



Policies Guiding Chinese Dam Building

This section outlines Chinese law governing domestic dam building, Chinese policies on overseas dams, and international guidelines that can be applied to Chinese overseas dam projects. Excerpts from important laws and policies are found in Appendix 2.

CHINESE DOMESTIC LAWS ON DAM BUILDING

China’s environmental laws have been significantly strengthened in recent years. In September 2003, China’s People’s Congress approved a new **Environmental Impact Assessment Law**. The law requires that enterprises proposing projects within China with significant environmental impacts must conduct an environmental impact assessment (EIA) prior to project construction. The assessment must be approved by Ministry of Environmental Protection (MEP).

China’s EIA law requires **public participation**. This requirement was clarified in February 2006

when MEP (then SEPA) issued “Provisional Measures for Public Participation in Environmental Impact Assessment.” The public participation measures provide basic instructions on:

- Procedures for disclosing EIAs to the public;
- When to engage the public in the EIA process;
- Who should be included in public participation;
- Methods that can be used to facilitate public participation (hearings, soliciting comments, public forums, expert forums, etc.);



- How to address, incorporate, and preserve public input on the EIA.

China also has laws on the **displacement of people for dam projects**. The most important of these is the 2006 “Rules of land compensation and people resettlement in medium and large hydraulic and hydroelectricity projects.” This law states:

- Displaced people must be provided with a level of livelihood *similar to or greater than* that which they enjoyed prior to dam displacement;
- Resettlement plans must include economic development plans, not just cash payments for land and resources lost;
- Resettlement plans should create jobs for displaced people;
- If rural communities are to be displaced, resettlement plans must include a plan for reclaiming new farmland (to avoid over-crowding in resettlement areas).

While the compensation law applies only to people displaced by dam projects in China, it can serve as a

model for the standards Chinese companies should use overseas. It is important to note, however, that in practice, few communities displaced by dams in China have received new jobs or training. But they usually do receive some kind of payment for their land.

In May 2008, new **regulations on the disclosure of government information** came into effect in China. This regulation requires that Chinese government offices release information on a timely, regular basis. It also creates a mechanism through which Chinese citizens can demand government information. This regulation may make it easier for citizens and NGOs to access information on the initiation, approval and regulation of overseas dam projects.

While China’s laws and regulations are promising, they have been difficult to implement in practice. MEP, many Chinese environmental NGOs, and concerned citizens in China are working hard to strengthen China’s legal safeguards. They are doing so through education and awareness campaigns, legal measures, and by working directly with Chinese companies.

CHINA:
Three Gorges Dam
site, Sandouping,
Hubei Province.

CHINESE LAWS AND GUIDELINES ON OVERSEAS PROJECTS

There are no laws or regulations that specifically address social and environmental impacts of dams Chinese enterprises build overseas. But in response to mounting criticisms of Chinese companies working overseas, the State Council in October 2006 issued nine **Principles Governing the Activities of Foreign Investment Firms**. These principles include:

- Mutual respect, equality and mutual benefit, complementarity, and “win-win” cooperation;
- Ensuring protection of environmental resources;
- Caring for and supporting local communities and local people’s livelihoods;
- Complying with local laws and regulations;
- Cultivating and protecting the interests of local employees;
- Strengthening project safety;
- Creating a friendly environment for public opinion.

The State Council is the most powerful government body in China. Its message to Chinese firms working overseas should be referred to in communications with Chinese dam builders. **Appendix 2** of this guide contains the full text of the State Council’s nine principles.

SASAC, which supervises China’s state-owned enterprises (SOEs) has taken steps to ensure SOEs set the standard for corporate social responsibility. In

January 2008, SASAC issued **Corporate Social Responsibility Guidelines for State-owned Enterprises**. These standards can be applied to SOEs such as Sinohydro and China Southern Power Grid. The guidelines state that SOEs should “set an example of honesty and trustworthiness, resource conservation, environmental protection, and people-centeredness.” Excerpts from these regulations are found in **Appendix 2**.

In addition, **China Exim Bank** and **China Development Bank** have their own **environmental and social responsibility** policies. Excerpts from China Exim Bank’s policy are included in **Appendix 2**. China Development Bank has a brief summary of its environmental policy publicly available on its web site. The policy states, “In recent years, environmental compliance has become an aspect of our loan evaluation process. We will not consider a loan application complete until the applicant has obtained approval from the relevant environmental agencies and we are otherwise satisfied with its environmental compliance.”

