumer Protection Law has attempted to meet the current consumption patterns and structure and to cover new issues that emerged in recent years so as to enhance the consumer rights protection.

Production Safety Law

China has a set of laws on workplace safety and occupational health consisting of the Production Safety Law, Law on Safety in Mines, Mineral Resource Law, Coal Industry Law, Construction Law, Fire Prevention Law, Railway Law, and Port Law. These laws are supported by a large number of administrative regulations, departmental rules, and local decrees. Nonetheless, the situation relating to workplace safety and occupational health in China is grim. Although the industrial incident and death toll rates are gradually falling since the adoption of Production Safety Law in 2002,²¹ the absolute number of people who died and got injured in the workplace is still appalling.²² Critics point out that lack of specific rules supporting the implementation of the Production Safety Law makes its implementation more difficult in practice, as well as limits its function in regulating production systems. Also, the current legislation on production safety has more emphasis on management and service aspects rather than on measures to regulate and monitor production systems. Further, the implementation of the law is subject to the authority of several administrative departments and tends to put less importance on injury prevention, which also leads to inefficient and passive enforcement of the law.²³

Environmental Law

Environmental laws and regulations can be divided into six areas:

- 1) Pollution - Law on the Prevention and Control of Atmospheric Pollution, Law on the Prevention and Control of Water

²⁰ "China Amends Consumer Protection Law after 20 Years," *China Briefing News*, 8 November 2013, available at www.china-briefing.com/news/2013/11/08/china-amends-consumer-protection-law-after-20-years.html, last visited 4 March 2014.

²¹ Michael Lelyveld, *China Cuts Coal Death*, 25 February 2013, available at www.rfa.org/english/commentaries/energy_watch/coal-02252013105928.html, last visited 3 April 2014.

²² *Ibid.*

²³ Research Report on Corporate Social Responsibility of China 2010 (*Zhongguo Qiye Shehui Zeren Yanjiu Baogao*), Social Science Academic Press (CHINA). PDF version available at <http://www.cass-csr.org/xiazai/bluebook2010.pdf>.

- Pollution;
- 2) Natural resources - Law on the Protection of Wildlife, Forest Law;
 - 3) Ecological protection - Water and Soil Conservation Law, Law on Prevention and Control of Desertification;
 - 4) Civil nuclear power - Regulation on the Supervision and Management of Civil Nuclear Safety Equipment, Regulation on Emergency Measures for Nuclear Accidents at Nuclear Power Plant;
 - 5) Environmental management - Law on Environment Impact Assessment, Measures for the Administration of Rates for Pollutant Discharge Fees;
 - 6) Ratified international agreements - Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, and the Convention on Biological Diversity.

Scholars agree that environmental laws constitute the most active and rapidly developing components of the Chinese legal system.²⁴ The irony is that China is still notorious for its environmental crisis that severely affects its biophysical environment as well as human health. The Chinese government has acknowledged the problems and responded in various ways including enacting these laws and regulations; but results show very little improvement in the situation.

Corporate Social and Environmental Disclosure

Corporate social and environmental disclosure has become an important component of the CSR implementation package, particularly in some developed countries. Following this trend, the Chinese government launched several CSR disclosure initiatives. In 2007 the State Environmental Protection Administration (SEPA, now the Ministry of Environmental Protection of China) promulgated a trial edition of the Regulation on Environmental Information Disclosure (Regulation).²⁵ The Regulation mandates environmental agencies and heavy-polluting enterprises to disclose certain environmental information to the public.²⁶

The two Chinese stock exchanges, the Shenzhen and Shanghai Stock Exchanges, took actions to promote CSR disclosure. In 2006 the Shenzhen Stock Exchange released the *Guide on Listed Companies' Social Responsibility* (Shenzhen Guide) in order to achieve scientific development, build a harmonious society, advance toward economic and social sustainable development, and promote corporate social

²⁴ Ibid.

²⁵ See *Huanjing Xinxi Gongkai Banfa* [the Regulation on Environmental Information Disclosure], Order No. 35 (2008) of the Ministry of Environmental Protection of the People's Republic of China.

²⁶ Ibid.

responsibility.²⁷ A year after the release of the Shenzhen Guide, twenty listed companies in the stock exchange published separate CSR reports along with their 2006 annual reports.

Following the Shenzhen Stock Exchange, in May 2008 the Shanghai Stock Exchange issued its *Guide on Environmental Information Disclosure for Companies Listed on the Shanghai Stock Exchange* (Shanghai Guide) and *Notice on Strengthening Social Responsibility of Listed Companies* (Notice). In December 2008, the Shanghai Stock Exchange further accelerated the development of corporate social and environmental disclosure by mandating three types of listed companies to publicize CSR including companies that are listed in the Shanghai Stock Exchange Corporate Governance Index, those that list shares overseas, and those in the financial sector.²⁸ According to the data released by the Shanghai Stock Exchange, there were two hundred ninety listed companies publishing CSR report for the 2008 fiscal year. According to Syntao, a leading sustainability consulting company in China, in 2012, 1,722 Chinese companies issued CSR report, among which 22.6 percent of CSOEs released CSR report compared to only 9.4 percent of private companies, suggesting that this trend is being driven by central government influence on SOEs.²⁹

Apart from the guidelines promoted by the two Chinese Stock Exchange, in 2007 the securities regulatory agency of Fujian Province issued a regulatory instruction requiring listed companies incorporated in the Fujian jurisdiction to publish an annual CSR report along with the annual financial report. It further issued a more concrete guide for the listed companies implementing the CSR in 2008. The regulatory agency also urged listed companies to sign CSR declarations, and launched a training conference to educate listed companies on how to conduct CSR, and so on.³⁰

Socially Responsible Investing and Environmentally Responsible Financing

An analysis approach, the so-called “socially responsible investing”

²⁷ See Article 1 of the Shenzhen Guide.

²⁸ See Li-Wen Lin, “Corporate Social Responsibility in China: Window Dressing or Structural Change,” in *Berkeley Journal of International Law* 28 (1) 2010, 77. Also see *Shanghai Zhengquan Jiaoyisuo guanyu Zuohao Shangshi Gongsi 2008 Nian Luxing Shehui Zeren de Baogao ji Nebu Kongzhi Ziwo Pigu Baogao Pilou Gongzuo de Tongzhi* [The Shanghai Stock Exchange's Notice Concerning Listed Companies' Implementation of Corporate Social Responsibility Reporting and Internal Control Self-Evaluation Reporting in 2008], 4 December 2008.

