



China's Role in Preventing Modern Slavery in Myanmar's Jade Mines

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Humanity Research Consultancy (HRC) is a social enterprise providing expert supply chain investigation, training and consultancy services to governments, NGOs, and corporations. HRC's local evidence-based insights empower policymakers to end forced labour, modern slavery, and human trafficking, globally. Connecting clients to experts from more than 50 countries, HRC specialises in providing local culturally sensitive insights, nuanced field investigation and research.

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The content of the report was drafted in 2020 – before the recent developments took place in Myanmar, including domestic instability and fluctuating ties with China.

Executive Summary

One of Myanmar's largest sources of foreign revenue, jade plays a crucial role in pumping up the national economy as well as "the world's longest-running civil war" between the Kachin ethnic group and the Myanmar military. Jade is vastly profitable, resulting in an industry rife with corruption, conflict, and organised crime. Multiple types of modern slavery can either be found in the mines or are related to the mining operations.

Beijing's growing presence in Myanmar has gained it a place at the centre of Myanmar's jade industry. Cooperating with both the Myanmar military and rebel groups, Chinese stakeholders control the entire supply chain. On one hand, the jade obsession is almost exclusively Chinese with demand for the stone driven largely by the Chinese market. On the other hand, with its rising economic growth, Chinese-owned front companies (foreign ownership is illegal in Myanmar) have become the main producers in jade mines. Buyer- or investor-capital from China contributes directly and indirectly to supplying arms and financial support to the Myanmar juntas, which in turn worsens the level of human rights abuses.

Ending modern slavery in jade mines requires a collective multi-faceted response from the national and local government, ethnic rebel groups operating in the area and all enterprises in the supply chain. **While the Government of Myanmar does not fully meet the minimum standards for the elimination of modern slavery and is not making significant efforts to do so, Chinese investors should step up and take responsibility for protecting their workers and related families from exploitation.** Addressing the root causes of human trafficking and forced marriage (a widespread means of coercion), is another necessary requirement to protect women from sexual abuses.

The first of its kind, this report analyses how and why Chinese corporates and markets involved in jade mining could assert their influence and apply pressure to conflict groups to change and reduce modern slavery practice in Myanmar.

With this report, Humanity Research Consultancy calls on China to adopt legislation and policies on supply chain due diligence.

It also calls on Chinese companies to actively follow the UN Guiding Principles on Business and Human Rights (UNGPs) as well as the new Guidelines for Social Responsibility in Outbound Mining.

Beijing also should use its position to push Chinese stakeholders to understand the negative social and environmental impacts they might bring to the mining environment and encourage them to engage more in protecting the welfare of ailing citizens.



Picture 1: Jade stone is mostly known for its green varieties, but it appears naturally in other colors as well

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1. Introduction

The collapse at the Wai Khar mine on the 2nd of July 2020 was recorded as the deadliest mining accident in Myanmar's history¹. The tragic landslide left at least 175 people buried under the mountain, while at least 100 went missing. Unfortunately, none of the victims' families received any compensation from either the government or operations companies since these jade pickers, as described by Aung San Suu Kyi, are regarded as "illegal miners".

The mineworkers' "illegal" status is a result of the disordered structure of this hazardous industry. According to Global Witness's significant report "Jade: Myanmar's 'big state secret'"², mines in Myanmar are dominated by "military-linked companies, armed groups and cronies" who abuse labour forces without offering them legal contracts. The chaotic situation has also given local traffickers openings to use deceptive tactics to recruit men and children into forced labour³. **The multi-billion-dollar jade trade is equipping both the national military and Kachin Independent Army (KIA) with weapons, and in turn, this ethnic conflict has caused more than 100,000 displaced persons**⁴. These people experience a lack of security, as well as a lack of community and social structures, exposing them to a high risk of human trafficking and sexual exploitation.

Local companies in Myanmar have pointed out that since foreign ownership in Myanmar is illegal, Chinese investors use joint ventures with local firms or create proxy shell companies to operate in jade mines⁵. Ye Htut, the deputy head of Myanmar Gems Enterprise (a department of the Ministry of Mines), emphasised that "about 600 jade mining firms operate on 20,000 acres around the town of Hpakant. The activity in the area is dominated

¹ Muller, N. (2020, July 13). A Deadly Gamble: Myanmar's Jade Industry. Retrieved August 23, 2020, from <https://thediplomat.com/2020/07/a-deadly-gamble-myanmars-jade-industry/>

² Global Witness. (2015). Jade: Myanmar's "Big State Secret". London: Global Witness.