China Southern Power Grid has an environmental policy, but it is very brief and general. **Sinohydro** does not appear to have an environmental policy. But Sinohydro Engineering Bureau Number One, which has a number of overseas dam projects, is certified under ISO 14001 (see next page).

Ministry of Environmental Protection (MEP) has recently taken steps to help improve environmental standards of Chinese companies that operate overseas. In October 2007, MEP and the **Ministry of Commerce** announced that Chinese exporters who caused environmental harm *within* China may be punished by having their export operations suspended.

SUDAN:
Chinese workers
at the Merowe
Dam site. Photo:
David Haberlah



INTERNATIONAL ENVIRONMENTAL GUIDELINES

In 2000, the **World Commission on Dams (WCD)** established the most comprehensive guidelines for dam building. The WCD's final report describes an innovative framework for planning water and energy projects. The framework is intended to protect dam-affected people and the environment, and to ensure that the benefits from dams are more equitably distributed.

The WCD framework covers key areas for improved planning of dams, including the need to fully assess all available options for meeting water and energy needs; addressing outstanding social issues from existing dams before building new ones; gaining public acceptance for key decisions; and the importance of protecting healthy rivers. The WCD recommendations are being adapted to national contexts in various public dialogue processes around the world.

A summary of the WCD recommendations is included in **Appendix 2**. For detailed information on the WCD's recommendations and priorities, refer to International Rivers' *Citizen's Guide to the World Commission on Dams*. This report can be downloaded for free at internationalrivers.org.

The **International Hydropower Association (IHA)** is a membership organization for hydropower companies. In 2004, IHA published "sustainability guidelines." These are less stringent than the WCD recommendations and overemphasize the benefits of dams. But they do instruct companies to include stakeholder participation and to improve living conditions of affected communities. **Sinohydro** is a member of the IHA and should be reminded of its duty to apply the IHA guidelines in all of their dam projects. The IHA guidelines can be read at www.hydropower.org.

In January 2008, SEPA announced it would cooperate with the International Finance Corporation (IFC) to bring the **Equator Principles** to China. The Equator Principles were developed by leading private banks and are based on World Bank standards. Environmental organizations have criticized the principles for lacking enforcement mechanisms. Nevertheless, SEPA's efforts to use the principles as a benchmark for Chinese financial institutions are a positive step.

In addition, hundreds of Chinese companies, including **China Development Bank** and **Hanergy** have signed up to participate in the **UN Global Compact**. This compact provides "a framework for businesses that are committed to aligning their operations and

strategies with ten universally accepted principles in the areas of human rights, labor, the environment and anti-corruption." For more information, see www.globalcompact.org.

Finally, many companies in China are certified under the International Organization for Standards 14001 series (**ISO 14001**). This series requires the adoption and release to the public of an environmental policy as well as regular internal audits. Sinohydro Engineering Bureau Number One has achieved this certification. It is unclear whether this has been applied to its overseas hydropower projects. For more information, see www.iso.org.

CHINA'S UNITED NATIONS COMMITMENTS AND INTERNATIONAL TREATY OBLIGATIONS

The Chinese government has signed on to a number of international treaties, participates in various international bodies, and recognizes several "soft laws" relevant to dam building. These obligations apply to activities inside China, but they also represent a commitment to the international community. The Chinese government should ensure companies and financiers acting under its regulation abide by China's treaty commitments when operating abroad.

Particularly relevant to overseas dam building is the **United Nations Norms on the Responsibility of Transnational Corporations**. Approved in 2003, the norms state that transnational corporations are responsible for upholding human rights as set forth in the Universal Declaration of Human Rights. The norms state that transnational corporations must ensure protection of human rights as set forth by national and international law, equality of employment opportunity, safe and healthy working environments, compliance with environmental laws of host countries and international agreements, and compliance with the goal of sustainable development.

In September 2007, China voted in favor of the **Declaration on the Rights of Indigenous Peoples**, which "emphasizes the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions and to pursue their development in keeping with their own needs and aspirations." This may be important to acknowledge if a dam project will impact an indigenous community.

A list of major environmental and human rights treaties to which China is a party is included in **Appendix 3**.