²⁹ Syntao, *A Journey to Discover Values 2012-2013: A study of CSR Reporting in China*, 2013.

³⁰ Ibid. See also Chuanzhong Yang & Yochuan Zhang, “All the Listed Companies Incorporated in the Fujian Province Publish CSR Reports,” *Shanghai Securities Post*, 23 May 2008, print and electronic versions available at http://paper.cnstock.com/paper-new/html/2008-05/23/content_61852450.htm.

(SRI) that suggests that investment analysis should include social and environmental factors, has emerged in China. In 2006 and 2008, the Bank of China and the Industrial Management Company launched their first SRI Funds to international and domestic investors respectively.³¹ Since 2008, the securities information companies and the Stock Exchange also launched several indexes concerning environmental protection and social responsibility.³²

Moreover, the Chinese government recently began to use financial channels to improve corporate environmental performance. The SEPA, the Bank of China, and the China Banking Regulatory Commission (CBRC) promulgated a joint document, "Opinion on Enforcement of Environmental Law and Prevention of Credit Risk," encouraging Chinese banks to incorporate corporate environmental performance into credit assessment.³³ Along with the release of the Opinion, the SEPA immediately initiated the green loan program by blacklisting thirty enterprises on account of their serious environmental violations and reporting the information to the credit management system of the Bank of China.³⁴

In addition to the green credit scheme, the SEPA coordinated with the China Securities and Regulatory Commission (CSRC) to issue a series of measures generally called "green securities."³⁵ Under the green securities scheme, companies in the thirteen high-pollution and high-energy-consumption industries are subject to environmental performance reviews when applying for initial public offering (IPO) or refinancing. Some large companies, including the China Coal Energy Corporation, the second-largest coal producer by output in China, failed their first IPO applications due to failure to strictly implement environmental impact evaluation and other measures relating to environmental protection required by law.

³¹ Ibid., page 79.

³² Ibid.

³³ Ibid. See also *Guanyu Luoshi Huanbao Zhengce Fagui Fangfan Xindai Fengxian de Yijian* [The Opinion on Enforcement of Environmental Law and Protection of Credit Risks], Huanfa (2007) No. 108 [The Document of Ministry of Environmental Protection (2007) No. 108].

³⁴ Ibid., page 80. See also Attachment 2 in the Press Release of Ministry of Environmental Protection of the People's Republic of China, *Huanbao Zongju Shoudu Lianshou Renmin Yinhang Yinjianhuiyi Lvse Xindai Ezhi Gao haoneng Gao Wuran Hangye Kuozhang* [The Ministry of Environmental Protection coordinated with the People's Bank of China, the China Banking Regulatory Commission to Suppress the Expansion of Pollution-Heavy and High-Energy-Consumption Industries through the Use of Green Credit], Press Release, July 30, 2007, available at http://news.xinhuanet.com/newscenter/2007-07/30/content_6451563.htm.

³⁵ Ibid. See also *Guanyu dui Shengqing Shangshi de Qiye he Shengqing Zairongzi de Shangshi Qiye Jinxing Huanjing Baohu Hecha de Tongzhi* [Notice Concerning the Environmental Checks on IPO Application by Companies or Re-Financing Applications by Listed Companies], SEPA [2003] No. 101, available at www.sepa.gov.cn/info/gw/huangfa/200306/t20030616_85622.htm.

Grievance Mechanisms

China has laws that provide legal bases for the operation of judicial grievance mechanisms. For example, Article 2 of the Civil Procedure Law states that it:

aims to protect the exercise of the litigation rights of the parties and ensure the ascertaining of facts by the people's court, distinguish right from wrong, apply the law correctly, try civil cases promptly, affirm civil rights and obligations, impose sanctions for civil wrongs, protect the lawful rights and interests of the parties, educate citizens to voluntarily abide by the law, maintain the social and economic order, and guarantee the smooth progress of the socialist construction.

The Criminal Procedure Law aims to "... protect the citizen's personal rights; their property rights, democratic rights and other rights..."

However, the court system in China has various problems that hinder ordinary people's access to justice. Financial and human resources supporting the operation of the courts are not evenly available in urban and rural areas; with the urban areas receiving more resources. The court system also suffers from several problems that required the CPC Central Committee to issue a communiqué to overhaul the judicial system in order to "uphold the constitution and laws, deepen reforms in administrative law enforcement and ensure independence and fairness in prosecuting bodies and courts, as well as to improve judicial practice and protection of human rights."³⁶

Petition System

Since the court system could not successfully resolve the rising number of conflicts and meet public expectation, people with grievances may seek justice through other means, such as filing petitions to government authorities (*Xinfang*).

Under this system, the State Bureau for Letters and Calls (*guojia xinfang ju*) and local bureaus for letters and calls (petition bureaus) are commissioned to receive letters, calls, and visits from individuals or groups regarding suggestions, complaints, and grievances.³⁷ The officers then channel the issues to respective departments and monitor the progress of the settlement process, which they feedback to the parties involved.

³⁶ Xinhua, "China to overhaul judicial system: communiqué," 12 November 2013, www.chinadaily.com.cn/china/2013cpctps/2013-11/12/content_17100078.htm.

See also Wong Kai Shing, *CHINA: Reforming China's Judiciary*, www.hrsolidarity.net/mainfile.php/2000vol10no06/555/, last visited 11 April 2014.

³⁷ 国家信访局 (*Guojia Xinfang Ju*), <http://www.gjxfj.gov.cn>, last visited 11 April 2014.

Petition bureaus are ostensibly a communication channel between the government and the citizenry. Petitioners may seek justice through the local petition bureaus. However, if people felt that justice has eluded them, they often travel to Beijing as a last resort to appeal to national government leaders following an age-old tradition.

Not counting those who remained at provincial capitals, the number of petitioners in Beijing alone has allegedly reached more than 100,000. Official statistics indicate that during 2003-2007 period petition offices annually handle around ten million inquiries and complaints.³⁸ However, despite its enduring nature and political support, the petition system has never been an effective mechanism to resolve the complaints brought to it. In practice, petitions that bypass local authorities have been viewed as a source of unrest. The nationwide petition system, or more accurately, the nationwide failure of the petition system, put the Party's claimed highest priority – social stability and harmony – at risk and caused grave concern to the national government. A 2005 Regulations attempted to compel local officials to improve their system of assisting petitioners and thus reduce the number of petitioners seeking help in the capital. The 2005 Regulations link the performance of officials in handling petitions with the overall assessment of their work. The Regulations provide for the punishment of government officials who fail to use the legal and administrative procedures properly; improper conduct takes the form of inappropriate intervention by local governments, arbitrary detention, and other human rights violations.