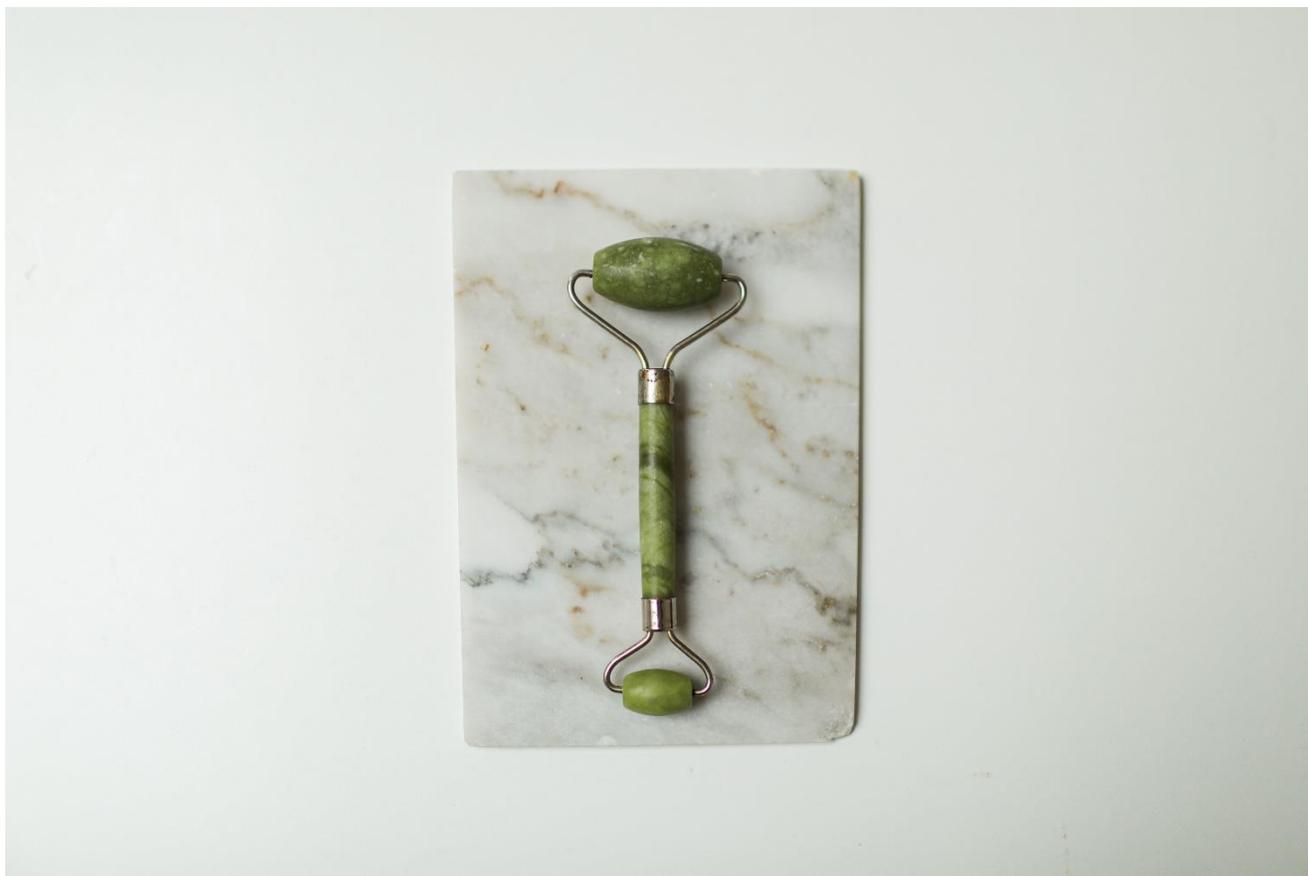
³ US Department of States. (2020). 2020 Trafficking in Person Report. Retrieved September 13, 2020, from <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>

⁴ Asia Unbound (2015, November 2). China's Role in Myanmar's Dangerous Jade Trade. Retrieved August 23, 2020, from <https://www.cfr.org/blog/chinas-role-myanmars-dangerous-jade-trade>

⁵ Zaw, H. (2015, December 16). Chinese jade miners in overdrive ahead of new Myanmar government. Retrieved August 23, 2020, from <https://www.reuters.com/article/us-myanmar-china-jade-insight-idUSKBN0TZ08520151216>

by about ten firms, among them mostly Chinese-led ventures”⁶. Chinese investors and companies ought therefore to take primary responsibility or apply pressure to their business partners in Myanmar to improve labour conditions and thereby prevent modern slavery in jade mines. Nevertheless, existing research shows that China is an essential economic driving force, and its duty of ensuring human rights in the supply chain has been largely ignored.

This paper is intended to support and provide information on the link between Chinese investors/buyers and the jade mining industry in Myanmar. **It analyses the most frequent forms of modern slavery that emerge in the jade sector to assist readers in understanding modern types of exploitation.** By analysing the current operations and omissions conducted by main stakeholders, this paper will offer some potential approaches to push the overall sector to adhere to international human rights standards.



Picture 2: Jade Roller for skin care

⁶ Ibid

2. Key Data of Myanmar's Jade Industry

2.1 How China's Enthusiasm for Jade Affects Myanmar's Jadeite Mining Industry

Jade, known as the royal gem in Chinese culture, has always been a part of Chinese civilization⁷. Even today, many Chinese still believe that wearing jade brings good luck, prosperity, and longevity. Global inflation started in the late 20th century which made people look for ways to preserve currency value⁸. **"Collecting jade stones is an investment that can be expensive at first but over time can earn you big bucks, because the value of jade increases fast,"** says Yongkuan Fu, 54, an antique and art collector in Beijing⁹. One of the most favoured investment methods for the Chinese middle class is the buying of jade and pearl jewellery (see figure 1).