Appendix 2:

Text of Relevant Laws, Regulations, and Guidelines

World Commission on Dams Key Recommendations (summary by International Rivers)

- 1 Development needs and objectives should be clearly formulated through an open and participatory process, before various project options are identified.
- 2 A balanced and comprehensive assessment of all options should be conducted, giving social and environmental aspects the same significance as technical, economic and financial factors.
- 3 Before a decision is taken to build a new dam, outstanding social and environmental issues from existing dams should be addressed, and the benefits from existing projects should be maximized.
- 4 All stakeholders should have the opportunity for informed participation in decision-making processes related to large dams through stakeholder fora. Public acceptance of all key decisions should be demonstrated. Decisions affecting indigenous peoples should be taken with their free, prior and informed consent.
- 5 The project should provide entitlements to affected people to improve their livelihoods and ensure that they receive the priority share of project benefits (beyond compensation for their losses). Affected people include communities living downstream of dams and those affected by dam-related infrastructure such as transmission lines and irrigation canals.
- 6 Affected people should be able to negotiate mutually agreed and legally enforceable agreements to ensure the implementation of mitigation, resettlement and development entitlements.
- 7 The project should be selected based on a basin-wide assessment of the river ecosystem and an attempt to avoid significant impacts on threatened and endangered species.
- 8 The project should provide for the release of environmental flows to help maintain downstream ecosystems.
- 9 Mechanisms to ensure compliance with regulations and negotiated agreements should be developed and budgeted for, compliance mechanisms should be established, and compliance should be subject to independent review.

- 10 A dam should not be constructed on a shared river if other riparian States raise an objection that is upheld by an independent panel.

State Council's "Nine Principles on Encouraging and Standardizing Foreign Investment"

Unofficial translation

(October 25, 2007) In order to seize economic globalization and regional cooperation opportunities, and encourage qualified enterprises to actively and steadily participate in international economic and technological cooperation, and to further enhance the level of opening up, the meeting stressed:

- 1 Insistence on mutual respect, equality, and mutual benefit, complementarity and win-win cooperation.
- 2 Strengthening of policy guidance, coordinating and standardizing orderly and rational distribution, preventing disorderly competition, and safeguarding national interests.
- 3 Improving the policy-making mechanism, the implementation of overseas investment enterprises, the autonomy of scientific studies and careful decision-making, and prevention of investment and operational risks.
- 4 Strengthening supervision of state-owned assets overseas, and supervision of sound evaluation and examination systems, establishment of security risk assessment and project cost accounting systems, and preserving and increasing the value of assets.
- 5 Complying with local laws and regulations, and adhering to fair, transparent public works project contracts, making a commitment to and fulfilling the necessary social responsibility to protect the legitimate rights and interests of local employees, paying attention to environmental resource protection, caring for and supporting the local community and people's livelihood.
- 6 Increasing the level of offshore project building contracts, improving product quality and efficiency, and constantly enhancing overall competitiveness.
- 7 Strengthening safety training, improving safe production responsibility systems, increasing protection of foreign-funded enterprises, institutions and property safety.

- 8 Accelerating personnel training, paying attention to the cultivation of operating in the international talents, and enhance their transnational operations management capabilities.
- 9 Creating a friendly environment for public opinion, walking the road of peaceful development policy, and preserving our good image and a good corporate reputation.

China Exim Bank Guidance for the Environmental and Social Impact Assessment of Loan Projects

Excerpt; unofficial translation; the full guidance can be found at internationalrivers.org

China Exim Bank (August 2008) Article 12, offshore project assessments should abide by the following principles:

- (1) Environmental impact assessment should be done during the pre-loan and loan-period review, and monitoring of environmental impacts should occur during post-loan management.
- (2) The host country's environmental policies and standards are the basis for evaluation. Offshore projects should abide by the requirements of host country laws and regulations, and should obtain corresponding environmental permits. When the host country does not have a complete environmental protection mechanism or lacks environmental and social impact assessment policy and standards, China's standards or international practice should be referred to.
- (3) Respect for local peoples' rights to land and resources, and proper handling of resettlement problems.
- (4) For projects that have serious negative impacts on the local environment, open consultation with the public in accordance with the host country's requirements.

Article 13, China Exim Bank follows these procedures of environmental and social assessment for offshore projects:

- (1) The borrowers or project owners hand in the approval document and environmental and social impact assessment report issued by the authorities of the host country.
- (2) China Exim Bank reviews the loan application documents submitted by the borrower, and will hire independent experts when necessary.
- (3) China Exim Bank negotiates with the project owners or the borrowers to amend the construction project proposal, based on the environmental and social assessments.

Article 14, China Exim Bank, if necessary, requires the inclusion of environmental and social responsibility in the loan contract, in order to monitor and restrain the behaviour of borrowers.