Labor grievance mechanism

While the Labor Law, the Law on Employment Contracts, the administrative regulations enacted by the State Council, the ministerial rules, and the judicial explanations of the Supreme People's Court have contributed to the protection of labor rights, the real situation in the factories regarding labor protection is still grim. According to a report of China Labor Watch, many employers do not sign labor contracts with workers in good faith. Workers are normally not properly informed about the details of the labor contract before signing. Under Article 26 of the Law on Employment Contracts, “in the event that the agreed terms of the contract are violated, changed, or subjected to fraud, coercion, or otherwise exploited on the behalf of one party, the contract shall be rendered wholly or partially invalid.” But even the favorable terms in labor contracts would have not much use to workers. When injured while at work, they may fail to claim compensation for the injury as guaranteed in the labor contract, because of lack of awareness of this legal right. In many cases,

³⁸ Li Huizi and Zhou Erjie, “China's public complaint department busiest office in Beijing,” Xinhua News Agency, 2 September 2007, www.chinadaily.com.cn/china/2007-09/02/content_6142475.htm, last visited 11 April 2014.

workers have labor contract with labor dispatch agencies. As a result, the factories may arbitrarily refuse to accept the workers, leading to loss of job security.³⁹ Considering that the All China Federation of Trade Unions (ACFTU) has not become the legitimate agency representing all workers, especially rural migrant workers, many workers face serious obstacles in settling their grievances.

International Human Rights Obligations

China has ratified (or acceded to) the following major international human rights instruments:

Table 1. Human Rights Treaties Ratified/Acceded to by China⁴⁰

Human Rights Treaties	Date of ratification/accession
1. Convention on the Elimination of All Forms of Discrimination against Women (1980);	1980
2. International Convention on the Elimination of All Forms of Racial Discrimination	1981a
3. Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	1988
4. Convention on the Rights of the Child	1992
5. International Covenant on Economic, Social and Cultural Rights	2001
6. Convention on the Rights of Persons with Disabilities	2008

It also ratified four of the eight fundamental International Labour Organization (ILO) Conventions:

Table 3. Status of Ratification of ILO Conventions - China

Freedom of Association and the Effective Recognition of the Right to Collective Bargaining		
C087	Freedom of Association and Protection of the Right to Organise Convention, 1948	<i>Not ratified</i>
C098	Right to Organise and Collective Bargaining Convention, 1949	<i>Not ratified</i>
Elimination of All Forms of Forced and Compulsory Labour		
C029	Forced Labour Convention, 1930	<i>Not ratified</i>
C105	Abolition of Forced Labour Convention, 1957	<i>Not ratified</i>

³⁹ Tragedies of Globalization: The Truth Behind Electronics Sweatshops, see www.chinalaborwatch.org/pro/proshow-164.html, last visited 28 April 2014.

⁴⁰ See Ratification Status for China, United Nations, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=36&Lang=EN.

Effective Abolition of Child Labour		
C138	Minimum Age Convention, 1973	Ratified
C182	Worst Forms of Child Labour Convention, 1999	Ratified
Elimination of Discrimination in Respect of Employment and Occupation		
C100	Equal Remuneration Convention, 1951	Ratified
C111	Discrimination (Employment and Occupation) Convention, 1958	Ratified

Note: Data taken from Normlex – Ratification by Country, www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103404

Response to International Initiatives

The United Nations' Global Compact was formally introduced in China through a high level meeting in Beijing in December 2001, hosted by the China Enterprise Confederation (CEC) with the cooperation of United Nations agencies including the United Nations Development Programme (UNDP) and the Global Compact office. In the following year, a meeting was held in Xi'an to introduce the Global Compact to members of CEC.

Since its launch, the Global Compact Local Network China has continuously been developing and expanding. In 2004, the CEC established an office to promote the Global Compact. In 2009, with the introduction of a new policy on network agreement, the Global Compact Office signed a memorandum of understanding with Beijing Rongzhi CSR Institute to serve as its China network for 2009 and 2010. In 2011, the Global Compact Network China was re-constituted to establish a governance board to better serve all participants in China with a more structured management system. Mr. Fu Chengyu, Chairperson of Sinopec Group and board member of the Global Compact was elected as the first chairperson of the Board of the Global Compact Network China. The secretariat of the Global Compact Network China is now located at CEC. In recent years, a large number of both state-owned and private companies have joined the initiative; so far, the total number of Chinese participants of the Global Compact has been over three hundred companies.

Prior to Rio+20 conference in June 2012, the Global Compact Office, in partnership with the Chinese media Tencent, produced a series of high-level interview and dialogue programs in support of this historic meeting. The dialogue program, "UN Global Compact Dialogue: CSR Champions from China" featured ten leading chief executive officers (CEOs) from the most active Global Compact participants in China. It highlighted the innovative sustainability solutions from SINOPEC, China Development Bank, COSCO, Baosteel Group, China Minmetals Corporation, China Southern Power Grid, Broad Group, ZTE, Juneyao Group, and Vanke Group.

The United Nations Global Compact, the Global Compact Local Network China, the Global Business Initiative on Human Rights, the Principles for Responsible Investment (PRI) and Tsinghua University School of Economics and Management jointly organized on 15-16 April 2013 a conference for business executives on “Sustainable Business in the Global Context: Rights, Risks and Responsibilities” in China. The conference “demonstrated that many Chinese companies are exploring how to better align their operations with the Global Compact’s ten principles and deepen their engagement on human rights issues.... [while] Chinese business representatives shared with foreign business leaders their experiences on how they respect and support the UN Global Compact principles in all countries of operation.” The United Nations Global Compact report states that the “conference helped to build the business case for corporate respect for human rights in global operations – in alignment with both the UN Global Compact principles and the UN Guiding Principles – and highlighted practical ways in which companies can respect and support human rights.”⁴¹

ISO 26000

Supply chain companies are another industrial force that can encourage Chinese organizations to adopt CSR practices. Transnational corporations are typically under pressure from their stakeholders to adopt specific CSR principles and policies. As a result, incorporating CSR into supplier sourcing decisions are practices that would diffuse CSR policies throughout Chinese organizations. For example, major automotive manufacturers for years have required that Chinese suppliers have ISO 14001 environmental management system standards. A new ISO business standard, ISO 26000, introduced in 2010, provides guidelines for social responsibility. It can be expected that supply-chain partner requirements for achieving this standard will closely follow the same diffusion path as ISO 14001 and ISO 9000 standards.