Figure 1: Data for 2014-2018 Market performance and Consumption (ton) of Jade trade in China¹⁰

⁷ Møller, H. (2018, April 20). Boom or Bust in China's Jade Trade with Myanmar. Retrieved August 23, 2020, from <https://www.chinoiresie.info/china-jade-trade-with-myanmar/>

⁸ Yang, M.Y. 杨美玉 (2019). 中缅玉石贸易历史与现状研究 [A study on the History and Current Situation of China-Myanmar's Jade Trade] (Master's thesis, University of Yunnan)

⁹ Liu, L. (2011). Crazy Stone. Retrieved August 23, 2020, from http://www.chinadaily.com.cn/life/2011-03/18/content_12193894.htm

¹⁰ China Industry Information. (2020). 2018年中国珠宝玉石行业供应量、消费量及珠宝玉石行业发展前景分析 [Analysis of China's jewelry and jade industry supply, consumption and development prospects of the jewelry and jade industry in 2018]

Nowadays, the production of jade inside China is shrinking dramatically because of land over-exploitation and stricter mining policy control. In contrast, Myanmar accounts for nearly 90 percent of the global jadeite trade's volume, which has turned Burmese jade into the perfect alternative for investors feeding China's appetite¹¹. In Mandalay, the jade market is saturated with Chinese sellers and buyers, and some traders say that jadeite prices have been rising by up to 300 percent annually since 2009 because of the fast-growing economy in China¹². It would be no exaggeration to say that the demand for Burmese jadeite is driven almost entirely by the Chinese market.

2.2 Conflict Over the Profiteering Jade Market

The Jade industry is worth up to US\$31 billion annually. This equates to almost half of Myanmar's official GDP and 46 times the government expenditure on health. However, locals in the jade areas benefit little from this natural resource heist. Instead, they face rampant heroin addiction, human trafficking, sexual exploitation, and dangerous working conditions in the mines because of the warfare over the land. This phenomenon will be discussed in detail in the subsequent sections.

Myanmar's jade mines are mainly situated in the Kachin region, where the armed conflict ended, but then restarted and has continued since the Myanmar government tore up the peace agreement with KIA in 2011. **Until now, more than 100,000 Kachin civilians have been displaced from their original living space. Lacking access to food and sanitation pushed them to work illegally in the mines where they have become extremely vulnerable to exploitation and human trafficking¹³.** Researchers have observed a strong link between the increasing conflicts and geographical location of jade mines in Myanmar. The government, rather than seeking stability in the region, appears to want to “retain its control over the country's lucrative jade resources”¹⁴ and this could be regarded as the main reason why ceasefire talks failed.

¹¹ Menard, A. (2019). Jade and Gem Smuggling Costs Myanmar Billions.

¹² Møller. (2018)

¹³ Song, L. (2017). Refugees or border residents from Myanmar? The status of displaced ethnic Kachins and Kokangs in Yunnan Province, China. *International Journal of Refugee Law*, 29(3), 466-487

¹⁴ Christensen, D., Nguyen, M., & Sexton, R. (2019). Strategic violence during democratization: Evidence from Myanmar. *World Politics*, 71(2), 332-366

“A Global Witness report from 2015 showed that more than half of the jade was unregistered, and corruption was present at every step of the jade supply chain.”

Apart from initiating the violence, Yangon also relies on the over-taxation of jade commerce to expand its government revenues. In recent years, the total tax for jade trade has been raised repeatedly from 10 percent to 30 percent¹⁵. However, the policy does not efficiently protect the environment and local vendors as claimed but boosts black market jade smuggling. **A Global Witness report from 2015 showed that more than half of the jade was unregistered, and corruption was present at every step of the jade supply chain: from obtaining a license, to officials at the mine site undervaluing production, as far as the army, local militias and ethnic armed groups facilitating smuggling¹⁶.**

Just like the Myanmar military, the independent armed forces of Kachin State and Shan State also strongly depend on the jade mines to equip themselves. According to a Chinese trader who often smuggles jade in the black market, Myanmar's ethnic armed groups run their own public markets from time to time in Mandalay and other places; this is considered illegal by the Myanmar government¹⁷. However, the transaction price through those ethnic army groups is often lower than the government auctions, therefore attracting many Chinese companies and individual investors. Most of the benefits from the trade are used to purchase weapons and supplies instead of helping local development, which exacerbates the conflicts in the jade-mining area¹⁸.

¹⁵ Shortell, P. (2019). Losing Luster: Addressing Tax Evasion in Myanmar's Jade and Gemstone Industry. Natural Resource Governance Institute.

¹⁶ Global Witness, (2015)

¹⁷ Xinmin Weekly News. 新民周刊.(2011) 谁在走私珍稀木材?[Who is smuggling the cherishing woods?] Retrieved August 23, 2020, from http://www.cb.com.cn/deep/2011_0701/233947_4.html

¹⁸ Mirante, E. (2020, July 02). A waste of lives. Retrieved August 23, 2020, from <https://www.himalmag.com/a-waste-of-lives-jade-mining-myanmar-labour-environment-exploitation-edith-mirante-2019/>

3. Understanding Modern Slavery in Myanmar's Jade Mining

3.1 Forced/Child Labour and Their Deadly Working Condition in Jade Mines

As armed conflicts between the Myanmar army and KIA continues, thousands of villages have been destroyed along with the destruction of the Kachin people's normal life. Local communities suffer from a lack of economic opportunities outside the mining sector¹⁹. Thus, despite life-threatening working conditions, many desperate Burmese have no choice but to work in the mines to support their families²⁰. In 2015, Myanmar's state media estimated that around 300,000 itinerant miners from across Myanmar migrate or were forced to work for hundreds of mining companies that operate in Hpakant²¹. Equally among them, children are frequently found working in hazardous workplaces where the environments are contaminated by dust and fumes²².

