

Universal Periodic Review, Third Cycle of the Civil Society's Evaluation of the Extraterritorial Obligations of the People's Republic of China: Case Studies from Argentina, Bolivia, Brazil, Ecuador and Peru

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Table of Contents

I. Presentation **4**

II. Projects analysed in China Regional Report/UPR **7**

- **Introduction** 10

III. China's Extraterritorial Obligations **11**

IV. Human Rights Violations Observed in Argentina, Brazil, Bolivia, Ecuador and Peru **13**

- Violations of the Right to Participation and Consultation 15
- Violation of the Right to Land, Territory and Adequate Housing 16
- Violations of the Right to Integrity, Liberty and Security of the Person, and of the Right to Peaceful Assembly and Association 18
- Violation of the Right to Live in a Healthy Environment 20
- Violations of Workers' Rights and the Right of Association 22

V. Conclusions 24

- Questions for the Chinese Government 24
- Recommendations 25

Cover photo: Photo of the São Manoel HPP in Brazil, which has destroyed sacred spaces of extreme cultural value for the indigenous peoples Munduruku, Kayabi and Apiaka. © Pedro Porcé

This report is an initiative of the FIDH, CDES, CooperAcción, CEDIB, Equidad and FARN, and was reviewed by the ETO Consortium. It draws on alternative reports by civil society organisations in Argentina, Bolivia, Ecuador and Peru, to be submitted in the context of China's third-cycle Universal Periodic Review. The following organisations are co-signatories to the report:

FIDH - International Federation for Human Rights
CDES - Centro de Derechos Económicos y Sociales, Ecuador
CEDIB - Centro de Documentación e Información, Bolivia
CooperAcción - Acción Solidaria para el Desarrollo, Peru
FARN - Fundación Ambiente y Recursos Naturales, Argentina
EQUIDAD - Centro de Políticas Públicas y Derechos Humanos, Peru
Acción Ecológica, Ecuador
APDHB - Asamblea Permanente de Derechos Humanos de Bolivia
APRODEH - Asociación Pro Derechos Humanos, Peru
CASCOMI - La Comunidad Amazónica de Acción Social Cordillera del Cóndor Mirador, Ecuador
CEDHU - Comisión Ecuménica de Derechos Humanos, Ecuador
CITRMD - Central de Comunidades Indígenas Tacana II Río Madre de Dios, Bolivia
CNDDHH - Coordinadora Nacional de Derechos Humanos, Peru
ERI - EarthRights International
FEPROMUC - Federación Provincial de Mujeres de Cotabambas, Peru
Frente de Defensa de los Intereses y Desarrollo de la Provincia de Cotabambas, Perú
FNTMMSP - Federación Nacional de Trabajadores Mineros, Metalúrgicos y Siderúrgicos del Perú
FTP - Fórum Teles Pires, Brazil
PSHA - Pueblos Shuar Arutam, Ecuador
Red Muqui, Red de Propuesta y Acción, Peru
REPAM - Eje de Derechos Humanos de la Red Eclesial Panamazónica, Ecuador

I. Presentation

On October 25, 1971, the United Nations General Assembly voted to admit the People's Republic of China (China). On the occasion, Mr. Chiao Kuan-hua, Chairman of Delegation Of People's Republic of China, said "We have always held that the just struggles of the people of all countries support each other. China has always had the sympathy and support of the people of various countries in her socialist revolution and socialist construction It is our bounden duty to support the just struggles of the people of various countries." Back then, few, if any, could have guessed that a fundamental struggle of Latin-American peoples would be the defense of their Economic, Social, Cultural and Environmental Rights (ESCER) against the irrational development and exploitation of their natural resources, and that China would be the main force behind it. UN agencies were among those who promoted the ESCER, establishing treatises, covenants and agreements to protect them.

In 2006, the United Nations Human Rights Council (UNHRC) was created, as well as the Universal Periodic Review (UPR). The UPR is designed to prompt, support, and expand the promotion and protection of human rights… assessing States' human rights records and addressing human rights violations wherever they occur. From its beginnings, the .UNHRC allowed social organisations to participate by submitting shadow reports, and it was soon evident the importance of countries respecting their citizens human rights in activities done abroad. Also, the Committee on Economic, Social and Cultural Rights (CESCR) stated in their General Discussions, especially on 24th, the obligations of States parties apply "outside the national territory in situations over which the States parties may exercise control." And reiterated that "were required to take the steps necessary to prevent human rights violations abroad by corporations domiciled in their territory and/or jurisdiction (whether they were incorporated under their laws, or had their statutory seat, central administration or principal place of business on the national territory)."

Interestingly, China also accepted ther obligation to respect human rights instruments in their operations on foreign soil. On October, 2017, the National Development and Reform Commission of the People's Republic of China (NDRC) and the Ministry of Commerce published the Opinions on Strengthening the Creation of a Credit System on Foreign Economic Cooperation, indicating that Chinese organisations and citizens participating in foreign economic cooperation must respect the host country laws, UN resolutions and protect China's good image. Also, some National Chinese Regulatory Institutions and Business Associations have issued a series of guidelines to guide their banks and companies in implementing due diligence activities to avoid and mitigate the social and environmental impacts of their foreign operations.

