

**CODE OF CONDUCT
FOR
BUSINESSES OPERATING
IN TIBET**



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Tibetan Centre for Human Rights and Democracy

Tibetan Centre for Human Rights and Democracy

The Tibetan Centre for Human Rights and Democracy (TCHRD) is registered non-governmental human rights organization established in January 1996 in Dharamsala, India with the mission to protect the human rights of the Tibetan people in Tibet and promote the principles of democracy in the exile Tibetan community.

TCHRD conducts regular, systematic investigation of human rights situation in Tibet and monitors human rights policies of the People's Republic of China. Every year, TCHRD publishes annual report, thematic reports, and testimonies of victims of human rights violations, biweekly newsletters, press releases and briefings on human rights issues in Tibet.

TCHRD attends the annual sessions of UN Human Rights Council as well as other regional, national and international conferences. Such participation is aimed at highlighting human rights situation in Tibet and lobbying and networking on the promotion and protection of human rights in Tibet. In keeping with TCHRD's goal to make China a responsible member of the international community, the Centre actively engages with the UN human rights mechanisms and special procedures submitting reports and cases of specific human rights violations in Tibet.

In an effort to engender a culture of human rights and democratic practices among Tibetans, TCHRD organizes workshops, talk series, public discussions and campaigns every year for students, activists, grassroots leaders, etc.

TCHRD's staff members are Tsering Tsomo, Executive Director; Tenzin Nyinjey, Tsering Gyel, and Dorjee Dhondup, Researchers; John Gaudette, Legal Research Officer; Phurbu Dolma, Accountant; Bugah, Office Assistant. TCHRD interns are SangdheKyab, Solange Cullen, and Tsenthar Gyal.

This Code of Conduct was researched and drafted by TCHRD legal officer John Gaudette, Esq.

For copies of any reports and/or for more information, please contact:

Tibetan Centre for Human Rights and Democracy
Top Floor, Narthang Building, Gangchen Kyishong
Dharamsala, H.P., 176215, India
Tel: + 91 1892 223363, Telefax: + 91 1892 225874
Email: office@tchrd.org Website: www.tchrd.org

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INTRODUCTION

Businesses operating in Tibetan areas in the People's Republic of China (PRC) face unique political, social, and environmental challenges. This code of conduct is designed to provide solutions to the major challenges facing business operations in Tibet, which will benefit both businesses and Tibetans. As stated in the UN Guiding Principles for Business and Human Rights, which is the definitive international standard, all human rights should be protected by the PRC and respected by businesses. However, this code only focuses on specific challenges that exist in Tibetan areas.

The code of conduct is based on existing international norms, including the UN Guiding Principles for Business and Human Rights, and the Chinese Chamber of Commerce for Mineral, Metals, Chemicals Importers and Exporters (CCCCMC) Guidelines for Chinese businesses operating outside of the PRC.

The CCCCCMC is a subordinate unit of the Ministry of Commerce in China. In 2014, CCCCCMC partnered with Global Witness to release Guidelines for Chinese mineral companies operating outside of the PRC. At the 3rd UN Forum on Business and Human Rights, the CCCCCMC Guidelines were held out as evidence of the PRC's policy commitment to human rights being an integral part of corporate social responsibility.¹

This code of conduct recognizes the competing obligations confronting multinational enterprises (MNE) when they are expected to follow international law, the law of their home State, and the law

¹ Liang Xiaohui, *China's Policy Shift on B&HR and CSR in Overseas Investments*, available at: <http://www.globalwitness.org/sites/default/files/Liang%20%26%20Oud%20presentation%20-%20UN%20BHR%20Forum%20-%202014.pdf>.

of their host State. Because of their grounding in international and Chinese standards, the code of conduct reduces and resolves the conflicting standards facing MNEs and other businesses operating in Tibet. By following these principles MNEs and other businesses in Tibet will be able to benefit Tibetans and other people in Tibet while maintaining long-term stability and profitability.

RESPONSIBILITY TO RESPECT

1. Corporations must respect international human rights standards, especially those contained in the International Bill of Human Rights (the Universal Declaration of Human Rights, the ICCPR, and the ICESCR), and the core International Labour Organization (ILO) Conventions.²

COMMENTARY:

- i. The 2008 UN Framework on Business and Human Rights requires businesses to respect human rights. The 2011 UN Guiding Principles on Business and Human Rights detailed how businesses should respect human rights. Both were unanimously adopted by the Human Rights Council.
2. Publish and display the rights employees have under international law binding on the People's Republic of China, Chinese law, and corporate policies.