According to the 2019 report by the International Growth Centre, 57 percent of jade miners in Myanmar work seven days per week, with 87 percent working more than five days per week (see Figure 2). Three quarters of the workers work between seven to ten hours per day, which makes for an average working week of more than 50 hours²³. However, compared to the huge profits jade could make, regular miners only get paid as little as 1USD per day²⁴. Many miners became long term drug users to ease the pain and fatigue brought on by the work²⁵. Heroin and opium are widespread in the mines and each injection costs less than 70 cents USD.

¹⁹ Hogan, L. (2018, December 07). The Human Cost of Myanmar's Jade Mines. Retrieved August 24, 2020, from <https://newnaratif.com/journalism/the-human-cost-of-myanmars-jade-mines/share/xuna/ae306dc92ae6dfe9049d4b2177bb932d/>

²⁰ Myanmar currently ranks first in Asia, third in the world for the highest number of accidents and deaths from landmines. More information see <http://gppreview.com/2016/09/20/landmines-plaint-myanmars-refugees-displaced-peoples/>. See also: Radio Free Asia.

(2017) Myanmar labor minister commits to working toward elimination of child labor. Available at: <https://www.refworld.org/docid/5971a79213.html>

²¹ Vrieze, P. (2016). Dangerous Myanmar Jade Mines Bring Income, Death. Retrieved August 23, 2020, from <https://www.voanews.com/east-asia-pacific/dangerous-myanmar-jade-mines-bring-income-death>

²² Sisodia, R. (2008). Jade trade in Myanmar thrives on exploitation, rights abuses. In The National (Vol. 29).

²³ Lin, M. Z. N., Loiacono, F., Sandi, N., Min, W., Vijje, M. J., & Ngwenya, S. (2019). Artisanal jade mining in Myanmar.

²⁴ Sisodia, R. (2008)

²⁵ Sandford, S. (2019). Drug Addiction Rises in Myanmar's Kachin State. Retrieved September 01, 2020, from <https://www.voanews.com/east-asia-pacific/drug-addiction-rises-myanmars-kachin-state>

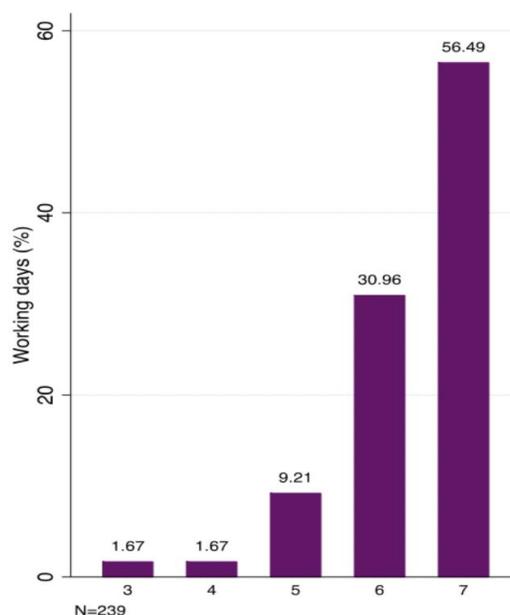


Figure 2: Data for average working days for miners in Myanmar²⁶

In addition to the squalid conditions and long working hours, jade pickers are under threat of arbitrary detention and physical violence. The United Nations (UN) Fact-Finding Mission's report in 2019 provided an example of a miner from a jade mine in Hpakant, who was detained by Tatmadaw soldiers when passing through a checkpoint. The soldiers searched him, looking for raw jade. When the man told them he had no jade, he was beaten, his feet were cuffed, and he was detained in a makeshift tent near a checkpoint for one night²⁷.

3.2 Displaced Kachin People Exposed to High Risks of Human Trafficking

Despite the ongoing jade mining projects and infrastructure development, most of the cash that is generated flows into the pockets of state-aligned investors and private sector companies. Local people are exploited and left living a displaced life in a worse financial condition in a ravaged environment. Looking for a way to leave the conflicted areas, girls in the Kachin area are vulnerable to human trafficking (See Figure 3)²⁸. They are usually first

²⁶ Lin, M. Z. N., Loiacono, F., Sandi, N., Min, W., Vijge, M. J., & Ngwenya, S. (2019).

²⁷ UN Office of the High Commissioner for Human Rights. (2019) Myanmar: Human Rights Violations Affecting Region and ASEAN Must Apply Pressure.

²⁸ The research conducted shows that among all Myanmar victims they interviewed, the girls from Kachin are the most at the risk of human trafficking. See details in: John Hopkins University and Kachin Women's Association Thailand. (2018). Estimating Trafficking of Myanmar Women for Forced Marriage and Childbearing in China. Available at:

https://reliefweb.int/sites/reliefweb.int/files/resources/ETFM_Full%20Report_07Dec2018_Final.pdf ; Also see: Barr, H., & Dholakia, N. (2020, August 24). Interview: Why 'Brides' From Myanmar Are Trafficked to China. Retrieved August 24, 2020, from <https://www.hrw.org/news/2019/03/21/interview-why-brides-myanmar-are-trafficked-china>.

approached by brokers, often someone close to the victims, who use expansive language (e.g., offering them a legal job in China or a real marriage) to entice them to leave Myanmar²⁹. These victims would then be handed over to the main traffickers, who often use threats or drugs to deliver them to the buyers in China.