These standards do not guarantee better CSR performance, but at least they provide assurance that the systems will be in place to help organizations improve their CSR management. It should also be noted that certain practices used by companies in the supply chain have had an impact on other social practices, such as the elimination of child labor and the payment living wages.

⁴¹ See *Chinese Companies Address Responsible Business in High-Risk Areas and Human Rights*, United Nations Global Compact, <http://unglobalcompact.org/news/321-04-17-2013>.

Issues Involving Companies

While the Chinese top-down governance system has the advantage of rapid policy and regulatory framework adoption, it does not necessarily lead to better corporate practice owing to lack of supervisory mechanism and high monitoring cost.⁴² This is seen in several cases in recent years.

Environmental issues

China's environmental crisis is one of the most pressing challenges to emerge from the country's rapid industrialization. Its economic rise, which has averaged around 10 percent annual gross domestic product (GDP) growth for the past decade, has come at the expense of its environment and public health. Mainly due to the industrial misbehavior, the people have been forced to face the following environmental catastrophes on a daily basis:

1. Air Pollution

There have been reports on daily air pollution index in Beijing surpassing the 300 threshold; and a reading above 500 was no longer unusual in recent years. This alarming situation is being blamed on manufacturing industries around the city, the five million-plus cars in the city, and probably as the primary cause on the “coal-burning electrical plants that power China's breakneck economic growth.” Beijing, however, is not China's worst pollution case; “Ürümqi in the western part of the country along with other Chinese cities like Lanzhou and Linfen appear on the list of the world's most polluted places.”⁴³

2. “Cancer Villages”

Research by Chinese experts on the “high rate of stomach, liver, kidney and colon cancer in certain areas, usually adjacent to heavy industrial complexes”⁴⁴ in the so-called “cancer villages.”⁴⁵

In Shangba in southern Guangdong province, a river's “flow ranges from murky white to a bright shade of orange” due to cadmium, lead,

⁴² Chris Marquis and Yang Chen, “Environmental reporting in China still likely to be greenwash,” *China Dialogue*, available at www.chinadialogue.net/article/show/single/en/6543-Environmental-reporting-in-China-still-likely-to-be-greenwash.

⁴³ Marc Lallanilla, “China's Top 6 Environmental Concerns,” *China Environment - Live Science*, 15 March 2013, www.livescience.com/27862-china-environmental-problems.html, last visited 3 April 2014.

⁴⁴ Ibid. See also “China acknowledges ‘cancer villages,’” BBC News, www.bbc.com/news/world-asia-china-21545868, last visited 3 April 2014.

⁴⁵ Shan Juan and An Baijie, “Study reaffirms ‘cancer villages,’” *China Daily*, http://usa.chinadaily.com.cn/china/2013-08/08/content_16878735.htm.

indium and zinc and other metals suspected to come from an upstream mining site. These contaminants are known to cause cancer.⁴⁶

Apart from these problems, water pollution, desertification, and loss of biodiversity are also at stake but the government has barely started to acknowledge them.⁴⁷

Labor rights

There is a clear gradual drop in the rate of deaths in the workplace during the 2003-2011 period as shown in Figure 1. Labor laws obligate employers to protect labor rights regarding compensation, working hours, leave and rest, occupational safety and hygiene, insurance and welfare, training, etc. However, just like other laws in China, the implementation of the labor laws is weak and uneven among cities and rural areas.

Figure 1. Workplace Fatalities in China - 2003-2011⁴⁸



Another prominent issue that seriously hinders workers’ welfare and rights is freedom to organize. While right to strike and freedom to organize a labor union are legally recognized, their exercise is discouraged in practice. The All China Federation of Trade Unions (ACTU) is China’s sole official union. It used to be an adjunct of the CCP and the government, serving as a “bridge” between workers and management in the state-owned enterprises (SOEs). With economic reforms and development of the private sector of the economy over the past twenty years, ACTFU’s role has been blurred. It has sought to unionize the workers in the private sector but has failed thus far to encourage the development of genuinely representative grassroots

⁴⁶ China's "cancer villages" bear witness to economic boom, Reuters, www.reuters.com/article/2009/09/17/us-china-pollution-cancer-idUSTRE58G00T20090917, last visited April 3, 2014.

⁴⁷ Lallanilla, op. cit.

⁴⁸ For more information see 中国安全生产网 (Zhongguo Anquan Shengchan Wang), www.aqsc.cn.

unions.⁴⁹ Rarely consulting the workers, ACTFU adopted a top-down approach by imposing the establishment of unions and acceptance of collective contracts. Many labor activists and scholars criticized this approach. Some of them decided to undertake pilot projects and test cases regarding collective bargaining and institutional reform believing the goodwill and open mind of ACTFU and local trade unions leaders. Yet it is too early to say that ACTFU would play a more significant role in representing workers, especially migrant workers who are more disadvantaged and generally marginalized by the formal trade union system.

Consumer's Rights and Production Safety

While China has enacted laws and regulations on consumer's rights and production safety, scandals concerning these issues have frequently occurred. Local protectionism, i.e., protection of bad practices of companies instead of public welfare for the sake of the high local government revenue and local government officials' achievement record, lead to poor implementation of the laws.

One of the most infamous scandals in food safety is the 2008-tainted milk case. The news broke in July 2008 after sixteen infants in Gansu Province, who had been fed with milk powder produced by Shijiazhuang-based Sanlu Group, were diagnosed with kidney stones.⁵⁰ Government inspection found that problems on milk products existed not only in Sanlu Group (a market leader in the low priced milk market), but also in twenty-one other milk companies, including famous brands such as Arla Mengniu, Yili, and Yashili.⁵¹ By November 2008, China reported an estimated 300,000 victims, with six infants dying from kidney stones disease and other kidney damage, and an estimated 54,000 babies being hospitalized. The chemical used (Melamine) seemed to have been added to milk to have an artificial higher protein content.

The issue raised a wide range of concerns about food safety and political corruption in China, and damaged the reputation of China's food exports, with at least eleven countries stopping all imports of Chinese dairy products. The World Health Organization referred to the incident as one of the biggest food safety cases it had dealt with in recent years, and that the crisis of confidence among Chinese consumers would be hard to overcome.⁵²

⁴⁹ See "All China Federation of Trade Union," *China Labor Bulletin*, www.clb.org.hk/en/category/all-china-federation-trade-unions, last visited 11 April 2014.