COMMENTARY:

1. International law binding on the PRC includes treaties and

2. The eight core ILO Conventions are: Forced Labour C029 (1930); Freedom of Association C087 (1948); Collective Bargaining C098 (1949); Equal Remuneration C100 (1951); Abolition of Forced Labour C105 (1957); Discrimination (Employment and Occupation) C111 (1958); Minimum Age C138 (1976); Worst Forms of Child Labour C182 (1999).

customary international law. Customary international law is binding on all States and formed through widespread and systematic State practice and the sense that a State is acting out of a legal obligation and includes, for example, the ICCPR.

3. If international and Chinese legal requirements conflict, the corporation should disclose the conflict through publication on their website and:
 - i. Follow the international standard when the Chinese law conflicts with the international standard.
 - ii. In cases of ambiguity, the international legal standard should be followed except when the penalty for not following Chinese law is clearly disproportionate to the harm to the effected population.

COMMENTARY

- i. International standards require that businesses follow international human rights standards when they conflict with national laws. However, in many corporate codes of conduct, corporations commit themselves to following all national laws. This is when the lack of enforcement for international law is most pronounced.
- ii. The CCCMC Guidelines state that the national laws and regulations set minimum standards of conduct and encourage corporations to exceed the laws and regulations. There may be instances where an apparent conflict can be reconciled by exceeding the strict requirements of the PRC's law to comply with international standards.
- iii. Even in cases of ambiguity, a business should never comply with a law that could result in torture, murder, arbitrary imprisonment, slavery, enforced disappearances or other forms

of irreparable injury.

4. If there is a high risk that a business cannot operate in an area without becoming complicit to egregious or systematic human rights violations it should consider severing the business relationship.

COMMENTARY:

- i. This is required in the UN Guiding Principles and based on established best practice for businesses working in high-risk environments.³

DUE DILIGENCE

5. Corporations must exercise due diligence to ensure that all of the measures in this code of conduct are effectively implemented.

COMMENTARY:

- i. Due diligence includes identifying, preventing, mitigating, and, if necessary, addressing and providing a remedy for human rights violations.
- ii. A business should not condone, profit, or seem to profit from human rights violations.⁴
- iii. A corporation should proactively consult regularly with other companies, host and home governments, and civil society to attempt to discover actual and potential human rights risks,⁵ including legal, ethical, social and environmental factors.⁶

3 John Ruggie, *JUST BUSINESS* (2013) p. 100.

4 John Ruggie, *JUST BUSINESS* (2013) p. 94; CCCMC Guidelines 2.4.2.

5 CCCMC Guidelines 2.4.2

6 CCCMC Guidelines p. 26.

- iv. Due diligence requires that a corporation assess the risk to human rights before, during, and after a project.
- v. A corporation must communicate with all stakeholders including the impacted population through their legitimate representatives, and obtain and maintain the social license to operate.⁷

6. Develop indicators for economic, social, and environmental impact that are relevant to the business and continuously assessed and reevaluated.

COMMENTARY:

- i. Indicators for evaluation should be based on international best practices and what has worked in similar operations.

BUSINESS RELATIONSHIPS

7. Corporations must ensure that the code of conduct is implemented throughout their supply chains.

COMMENTARY

- i. Businesses must ensure that first-tier suppliers, including private contractors and subsidiaries, implement the code of conduct. These suppliers must ensure that their suppliers also implement the code of conduct.⁸
- ii. This must include utilizing independent auditing organizations to verify that the code of conduct is implemented.

⁷ John Ruggie, *JUST BUSINESS* (2013) p. 99-100.

⁸ CCCMC Guidelines, 2.3.1.

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8. Businesses that use the same supplier should create uniform standards and expectations, based on this code and existing international standards.

COMMENTARY

- i. This includes setting realistic production targets that are achievable while still complying with human rights standards.
9. Only comply with requests for information about customers or employees do not violate the target's rights, especially the rights to freedom of expression, assembly, or privacy.

COMMENTARY:

- i. The request for information must be provided for by law, from a law enforcement agency, and must use the least restrictive means necessary for national security, public safety, public order, the protection of public health or morals, or to protect the rights of others.⁹
10. Add a human rights clause to all contracts saying: "The parties to this contract must at all times respect all international human rights. Failure to do so will constitute a material breach of the contract."