Variables	Myanmar (n=89) n (%)	China (n=68) n (%)	Total (N=157) N (%)
Average Age at Interview (in years)	31.2	33.1	32.0
Ethnicity			
Kachin	79 (88.8)	63 (92.7)	142 (90.5)
Shan	9 (10.1)	3 (4.4)	12 (7.6)
Other ^a	1 (1.1)	2 (2.9)	3 (1.9)

Figure 3: Characteristics of victims of forced marriage, by country review³⁰

After being sold to Chinese families, these “brides” may experience psychological abuse, poor living conditions and exposure to a wide range of diseases. They are forced to do housework for the whole family, while domestic violence and sexual abuse frequently come from their “husbands”³¹. **These women often suffer from a lack of health care because of their illegal status as well as the indifference of their host families. In most cases, buyers force victims to go through some illegal drug treatments for the sake of pregnancy, which sometimes causes severe damage to their physical health.** A Human Rights Watch report also shows that two women out of 22 survivors whom they interviewed had been sold twice³². That means, for those survivors who manage to escape, there is still the risk of being re-trafficked because their displaced condition has not improved.

3.3 Sexual Exploitation of Women and Girls

The UN Special Rapporteur reported in 2019 that Myanmar's national army had used jade mining areas as a staging ground for sexual violence and other serious violations. One woman explained that “the girls are often 14-15 years old. Everyone is buying [sex], jade diggers,

²⁹ Zhao, G. M. (2003) Trafficking of women for marriage in China: policy and practice. *Criminal Crim Justice*. 3(1):83-102.

³⁰ John Hopkins University and Kachin Women's Association Thailand. (2018).

³¹ Barr, H., Hatcher, R., & Axtell, B. (2019). It's a Booming Business: Trafficking Myanmar 'Brides' to China. Retrieved August 24, 2020, from <https://womensenews.org/2019/03/its-a-booming-business-trafficking-myanmar-brides-to-china/>.

³² Ibid.

military, police, civilians...Young beautiful virgins cost more: [17 Euro] for 30 minutes is [a] standard price and then it goes up or down depending on other 'qualities in the girl'.”³³ In the worst cases, girls as young as nine years old were being trafficked into sexual industries in other regions or neighbouring countries such as China and Thailand³⁴. Jiegao Border Trade Zone in China for example has one of the busiest jade bazaars in the China-Myanmar border region. Jiegao city attracts all kinds of jade industries stakeholders, as well as traffickers and pimps. Many girls from Myanmar in Jiegao are tricked and traded into prostitution because they are cheaper than Chinese girls but live in worse conditions because of their illegal status³⁵. Drug abuse is also common amongst sex workers, which increases the submission and passivity of the victims and ensures that they are less likely to free themselves from this abusive relationship.



Picture 3: Prostitution halls in Jiegao: often disguised as massage parlours, but barely hidden³⁶

³³ United Nations Human Rights Council. (2019). The Economic Interests of Myanmar's Military. A/HRC/42/CRP/3.

³⁴ Ibid.

³⁵ Sun, Y. & He R.R. (2015). 境内关外：实拍中缅边境的越境者与红灯区 [Inside and outside the border: real shots of illegal border crosser and the red light districts on the China-Myanmar border] Retrieved August 23, 2020, from <https://read01.com/J8en4R.html#.X0fm0S17FQI>

³⁶ Ibid.

4. China's Role in Jade Mines

4.1 Why China is the Key to Combatting Modern Slavery in Jade Mines

China has immersed itself in the entire jade supply chain (see figure 4). Its demand influences jade prices, and it is an open secret that Chinese business interests collude with the military, ethnic armed groups and drug lords to steal Kachin's jadeite wealth, sparking conflict along the way³⁷. With China so involved, even the Jade Act - a sanction implemented by the U.S. that bans all jade products in an effort to fight against human rights abuses in mines - has become symbolic and essentially ineffective³⁸.