State-owned Assets Supervision and Administration Commission (SASAC): "Guidelines on Fulfilling Social Responsibility by Central Enterprises"

Excerpt; unofficial translation

(National Resource Development Research #2008-1, January 4, 2008) Fulfilling social responsibility is an action taken by central enterprises for implementing the concept of scientific development. It requires central enterprises to be human-oriented and act according to the view of scientific development, and to be responsible to stakeholders and the

environment, so as to realize a harmony between the growth of enterprises, society and environment.

Overall requirements: Central enterprises shall enhance awareness of and perform social responsibility actively, and become the backbone of the national economy and models of legal operation, faithfulness and credit, energy-saving, environmental protection, and human-oriented, harmonious corporations for all Chinese enterprises.

Requirements on Fulfilling Social Responsibility:

- Legal operation on the basis of honesty and credit: Central enterprises shall obey laws, regulations, social morality, business morality, and industry rules, pay taxes in time and in full, protect the rights and interests of investors and creditors, protect intellectual property rights, perform contracts faithfully, maintain high credit-standing, and fight against unfair competition and corruption in business activities;
- Improvement of product quality and service: Central enterprises shall ensure safety of their products and services...protect the rights and interests of, and handle properly claims and suggestions from consumers, and make efforts to provide more value to consumers, so as to become enterprises trusted and recognized by consumers;
- Saving resources and protecting environment: Central enterprises shall take responsibility in energy saving and pollution reduction, develop energy-saving industry, products, and recycling to improve the comprehensive utility efficiency of resources, increase input in environmental protection, improve processes to reduce discharge of pollutants, implement clean production, and stick to the practice of growth with high efficiency but less input, consumption, and pollution;
- Promoting innovation and technical progress;
- Ensuring safe production;
- Protecting the legal rights of employees;
- Participation in activities for public welfare.

Measures for Fulfilling Social Responsibility:

- Establishing social responsibility performance and reporting systems;
- Enhancing communication between enterprises and international collaboration: central enterprises shall learn from foreign companies' good practices and experiences on social responsibility, communicate with those companies with high performance on social responsibility, find out the gap and improve their work. They also need to communicate with international organizations and participate in activities for making international standards on social responsibility.

Appendix 3:

Selected International Agreements to which China is a Party

The following Conventions, Declarations, and Norms hold the Chinese government accountable to upholding certain standards within China. But they also represent a commitment to broad principles that can and should be applied in overseas projects.

International Agreement	Key aspects of agreement relevant to overseas dams	Date signed and ratified by China or adopted at the United Nations
Universal Declaration of Human Rights	The Declaration defines basic human rights such as the right to employment, the right to property, and the right to equal protection before the law. Article 25 states, "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."	Adopted by United Nations General Assembly December 10, 1948
International Covenant on Economic, Social and Cultural Rights	The covenant includes many human rights commitments. For example, forced evictions, defined as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection," are a violation of the Covenant.	Signed by China October 27, 1997; ratified March 27, 2001
UN Declaration on the Rights of Indigenous People	This Declaration "emphasizes the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations."1 It also promotes indigenous peoples' "full and effective participation in all matters that concern them and their right to remain distinct and to pursue their own visions of economic and social development."2	Adopted by United Nations General Assembly September 2007

International Agreement continued	Key aspects of agreement relevant to overseas dams continued	Date signed and ratified by China or adopted at the United Nations continued
Convention on the Rights of the Child	The convention requires that states act in the best interest of children.	Signed by China August 29, 1990; ratified March 2, 1992
UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights	The norms state that transnational corporations are responsible for upholding human rights as set forth in the Universal Declaration of Human Rights. They further state that transnational corporations must ensure protection of human rights as set forth by national and international law, equality of employment opportunity, safe and healthy working environments, compliance with environmental laws of host countries and international agreements, and compliance with the goal of sustainable development.	Adopted by United Nations Environment and Social Council April 13, 2003
Rio Declaration on Environment and Development	The Declaration sets forth a code of environmental responsibility for states, particularly in the area of sustainable development. Principle 22 states, "Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development." Principle 23 states, "The environment and natural resources of people under oppression, domination and occupation shall be protected."	Adopted by United Nations Committee on Environment and Development June 1992
Convention on Biological Diversity (CBD)	In signing the CBD, the Chinese government demonstrated its commitment to the philosophy of sustainable development. The CBD also states that the precautionary principle should be employed if and when there is a lack of scientific data on threats to biodiversity.	Signed by China June 11, 1992; ratified January 5, 1993

¹ *Frequently Asked Questions: Declaration on the Rights of Indigenous Peoples* United Nations Permanent Forum on Indigenous Issues.

² *United Nations adopts Declaration on Rights of Indigenous Peoples* United Nations News Centre, September 13, 2007.