COMMENTARY

- i. In conjunction with articles 3 and 4, this is designed to ensure that a business do not appear to be benefitting from human rights abuses. Including this language in a contract gives all parties a strong incentive to ensure human rights are respected and a remedy if a party refuses to respect human rights.

⁹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, UN Human Rights Council, UN Doc. No.A/HRC/23/40 (17 April 2013).

ii. If a business finds that it cannot operate without being complicity in human rights abuses, inserting this language into the contract will enable the business to sever the business relationship.

11. Security measures must not violate the right to freedom of association or assembly. Security should not be provided by any private or governmental organization that is credibly implicated in human rights abuses.

COMMENTARY

i. This requirement is included in the Voluntary Principles on Security and Human Rights and incorporated by reference into the CCCMC Guidelines by Art. 2.4.2

SOCIAL LICENSE

12. Continuously work with stakeholders in an equitable and culturally appropriate manner.

COMMENTARY:

i. This includes working with community leaders independent from government influence. The interactions must be equitable and culturally appropriate,¹⁰ which may require the exclusion of local government officials and guarantees of confidentiality.

13. Proactively solicit, respect, and respond to stakeholder feedback and expectations including from local communities and civil society.

¹⁰ CCCMC Guidelines, 2.8.3.

COMMENTARY:

- i. This should also include periodic updates with stakeholders to solicit suggestions and grievances.
 - ii. Civil society includes, among others, the local community, NGOs operating in the area and abroad who are knowledgeable about the situation in Tibet or the local area.¹¹
14. Develop and maintain an effective operational-level grievance mechanism for individuals and communities that may be adversely impacted by business, especially the most vulnerable people, groups, and organizations.

COMMENTARY:

- i. The mechanism must be legitimate, accessible, predictable, equitable, transparent, and rights compatible.¹²
 - ii. This must include protections for people who raise human rights issues and may face reprisals. Except when necessary to protect a whistleblower, the dispute resolution process should be open and transparent.
 - iii. This must include anonymous communications when necessary to protect the source from reprisals or retribution.¹³
15. Obtain the Free, Prior and Informed Consent (FPIC) from stakeholders and local communities.

COMMENTARY:

- i. The CCCMC Guidelines require business operations to receive FPIC from all impacted local communities.¹⁴

11 CCCMC Guidelines 2.1.5.

12 CCCMC Guidelines, 2.8.4.

13 CCCMC Guidelines 2.4.1; 2.5.9.

14 CCCMC Guidelines, 2.4.5.

16. Ensure that all land and property used was lawfully owned by the seller. If the land was obtained through the involuntary resettlement of the customary user, ensure the resettlement was necessary and the people received fair compensation, regardless of whether they had legal title to the land.

COMMENTARY:

- i. The requirement that involuntary resettlement should only happen when it is necessary or inevitable is part of international human rights law¹⁵ and applies to resettlement caused by mining.¹⁶
- ii. This includes insuring that money actually reaches the affected people.

17. Contribute to the social, economic, and institutional development of stakeholders.

COMMENTARY:

- i. Social license cannot be obtained only through philanthropic work or donations.¹⁷

18. Provide leadership and vocational training to the local community.

COMMENTARY:

- i. Support employees participating in training and education programs that provide opportunities for advancement. This includes providing necessary funds for training and education,

¹⁵ Basic Principles and Guidelines on Development-Based Evictions and Displacements, HRC, UN Doc. A/HRC/4/18. Paras. 1, 3, *available at*: http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf.

¹⁶ CCCMC Guidelines, 2.4.3.

¹⁷ John Ruggie, *JUST BUSINESS* (2013) p. 95.

support for domestic and international travel, career advice, and creating clear promotion schemes.¹⁸

TRANSPARENCY

19. When establishing a business operation corporations should conduct an initial Human Rights Impact Assessment that evaluates the potential consequences, risks, and benefits of the business operation.
20. Corporations should provide periodic annual Human Rights Impact Assessments that are publically available on the corporation's website.

COMMENTARY:

- i. The purpose of transparency is two-fold: first to show that corporations are respecting human rights; and, second, to provide information on the situation in Tibet.
 - ii. Voluntary proactive transparency can shift the emphasis away from publically exposing human rights abuses that may be unknown to the business to knowing of the human rights issues related to the business operation and showing that human rights are respected.¹⁹
21. The Human Rights Impact Assessment should include:
- a. An explanation of the indicators chosen by the company to monitor and evaluate the human rights, economic, social, and environmental impact of the business;

¹⁸ CCCMC Guidelines, 2.5.7.