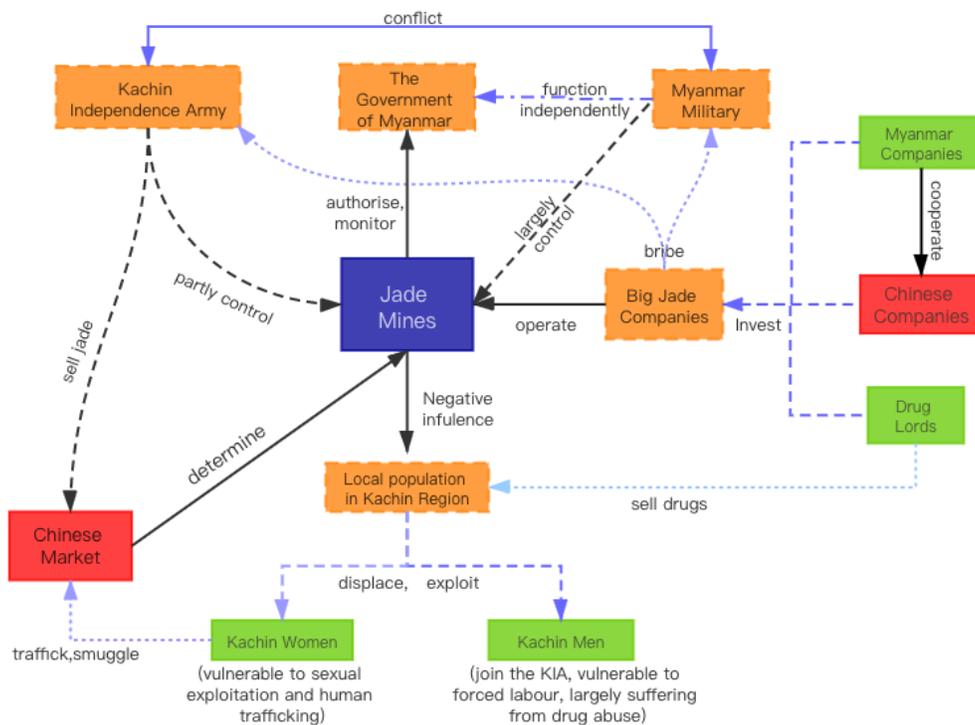


Figure 4: Relationship of Key Stakeholders in the Jade Mine Industry

³⁷ Donowitz, P. (2018). Can China be an agent of stability in northern Myanmar?

³⁸ Asia Unbound (2015, November 2). China's Role in Myanmar's Dangerous Jade Trade. Retrieved August 23, 2020, from <https://www.cfr.org/blog/chinas-role-myanmars-dangerous-jade-trade>. The U.S implemented a jade sanction "Tom Lantos Block Burmese JADE (Junta's Anti-Democratic Efforts) Act" in 2008, more detail can be found at: <https://www.congress.gov/110/plaws/publ286/PLAW-110publ286.pdf>

At this time, China could use its power to mitigate the human rights impacts in jade mines because Myanmar needs China's economic and diplomatic support. The cooperation between Beijing and Yangon on the Belt and Road Initiative (BRI) guarantees capital inflow from China to Myanmar. Since 2011, China has become, and remains, the largest source of foreign direct investment (FDI) in stock, amounting to around 20 percent of total FDI³⁹. In the first half of 2019 alone, Mainland Chinese and Hong Kong money accounted for 84 of the 134 new investments approved by the Myanmar government⁴⁰. **Meanwhile, the Rohingya crisis also pushed the Myanmar government and militias to lean toward China for support as western governments and INGOs increasingly criticised their human rights records⁴¹.** In the meantime, China also showed the Tatmadaw its power of virtual veto over the peace process by successfully convincing the northern armed groups to join a peace conference in 2016⁴².

4.2 China's Responsibilities Under the UNGPs

The growing international interest in the “ethics” of business requires companies to place greater consideration on adhering to international human rights norms.⁴³ This idea is not new: the preamble of the 1948 Universal Declaration of Human Rights emphasised that “every individual and organ of society... shall strive... to promote respect of these rights”. **This means that although traditionally the state is the main player in preventing human rights abuses, it does not allow the corporates and investors to disregard their roles in monitoring and raising certain social norms.**

In 2011, the UN Human Rights Council endorsed an international soft law, the United Nations Guiding Principles on Business and Human Rights (UNGPs)⁴⁴. This law builds on existing international regulatory instruments and constitutes the most widely recognised framework

³⁹ Yao, Y & Zhang, Y.Y. (2018). Public perception of Chinese investment in Myanmar and its political consequences: A survey experimental approach. Available at <https://www.theigc.org/wp-content/uploads/2018/06/Yao-Zhang-2018-Policy-Brief.pdf>

⁴⁰ Ibid.

⁴¹ International Crisis Group. (2020, April 02). Commerce and Conflict: Navigating Myanmar's China Relationship.

⁴² Ibid

⁴³ Sullivan, R., & Robinson, M. (2004). Business and Human Rights: Dilemmas and Solutions. New York, NY: Greenleaf Publishing.

⁴⁴ In 2019, China made its comments United Nations Guiding Principles on Business and Human Rights to take into account the International Covenant on Economic and Social and Cultural Rights, the UN Guiding Principles on Business and Human Rights and climate change in all Chinese investment abroad. See also: <https://www.business-humanrights.org/en/latest-news/china-commits-to-un-human-rights-council-to-respect-human-rights-in-its-foreign-investments/>

addressing the risk of negative impacts on human rights associated with business activities⁴⁵. It proposed the “**protect, respect and remedy**” framework for states and companies to fulfil their human rights obligations:

- (a) *Protect: a policy commitment to meet the state responsibility to protect against human rights abuses;*
- (b) *Respect: the related companies are mandated to implement a due diligence process to identify, prevent, mitigate and account for how they address their human rights impacts; and*
- (c) *Remedy: the steps that both states and corporates must take to ensure victims' greater access to an effective remedy, both judicial and non-judicial*⁴⁶.

As a signatory of the Palermo Protocol, the Chinese government is obliged to investigate and prosecute human trafficking cases, protect victims of trafficking, and provide remedies if it fails to take reasonable steps to prevent human trafficking and protect potential or actual victims of trafficking⁴⁷. Additionally, the United Nations Sustainable Development Goals (SDGs) are closely connected with human rights due diligence. A clear overlap exists between human rights due diligence and the Sustainable Development Goal 8.7. Thus, China has a responsibility to end child labour, forced labour and human trafficking for achieving its SDG agenda.