⁵⁰ Tania Branigan, "Chinese figures show fivefold rise in babies sick from contaminated milk," *The Guardian*, 2 December 2008.

⁵¹ "China seizes 22 companies with contaminated baby milk powder," Xinhua News Agency, 16 September 2008.

⁵² Lisa Schlein, "China's Melamine Milk Crisis Creates Crisis of Confidence," *Voice of*

Several people faced criminal charges, and were given death and other penalties. Two people were executed, one got a suspended death penalty, and others received either life sentence or fifteen-year jail terms. Several local government officials, as well as the Director of the Administration of Quality Supervision, Inspection and Quarantine were forced to resign.⁵³

In the context of central government-driven responses, bottom-up efforts to access justice were discouraged, or even suppressed. A group of ninety lawyers from Hebei, Henan and Shandong provinces—the three worst affected places—that provided *pro bono* services to the victims of tainted milk, and whose members' names were published in the newspapers, came under pressure from government officials to refrain from getting involved in the issue. The Beijing Lawyers' Association, a part of the Communist Party apparatus, asked its members "to put faith in the party and government." Government authorities fear social unrest would rise if lawsuits were unleashed.⁵⁴ An official said that the central government had issued instructions placing the cases on hold, pending a decision on how to handle the cases in a unified manner. Furthermore, a court was instructed not to give any written reply or accept Sanlu-related cases in the meantime.⁵⁵

Case Study

PetroChina Company Limited (PetroChina) is a joint stock company with limited liability under the Company Law of the People's Republic of China. It was established in 1999 as part of the restructuring of the China National Petroleum Corporation.⁵⁶ It is the largest oil and gas producer and seller in the country's oil industry, and one of the leading oil companies in the world.⁵⁷ Its primary business includes, but not limited to, "exploration, development and production of crude oil and natural gas refining, transportation, storage and marketing of crude oil and oil products, as well as production and marketing of basic, derivative and other chemical products; and transportation and

America, 26 September 2008.

⁵³ "Crisis management helps China's dairy industry recover". Xinhua News Agency. 23 September 2008.

⁵⁴ Ng Tze-wei, "Lawyers warned to shun milk suits". *South China Morning Post*, 23 September 2008.

⁵⁵ Sky Canaves, Juliet Ye and Kersten Zhang, "Hong Kong Adds Tests For Melamine in Food," *The Wall Street Journal*, 31 October 2008.

⁵⁶ PetroChina, *2013 Sustainability Report*, page 6, www.petrochina.com.cn/Ptr/Society_and_Environment07/Social_Responsibility/Annual_Report_2011, page 2, www.petrochina.com.cn/Resource/pdf/xwygg/E_PetroChina%20-%202011%20annual%20report.pdf.

⁵⁷ *Annual Report 2011*, page 2.

marketing of natural gas.”⁵⁸

The controlling shareholder of the PetroChina is the state-owned enterprise China National Petroleum Company.⁵⁹ PetroChina has expanded its business in many countries and regions of the world, in cooperation with other leading energy companies. It implements the Rumaila Project in Iraq in cooperation with BP. It also has huge investments in Asia, Africa, and Australia; and has acquired other big related companies (Bow Energy Limited, for example).

The oil industry is capital and technology-intensive industry with several components: crude oil market; product oil market; chemical market; and gas market. These markets cover wide areas and have a tremendous impact on the national economy and national life. Due to the large demand for funds and technology, as well as the concentration of crude oil resources in a few countries and regions, international competition among oil companies is fierce.⁶⁰

Corporate Human Rights Initiatives

PetroChina has no specific department dealing with human rights affairs; however it has human rights initiatives, and tries to address human rights issues under its “sustainable development”, “people oriented approach,” and corporate social responsibility programs. It established the Health, Safety and Environment Committee under its Board of Directors to make policies related to environmental rights, labor rights, and indigenous people’s rights.

PetroChina adheres to the “people oriented” concept, “respect[s] and maintain[s] the legitimate rights of [its] employees to promote the localization and integration of diverse cultures, make[s] efforts to solve the problems of great concern to employees.... [and] aim[s] to guarantee that all employees can share in the achievement of corporate development.”⁶¹ It also proclaims its strict adherence to the Chinese Labor Law and the Labor Contract Law, as well as the “regulations of the jurisdictions where [its] shares are listed.”⁶²

Moreover, PetroChina initiates special initiatives addressing environmental and labor rights. It incorporated the concept of “caring for life and protecting the environment” into its organizational culture,

⁵⁸ 2013 Sustainability Report, page 7.

⁵⁹ Annual Report 2011, page 14.

⁶⁰ Translated materials from Petroleum Intelligence Weekly, the World Top 50 Petroleum Companies in 2011, see <http://wenku.baidu.com/view/4bc74b7c31b765ce050814de.html>.

⁶¹ See *Sustainability Report 2011*, PetroChina Company Limited, page 43, www.petrochina.com.cn/Resource/Petrochina/img/2012bg/2011kcxbg-en.pdf.

⁶² Ibid.

and proclaimed that it had always strived to be an environmentally friendly enterprise.⁶³

It adopted several codes of conduct and standards pertaining to human rights, including the Health, Safety and Environment Management System (HSE), and formulated or revised thirty-two HSE standards to protect environmental and labor rights.⁶⁴

It conducts the Hazard and Operability Analysis for new projects and in the expansion of projects. It established strict environmental protection examination system and implements HSE assessment to avoid violations of environmental and labor rights.⁶⁵

It established an employment management system on labor contracts, insurance and other social benefits, vocational training, and vacation. It proclaimed its commitment to provide equal opportunities and fair treatment to all employees regardless of their nationality, ethnicity, race, gender, religion and culture; prohibited the employment and use of child labor; and resisted all forms of forced labor.⁶⁶

PetroChina implements the Occupational Disease Prevention Law, and standardizes employees' occupational health surveillance, organizes physical check-ups for employees, contractors and temporary workers who are exposed to hazards.⁶⁷

It has been publishing its annual Sustainability Report since 2006, which provides information on how PetroChina complies with its social responsibility, including the responsibility to respect human rights. It refers to the *Guideline on Preparing the Report on Performance of Corporate Social Responsibility* by the Shanghai Stock Exchange and other international guidelines. As a participant in the UN Global Compact, it presents its progress on compliance with the Ten Principles and submits reports to the UN Global Compact that are uploaded onto the latter's website.⁶⁸

It participates in many multi-stakeholder initiatives on human rights. For example, it participated in the Global Compact Leaders Summit and UN Global Compact High Level Forum China and submits Communication on Progress (COP). It also participated in the 23rd Annual Meeting of Natural Gas Technology Committee of International Standardization Organization, and a series of other events on international environmental standardization. Besides, it held various

⁶³ Ibid., pages 25 and 7 respectively.