¹⁹ Right to Respect, *What Does Human Rights Due Diligence Require?*, available at: <http://www.right2respect.com/wp-content/uploads/2015/02/HRDD-CorpExecGuide2015.swf>.

- b. How the business operation measures according to the indicators;
- c. A statement of the corporation's policy and information on how it is implemented;
- d. Information on all audits carried out of suppliers;
- e. All complaints and an explanation of how they were addressed, with particular attention to anonymity where required;
- f. Results of methods of dispute resolutions in the form of statistics and case studies.
- g. All government requests for information and the response;
- h. The results of environmental impact assessment, human rights assessments, social impact assessments, and other methods of risk assessment;
- i. Any violations of this code of conduct or human rights violations and remedial steps taken;
- j. Any potential or "near misses" of violations of the code of conduct or human rights; and
- k. Summaries of meetings with employees and stakeholders.

COMMENTARY:

- i. "Near misses" should be interpreted broadly. It may include times when a violation was imminent or threatened but did not occur. For example, if an employee is detained or threatened with detention, but then released.

SUBSTANTIVE RIGHTS

ENVIRONMENT

22. Conduct a thorough environmental impact assessment and make the results publically available.

COMMENTARY:

i. Work with professional environmental protection organizations and civil society to understand the impact of the business.²⁰

23. Minimize the environmental impact and ecological footprint of the business.

COMMENTARY:

i. This is unusually important due to Tibet's fragile, high-altitude Himalayan environment and the importance of Tibet's environment for Asia and the world.

ii. The impact of a business includes investigating and establishing a business operation and can continue after the business has closed.²¹

24. Regularly assess and mitigate adverse environmental impacts.

COMMENTARY:

i. This includes surpassing local regulations²² and includes impacts from pollutants and consequences from construction or blasting and drilling.²³

25. Contain, clean up, remove, and safely dispose of any pollutants caused by the business operation.

²⁰ CCCMC Guidelines, 2.7.14 (excluding civil society)

²¹ CCCMC Guidelines, 1.4.

²² CCCMC Guidelines, 2.7.9.

²³ CCCMC Guidelines, 2.7.5.

26. Work with the local communities and devote resources to restore the degraded environment.
27. Promote conservation and biodiversity, including respecting the spirit of the UN Convention on Biological Diversity.²⁴

COMMENTARY:

- i. Identify biodiversity areas affected by the business operation and develop transparent, inclusive, informed, and equitable processes that protect the environment.²⁵

NON-DISCRIMINATION AND CULTURAL RIGHTS

28. Ensure that nobody is discriminated against on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

COMMENTARY:

- i. Discrimination includes both intentional discrimination and measures that disproportionately impact members of a particular group.
- ii. This requires that equal pay and implementing corporate policies that prohibit corporal punishment, any form of harassment or abuse, coercion or intimidation, or threats to the workers or their families.
29. Prohibit discrimination based on a person's political opinion or criminal record if related to political offenses.

²⁴ There are 195 State parties to UN Convention on Biological Diversity.

²⁵ CCCMC Guidelines, 2.7.12.

COMMENTARY:

- i. This may include resisting pressure from local authorities to not hire former political prisoners.
30. Respect the culture and protect the heritage of local communities. Do not harm traditional cultures of local peoples.

COMMENTARY:

- i. This requires engaging with potentially impacted communities and designing projects that cause only unavoidable residual impacts to the culture.²⁶
31. Provide a bilingual workplace and ensure that nobody is discriminated against, especially in hiring and promotion decisions, for not being a native or fluent Mandarin speaker.
32. Do not conduct any operations that would damage or facilitate the damage of sacred sites.
33. Provide paid holidays for important religious and cultural dates.

WORKER RIGHTS

34. Ensure that nothing in the supply chain is produced by forced labor as defined by ILO Convention C29 (1930) and Art. 8(3) of the International Covenant on Civil and Political Rights.
35. Perform independent investigations of attacks against employees, including threats, harassment, arrests, beatings, or killings.
- a. Report attacks to relevant local authorities;

²⁶ CCCMC Guidelines, 2.4.4.



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**Top Floor, Narthang Building,
Gangchen Kyishong
Dharamsala, HP, India**

Email: director@tchrd.org

Tel: +91 1892 223363/229225

Web: www.tchrd.org