Indeed, China has tried to include business and human rights into its “National Human Rights Action Plan (2016-2020)” in an effort to change its negative image in the international community. For the first time, China promoted that all Chinese overseas enterprises should abide “by the laws of the countries in which they are stationed and fulfil their social

⁴⁵ Here, a company's “business activities” include both actions and omissions.

⁴⁶ UN Guiding Principles, Principle 15.

⁴⁷ China ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol) on 8 Feb 2010. For a discussion of the principles of state responsibility relevant to trafficking, see Anne T. Gallagher, *International Law of Human Trafficking* (Cambridge University Press, 2010), p.273-275.

responsibilities in the process of conducting foreign economic and trade cooperation, providing assistance and making investment”. Accordingly, Beijing then promulgated more than 20 relevant policies to guide the investment and operation of enterprises. Among them, the **Measures for the Administration of Overseas Investment of Enterprises** and the new **Guidelines for Social Responsibility in Outbound Mining**⁴⁸ are the two pillars that the government should use to lead and monitor overseas investment in mining industries by Chinese enterprises.

According to these two policies, it is recommended that all overseas Chinese investment projects go through a supervisory inspection by the central or state government while the companies involved should conduct human rights due diligence checks, forbid forced/child labour and ensure labour rights for their employees. However, these guidelines lack binding forces because they are voluntary, and no companies have been seen to implement them yet⁴⁹. Moreover, the assessment process is mainly focused on the “analysis of the impacts of the project on the national interests and national security of China”, where social and environmental impact assessments are largely left behind in their evaluation⁵⁰.

Some experts associate this reluctance with the Chinese government’s reaction to criticism of its human rights violations. That is, regardless of whether the Myanmar government is unwilling or unable to remove the military from the country's economic life and fulfil its human rights obligations in the military-controlled Kachin area, human rights are internal matters that should be exempt from international scrutiny in China’s views⁵¹.

Therefore, although the UNGPs stipulates that the corporates “cannot and should not simply mirror the duties of the states” and that they hold the responsibilities to “respect human rights as baseline expectations... in all situations,” **Chinese mining companies in Myanmar**

⁴⁸ 《企业境外投资管理办法》 and 《中国对外矿业投资行业社会责任指引》； See also: <http://en.pkulaw.cn/display.aspx?cgid=307304&lib=law> and <http://www.cccmc.org.cn/docs/2014-10/20141029161135692190.pdf>

⁴⁹ Vella, H. (2014). Addressing conflict minerals - China publishes 'groundbreaking' guidelines. Retrieved September 02, 2020, from <https://www.mining-technology.com/features/featureaddressing-conflict-minerals-china-publishes-groundbreaking-guidelines-4439995/>

⁵⁰ Cai, F.F., Yue J.F., Zhang J.L., & Chen J.Y. (2017) *中国企业海外投资的社会责任与 NGO 参与：以缅甸莱比塘铜矿项目为例* [The Social Responsibility of Chinese Enterprises' Overseas Investment and NGO Participation: A Case Study of the Lebitang Copper Mine Project in Myanmar]

⁵¹ Le, U. P. (2012). A Culture on Human Rights in East Asia: Decon- structing ‘Asian Values’ Claims, in: U.C. Davis Journal of International Law & Policy, 18, 469.

showed that they ignored the human rights impact because of the loose legal constraints from both countries. In general, two extreme types of business are considered intolerable by international societies⁵². One form is when the company is directly involved in human rights abuses (forced labour, abusing land rights of local people, etc.); the other is when a country's government engages in severe violations of human rights to its people, but the company continues to do business with the state which could then be considered as supporting the suppressions. **In jade mines, Chinese investors have covered both categories: they have not only prioritized profit at the expense of human rights and the environment but also put money in the pocket of both military and rebel forces which led to a deleterious outcome for the people of Myanmar.** Unfortunately, no human rights due diligence processes have been put in place by any corporates to identify potential human rights abuses and enable them to implement timely preventative measures.

Similarly, there is little chance for victims in jade mines to have access to effective solutions. Although business enterprises also have an important role to play in timely and effective remediation of any adverse human rights impacts caused or exacerbated by them⁵³, barriers such as the high cost of bringing a claim, lack of free legal assistance, and denial of justice in the country where the abuse occurred make the practice impossible for the enslaved mine supply chain workers.

4.3 What China Could Do to Change the Situation?

UNGPs has listed the appropriate responses to the adverse human rights impacts caused by the irresponsible behaviour of mining companies (see figure 5). For Beijing to have a real impact on mitigating the modern slavery situation in Myanmar's jade mines and raise its international reputation, it must urge its corporates to take positive steps in initiating a human rights due diligence process, stop illegal smuggling/trafficking and push Chinese investors to provide a remedies mechanism for local communities. **Supply chain due diligence** stands as the core of the UNGPs. It is now regarded as the "gold-standard" of

⁵² Putten, F. V., Crijns, G., & Hummels, H. (2017). The ability of corporations to protect human rights in developing countries. *Business and Human Rights*, 82-91. doi:10.4324/9781351281287-6

⁵³ UNGPs

responsible business conduct, especially for downstream companies which rely on critical commodities-such as raw jade-- from high-risk and conflict-affected areas⁵⁴.