⁶⁴ Ibid., pages 25-26.

⁶⁵ Ibid., pages 26 and 28.

⁶⁶ Ibid., page 43,

⁶⁷ Ibid., page 45.

⁶⁸ Ibid., page 9.

forms of dialogues on external concerns.⁶⁹

PetroChina has been praised by some civil society organizations for its CSR commitment. According to the Corporate Social Responsibility Survey of Hang Seng Index Constituent Companies 2009 released by Oxfam, PetroChina earned the maximum number of points in the stakeholder engagement section,⁷⁰ and was No. 9 in the CSR strategy and reporting section.⁷¹

UN Framework

As earlier discussed, PetroChina adopted guiding principles addressing labor rights, environmental rights, rights of migrant workers and their families, as well as stated emphasis on right to equal pay for equal work, equal rights, freedom from discrimination, the abolition of slavery and forced labor, safe working environment rights, abolition of child labor, the right to work, life, liberty and the right to security, physical and mental health, accessibility to health services, and social security. These are all in line with the UN Framework.⁷²

And yet, PetroChina still lacks unified and specialized guiding principles and norms of behavior concerning human rights protection. It also does not stress freedom of association/organization, participation in collective bargaining, the right to peaceful assembly, among others.

PetroChina should take more active steps to understand the impact on human rights of its present and proposed activities. Such assessment of human rights impacts should be based on international human rights standards. PetroChina focuses more on assessment of impacts on environmental rights, and to a certain extent on labor rights. Its assessment of social impact is not enough, especially since there is no clear and systematic assessment of such impact based on international human rights standards.

Although a Health, Safety and Environment Committee established under the Board of Directors of PetroChina reflects the company's concern for human rights issues to some degree, respect for human rights does not appear as one of the company's values and no such

⁶⁹ *ibid.*

⁷⁰ See Oxfam, Corporate Social Responsibility Survey of Hang Seng Index Constituent Companies 2009, www.oxfam.org.hk/filemgr/1076/HSI2009_en.pdf.

⁷¹ *Ibid.*

⁷² See "Annex - Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework," *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie*, A/HRC/17/31, 21 March 2011.

statement appears in its Code of Conduct. It has carried out training on occupational safety and environmental pollution prevention, but no systematic human rights training has been held.⁷³

Although PetroChina monitors and tracks human rights practice by releasing the annual corporate social responsibility report and the Sustainability Report, it does not have specialized and unified human rights monitoring and tracking procedures.

Therefore, while PetroChina has fulfilled to a certain degree its responsibility to respect human rights, a considerable part of its system assisting the performance of such responsibility needs improvement.

Human Rights Issues

PetroChina's operations can have serious human rights implications due either to the situation in the countries where it conducts business or the nature of its projects. Companies are accountable for human rights abuses, or complicity in human rights violations of institutions they work with. However, in one case, PetroChina is being accused of contributing to human rights violations linked to projects of its major shareholder. This is the case of oil projects in Sudan.

Although PetroChina does not operate in Sudan, it has been accused of complicity with the human rights violations committed by the Sudanese government against the people in southern Sudan during the so-called Darfur crisis. Its major shareholder, the China National Petroleum Company, has been implementing oil projects in southern Sudan for many years including during the time of the Darfur crisis. This crisis, considered a major humanitarian problem as well as a case of genocide against the southern Sudanese, led to a number of NGO campaigns against companies that invest in Sudan's oil industry.⁷⁴

An international group of NGOs requested in a 12 May 2008 letter the UN Global Compact Board to exercise its authority under the so-called "Integrity Measures"⁷⁵ to hold PetroChina accountable for the Darfur crisis. The group asked the UN Global Compact Board to request PetroChina to 1) engage the Sudanese government, either

⁷³ See *PetroChina Annual Report 2011*, www.petrochina.com.cn/Resource/pdf/xwygg/E_PetroChina%20-%202011%20annual%20report.pdf.

⁷⁴ See Ross Kerber, "Activists pressure funds to drop Chinese stocks," *New York Times*, 20 March 2008, www.nytimes.com/2008/03/20/business/worldbusiness/20iht-fidelity.1.11280517.html.

⁷⁵ For more information on the Integrity Measures visit: <http://unglobalcompact.org/AboutTheGC/IntegrityMeasures/index.html>.

independently or collectively with other foreign oil companies operating in Sudan, to implement the UN Security Council resolution on ending the conflict in Darfur; 2) Make all possible efforts to contribute to the success of Sudan's Comprehensive Peace Agreement (CPA), including utilizing leverage on its business affiliates on the [government of Sudan] and on the government of South Sudan, to ensure that the CPA is implemented without further delay.⁷⁶ The group of NGOs subsequently filed a formal complaint on the issue with the Global Compact Board on 15 December 2008.⁷⁷

The formal complaint has two major issues:

- a. Are signatory-companies accountable under the UN Global Compact for the actions of their shareholders? And if the shareholders were companies, can UN Global Compact hold them accountable regardless of their non-signatory status?
- b. Are signatory-companies accountable under the UN Global Compact for any link to activities of other companies that allegedly support the human rights violations of host government?⁷⁸

The response of the UN Global Compact Office (through the letter of the Vice-Chair of the Global Compact Board on 9 February 2009) answers the two issues.⁷⁹ On the first issue, the letter explains that PetroChina (a signatory to the Global Compact) is not operating in Sudan and thus cannot be held responsible for the crisis there. And while the China National Petroleum Company (CNPC), the "dominant majority shareholder" of PetroChina, operates in Sudan it is not a signatory to the Global Compact and thus it is not covered by the integrity measures. The letter cites the difficulty of holding a subsidiary "responsible for the activities of a non-signatory shareholder, even if that shareholder holds a significant majority of the shares."⁸⁰ A prior response by the Executive Director of the UN Global Compact Office to the NGO request to delist PetroChina says that the Global Compact Board decided "not to handle this matter as an integrity issue of an individual company, PetroChina" and that the "Global Compact's approach to business and peace emphasizes engagement rather than divestment and the power of collective action

⁷⁶ Letter of the NGOs dated 12 May 2008 addressed to Mr. Georg Kell, Executive Director of the Global Compact.