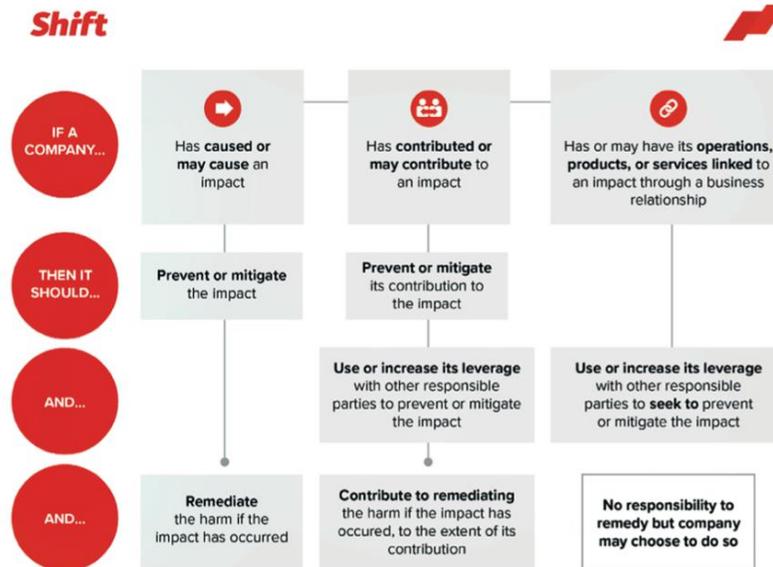


Figure 5: Summarised Appropriated Responses for Companies under the UNGPs ⁵⁵

To be fully effective, due diligence should not be limited to the first tier downstream and upstream in the supply chain but should encompass all suppliers and sub-contractors, particularly those that have been identified during the due diligence process as posing major risks. This process requires enterprises to engage actively with local communities and select local partners more carefully. To implement a green Belt and Road Initiative (BRI)⁵⁶, China has to do more than economic investment. Given the *de facto* absence of functioning regulation or any guarantees for local communities' livelihoods in the operating areas, Chinese investments have already faced some failures and been boycotted in Myanmar. In other industry schemes (e.g., the Responsible Minerals Initiative), China has been forced to

⁵⁴ Saegert, J., & Grossman, G. (2018). Human Rights Due Diligence in Mineral Supply Chains .Retrieved September 2, 2020, from https://www.eu-china.net/uploads/tx_news/Blickwechsel_Human_Rights_Due_Diligence_in_Mineral_Supply_Chains_International_Developments_and_Chinese_Efforts_02.pdf

⁵⁵ Jaekel, T. (2020). Still Overlooked: Communities affected by jade mining operations in Myanmar, and the responsibilities of companies providing machinery. Retrieved September 02, 2020, from <https://swedwatch.org/publications/>

⁵⁶ In seeking greater participation in the BRI, China's government has sought to promote the "sustainable" and "green" nature of BRI investments. More information can be found at <https://green-bri.org>

participate in a due diligence check by their international downstream buyers⁵⁷. However, this does not seem to happen in the jade industry because most buyers are also Chinese. Thus, a mandatory national regulation from the Chinese government is desirable.

In addition, China must pay more attention to the distribution of development benefits. Investment is meant to assist the local economy and improve living standards across the population, rather than be concentrated in the hands of Myanmar's military, KIA militias and economic elites. Many of the human trafficking victims we interviewed chose to stay in China with their violent "buyers" because there is no hope for them to return to the conflict-zone in Myanmar. As long as jade continues to fuel the armed conflict in Myanmar and the local economy remains in a state of collapse, human trafficking and exploitation of local populations will not stop.

For the existing and future victims, both the Chinese government and Chinese companies have responsibilities for ensuring the victims' right to effective solutions. This right is specified, for example in articles 2.3 and 14 of the International Covenant on Civil & Political Rights. Legislations are required to ensure victims have access to sufficient funding for claims, access to evidence and the information necessary for claimants to substantiate their claims, as well as the free assistance of an interpreter to overcome any language barrier in understanding legal speak and terminology in court. Effective implementations and official human rights due diligence measures would help guide the companies and hold them accountable. At the same time, Chinese investors should recognise that there is a growing demand to hold private players accountable for wrongdoing. As global norms around corporate conduct solidify, they should prepare an internal mechanism to avoid human rights allegations.

It is worth noting that fulfilling companies' responsibilities under the UNGPs does not deprive a company of its right to operate in conflict areas. A Global Witness senior advisor clarifies that it is more about "taking responsibility for their sourcing and asking their suppliers for evidence the trade has not financed armed groups or rogue elements of the national army"⁵⁸.

⁵⁷ Saegert, J., & Grossman, G. (2018).

⁵⁸ Vella, H. (2014).

Besides, as mentioned by the China Chamber of Commerce of Metal, Minerals & Chemicals Imports and Exports⁵⁹, low- social responsibility has become one of the main obstacles restricting the development of Chinese mining companies in foreign countries⁶⁰. Companies should not regard the social responsibility of ensuring no modern slavery has been used in or caused by the production of the goods they sell as a burden. It should rather be seen as an advantageous method to gain stronger international competitiveness.

⁵⁹ 中国五矿化工进出口商会, is a national and industrial non-profit social organization formed voluntarily by units registered within the territory of the People's Republic of China. One of its major function is to supervise and guide the legal operation of the members.

⁶⁰ Sino-Swedish Corporate Social Responsibility Website. (2018) 矿业对外投资社会责任指引发布 [The Release of the Guidelines on Social Responsibility for Outward Investment in Mining Industry]

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