⁷⁷ See "NGOs to Further Challenge UN Global Compact to Uphold its 'Integrity Measures,'" http://www.csrwire.com/press_releases/14616-NGOs-to-Further-Challenge-UN-Global-Compact-to-Uphold-its-Integrity-Measures-.

⁷⁸ These issues are based on the letter of Mark Moody Stuart, Vice Chair, Global Compact Board, dated 9 February 2009, to Eric Cohen, Chairperson of Investors Against Genocide, and Bart Slob, Senior Researcher of SOMO.

⁷⁹ The Executive Director of the UN Global Compact Office, Georg Kell, also responded to the letter of the NGOs, see UN Compact Office responds to NGO Letter, January 2009, www.unglobalcompact.org/NewsAndEvents/news_archives/2009_01_12b.html.

⁸⁰ See letter of Mark Moody Stuart, *ibid*.

rather than focusing on any one individual company.”⁸¹

On the second issue, the complaint argues that any company that takes “part in any activity which is a source of major government revenue is by definition complicit with any human rights [violations] of the host government whether or not there is direct connection with the company’s activities.” In this case, the “company should then either engage with the government in order to persuade it to desist [from committing human rights violations], or presumably withdraw from the country.”⁸² The letter of the Vice-Chair of the UN Global Compact, however, states that “companies have to make their own decisions based on whether they feel able to operate in line with the principle they subscribe to as well as any advice or sanction from their home government and of course whether there are United Nations sanctions involved.”⁸³

This case opens a debate on the extent of liability of a company for the human rights abuse, or complicity in human rights violations, attributed to another company which is its major shareholder. The complaint of the NGOs is based on the premise that PetroChina has close financial engagement with its major shareholder (CNPC) in the Sudan oil projects and thus should be made responsible for the human rights violations committed by the Sudanese government, a partner in the oil projects.

Additionally, the case provided an opportunity for the UN Global Compact to explain how its Integrity Measures works. The response of the Executive Director of the UN Global Compact Office states:

The purpose of the integrity measures is to promote continuous quality improvement and assist the participant in aligning its actions with the commitments it has undertaken with regard to the Global Compact principles. In the context of the current lack of clarity for companies on the issue of if and when and how to engage in human rights advocacy, we think it undesirable that the refusal of any one company to engage in one-on-one advocacy with a host Government could lead to consequences such as de-listing from the UN Global Compact. This would deny the company the opportunity to learn, improve performance and engage in collective action.⁸⁴

PetroChina faces the risk of causing damage to the environment and people’s health and livelihood due to oil and gas exploration, related construction processes as well as oil exploitation, transportation, or warehousing. Over the past years, in China alone, the pipeline oil spill

⁸¹ “UN Global Compact Office responds to NGO Letter,” United Nations Global Compact, January 2009, www.unglobalcompact.org/NewsAndEvents/news_archives/2009_01_12b.html.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

of Shanxi Changqing Oilfield Company, the Dalian pipeline explosion, and other serious oil spill accidents caused long-lasting damage and extremely harsh consequences to the local ecological environment, the local residents' living environment and even their right to health.⁸⁵ Solid, gaseous and liquid wastes generated during the production process in the petrochemical industry also brought the environmental hazards. In one case, the members of the Ethical Council of the Swedish pension funds had face-to-face dialogues with officers of PetroChina in 2009 regarding the "deficient safety procedures and emissions of chemicals into the Songhua River in China, contrary to the Basel Convention on Hazardous Waste."⁸⁶ The Ethical Council was satisfied with the action taken by PetroChina after the dialogues.⁸⁷

The nature of PetroChina projects exposes its workers to hazardous materials and equipments that can cause occupational diseases and injuries.

PetroChina's subsidiaries and branch offices in many countries in Asia, Africa, and the Pacific require the deployment of a large number of Chinese employees (who bring their families along). The employees become migrant workers in the host countries and face danger from internal conflict or post-conflict situation. In the past few years, some of these workers had been kidnapped or murdered in the host countries.⁸⁸

Other Risks and Pressures

The strong international reaction to the Darfur crisis illustrates the financial risks companies may face for their involvement in projects with human rights issues. International company shareholders may decide to withdraw their investment under pressure from governments, inter-governmental organizations, and non-government institutions. PetroChina, subjected to international divestment campaigns, could have been more seriously affected. There have been reports of shareholders withdrawing their investment in PetroChina as a consequence of the international campaigns.⁸⁹

⁸⁵ See *Sustainability Report 2011*, PetroChina Company Limited, page 25-27, www.petrochina.com.cn/Resource/Petrochina/img/2012bg/2011kcxbg-en.pdf.

⁸⁶ See *Ethical Council: Annual Report 2010*, Ethical Council of Sweden, page 13, www.ap4.se/upload/Etikr%C3%A5det/Etikr%C3%A5det%20ENG/Ethical_council_annual%20report%202010.pdf.

⁸⁷ "Three Dialogues lead to desired effect," Ethical Council, www.ap4.se/etikradet/Etikradet.aspx?id=601&epslanguage=EN.

⁸⁸ See "Four Hijacked Chinese Oil Workers in Colombia Have Been Released," China News, www.chinanews.com/gj/2012/11-22/4351095.shtml.

⁸⁹ See "Harvard announces decision to divest PetroChina stock," *Harvard Gazette*, 4 April 2005, <http://news.harvard.edu/gazette/story/2005/04/harvard-announces-decision-to-divest-petrochina-stock/>; "Dutch pension fund puts Walmart,

On the other hand, China's State-owned Assets Supervision and Administration Commission (SASAC) calls on state-owned enterprises (SOEs) to fulfill their social responsibility, and "integrate the sense of social responsibility into their corporate culture and governance, open more dialogues with global peers and participate in the constitution of international standards on business responsibilities."⁹⁰ SASAC defines social responsibility "in a broad sense to cover environmental protection, energy and resources conservation, securing production safety, protecting the rights of employees and consumers, maintaining market order, upholding business ethics and philanthropy, repaying investors, and creating job opportunities."⁹¹ Against this background, SOEs such as PetroChina should heed the call to fulfill their social responsibility, an act that also "reflect[s] the State Will."⁹²

Finally, PetroChina runs the risk of being affected by sanctions from other governments under their existing sanctions policy on Sudan.⁹³ These state sanctions are in line with the 2004 European Union sanctions⁹⁴ and the 2005 UN sanctions that were supplemented in 2006 by Security Council resolution 1672 (2006) in response to the "Reports of the Secretary-General on the Sudan."⁹⁵ These sanctions are similar to those adopted against Myanmar, an issue also linked to PetroChina.⁹⁶

PetroChina on investment blacklist," Dutch News, www.dutchnews.nl/news/archives/2012/01/dutch_pension_fund_puts_walmar.php; Shai Oster, "Fidelity Cuts Stake in PetroChina," *The Wall Street Journal*, 17 May 2007, <http://online.wsj.com/news/articles/SB117930954139904723>, but also Ross Kerber, "Fidelity denies it sold PetroChina stock as a political gesture," *The New York Times*, 17 May 2007, www.nytimes.com/2007/05/17/business/worldbusiness/17iht-fidelity.1.5752678.html?_r=0.

⁹⁰ "China's centrally-administered SOEs ordered to play leading role in social responsibility," *People's Daily*, 9 January 2008, <http://english.people.com.cn/90001/90776/90884/6335270.html>.

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ See, for example, *Policy paper: Financial sanctions, Sudan*, HM Treasury, www.gov.uk/government/publications/financial-sanctions-sudan.

⁹⁴ "In 2004 the European Union imposed measures in the EU prohibiting the supply of technical, financial and other assistance related to military activities, with exemptions, directly or indirectly to any person, entity or body in, or for use in Sudan." *Ibid.*

⁹⁵ "In 2005 the United Nations imposed travel restrictions, with exemptions, and an assets freeze on designated individuals considered to be impeding the peace process, constituting a threat to stability in Darfur and the region, committing human rights violations and violating measures set out in previous resolutions (primarily related to an arms embargo)." *Ibid.* See also United Nations, "Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan," www.un.org/sc/committees/1591/.

⁹⁶ Bill Baue, "Corporate Operations in Burma Fuel Human Rights Abuses, Say Shareowner Activists," *Social Funds*, <http://socialfunds.com/news/article.cgi/2402.html>.

Recommendations

As one of the leading SOEs in China, PetroChina can provide an example of the highest level of compliance with CSR and fulfillment of the obligation to respect human rights. Advocates believe that PetroChina has both extrinsic and intrinsic motivations for human rights protection and social responsibility; more importantly, it has power and social influence within the Chinese business community that can help it build a new model for all Chinese companies on merging business and human rights. There are suggestions that PetroChina should place human rights protection as one of its guiding principles and corporate values; and should exercise due diligence on matters regarding genocide and workers' rights (including right to organization and participation in collective bargaining of the Chinese workers).

In order to enhance its respect for human rights, PetroChina can undertake the following suggestions on corporate governance framework and practical operations:

1. Organizational Structure:
 - Convert the Health, Safety and Environment Committee under the Board of Directors into Human Rights and Corporate Social Responsibility Committee with extended functions;
 - Establish an independent Department of Human Rights and Corporate Social Responsibility that would formulate codes of conduct and regulations on managerial issues and related matters that have human rights impact, carry out human rights training, conduct overall investigation on human rights impacts, undertake measures to prevent violations of human rights, cooperate and communicate with human rights organizations, and offer immediate remedy whenever human rights disputes arise. This Department implements the decisions of the Health, Safety and Environment Committee under the Board of Directors.
2. Operational Procedures:
 - Create a system of internal control and risk management based on human rights standards;
 - Adopt an emergency management system for human rights crises;
 - Establish a human rights impact management and training system based on the existing Health, Safety and Environment System in order to carry out human rights impacts management training for the company management staff as well as rank and file workers.
3. Stakeholders Management:
 - Contractors: promote adoption by contractors of human rights impact management system, and link it to their general company evaluation system; establish a system for evaluating the human rights impact of contractors so that they can operate in accordance with human rights standards; improve

- performance standards of the contractors' human rights impact evaluation system;
- Investors: submit periodic performance reports concerning its human rights impact management and corporate social responsibility to the investors; encourage investors to engage in the improvement of its human rights impact management and corporate social responsibility system; and strengthen their supervision of the human rights impact management system.
 - Government: in partnership with the government, promote the responsibility to protect and respect human rights under the business and human rights framework; request the local governments to respect human rights, and to reduce human rights violations; carry out community and humanitarian relief services together with the government;
 - Civil society: make regular communication and information exchange with the civil society; invite civil society organizations to conduct overall human rights impact investigation and consultation on its behalf; share experiences and information with the civil society to reach a mutual understanding of the business and human rights standards.

There is also a suggestion that PetroChina should learn the best practices on business and human rights, particularly from the experiences of ExxonMobil Corporation. Furthermore, PetroChina should seek the consulting services of the United Nations, its member-states, and civil society organizations in the field of business and human rights; participate in the establishment of business and human rights framework, and the development of human rights standards and norms for corporate behavior. PetroChina should also invite relevant United Nations bodies, international organizations, national departments, as well as civil society organizations for dialogues. Further, PetroChina should interact more with the government in host countries and their local communities, establish continuing communication schemes, and invest more on public interest advertisement to show its commitment to human rights protection.

Conclusions

While the Chinese government and Chinese companies have done far less than expected in fulfilling their obligation to promote social responsibilities and protect human rights, the current legal policies and systems in China provide to some degree the supporting framework for human rights-based approach to access to justice regarding business operations.

In this context, initiatives such as filing of individual cases in court, public interest litigation, and public interest petitions with media

advocacy by civil society organizations and public interest lawyers have indeed promoted access to justice in China, especially for marginalized and disadvantaged groups. These “bottom-up” approaches are recognized as more effective means of fighting injustice in specific cases considering the limitations of existing legal, judicial and political systems. For example, there are restrictions on judicial proceedings that limit the space for legal action. Since politically sensitive cases may not be brought to court, certain types of cases and rights-holders are excluded from the justice system. Therefore, strategies outside the current justice system are explored and developed. Legal empowerment (as a set of innovative and integrated strategies seeking to redress imbalances in power, knowledge and influence between companies and potential complainants and rights-holders) is promoted to enable informed dialogue, shared responsibility for the outcomes, and a process-based respect for human rights.

These strategies can play a significant role in the promotion of human rights-based approach to access to justice with respect to business operations.

But it still necessary for the companies to develop their own internal systems based on human rights-based approach to access to justice principles in order to uphold the objectives set by both the Chinese government and the international community on the proper role of business in serving justice.