Next November 6th, China will be examined under the Third Cycle of the UPR. Even though until now there is no wide and comprehensive assessment of Chinese Companies and Finance Institutions in Latin America on the obligation to comply to, protect and respect local communities rights, the Federación Internacional de Derechos Humanos, the Centro de Derechos Económicos y Sociales (Ecuador), the Centro de Documentación e Información (Bolivia), Cooperacción (Peru), the Fundación Ambiente y Recursos Naturales (Argentina), and the Foro Teles Pirés (Brazil) together with another 15 social organisations, have presented a shadow regional report for the UPR of China. The report title is Assessment on Extraterritorial Obligations of People's Republic of China from the civil society: cases of Argentina, Bolivia, Brazil, Ecuador and Peru).

The report presents 18 projects (Table 1, Analysed Projects, page 7) supported by 15 Chinese consortium and at least 6 Chinese banks in Argentina, Bolivia, Brazil, Ecuador and Peru. Out of these 18 cases, 7 are from the mining industry, 6 from the oil industry and 5 from the hydroelectric industry. Also, 15 involve indigenous territories, 11 natural protected areas, 5 have been declared Natural and Cultural World Heritage by the United Nations Educational, Scientific and Cultural Organisation (UNESCO), and 12 belong to the Ecuadorian, Bolivian and Brazilian Amazonian Region.

The report concludes that "Human Rights violations by Chinese companies are not isolated cases but show a recurrent behavour pattern, characterized by i) Defiance of the fundamental rights, but above all, the economic, social, cultural and environmental rights (ESCER), infringement of human and environmental international standards and lack of accountability about these infringements, ii) Knowingly and continuously violating rights; iii) Lack of control and assessment of Human Rights due diligence on the part of the Chinese State regarding projects developed by its companies abroad; and iv) Lack of adoption and implementation of effective measures to fulfil extraterritorial obligations of the Chinese State regarding the International Commitments assumed as State Party to ICESCR and UN." All this is even more critical when the impact of Chinese investments is observed in indigenous territories and in environamental and socially sensitive áreas, under national and international schemes requiring special protections.

The report also shows the need to expand the research towards other Chinese projects, but what's even more important, it shows China has effective enjoyment of the rights of the local communities where the projects with Chines participation are implemented. Chinese presence in extractive and infrastructure industries has increased sharply the last decade, and, in fact, China Development Bank has become the most important international lender for many latinamerican countries, and Chinese companies like Sinohydro, Gezhouba, China Petroleum and Chinalco are in charge of some of the most relevant projects in the region.

It's expected that Chinese presence in Latin America will grow and deepen, particularly with the Belt and Road Initiative (BRI). This is clearly seen on the priorities and policies established by China in the international cooperation with Latin America, e. g., "1+3+6" cooperation framework (2014), white paper on politics (2016), the Action Plan 2019-2021 CELAC-China (2018), the Bilateral Joint Action Plans, and bilateral agreements regarding BRI. All these instruments have in common natural resources extraction and exporting from this region to China, and Chinese expansion in the development of energy infrastructure and transport works.

Latin America peoples have hoped for a new cooperation scheme out of "South-South cooperation and win-win relation", different from the abusive model of multilateral Banks and finance markets, but after a decade of Chinese finance and investments, the impacted communities have not seen yet a social and environamental responsable behaviour from Chinese institutions.

On the other hand, civil society in Latin America has a long tradition of engaging in grand scale projects and in defining development policies, however, the national participation áreas have been neglected by the secretive and excluding model surrounding Chinese investments. Local communities and civil society organisations usually report on the impossibility of knowing basic information about the projects impacting them, and even of contacting the Chinese companies.

The possibility of a true South-South cooperation and mutual benefits relations between China and Latin America rely mainly on China showing an honest commitment with the wellbeing of the local communities, and with an investment model that respect nature and human rights.

The Third Cycle of UPR of China is a unique opportunity to get China to hear local communities voices, review the behaviour of their companies and bankers, and implement the necessary proceedings and tools to repair past damages and prevent future ones.

Colectivo sobre Financiamiento e Inversiones Chinas, Derechos Humanos y Ambiente, CICDHA
Federación Internacional de Derechos Humanos, FIDH

II. Projects analysed in China Regional Report/UPR

#	Name	Country	Chinese Company	Chinese Bank	Industry	Protected Area	World Heritage/ UNESCO	Indigenous Territory	Amazonia
1.	Mirador	Ecuador	Railway Construction Company (CCRC) | Tongling Nonferrus Metals Groups Holding Company	Bank of China China Development Bank Export-Import Bank of China Chinese Mercantile BankChinese Bank China Construction Bank Industrial and Commercial Bank of China Limited	Mining	X		X	X
2.	San Carlos Panantza	Ecuador	Railway Construction Company (CCRC)| Tongling Nonferrus Metals Groups Holding Company	Bank of China China Development Bank Export-Import Bank of China Chinese Mercantile Bank China Construction Bank Industrial and Commercial Bank of China Limited	Mining	X		X	X
3.	Río Blanco	Ecuador	Junefield Mineral Resources Holdings Limited	No data available	Mining	X	X	X	
4.	Bloque 62	Ecuador	China National Petroleum Corporation (CNPC) | China Petrochemical Corporation (SINOPEC)	No data available	Oil	X		X	X
5.	Bloque 14	Ecuador	China National Petroleum Corporation (CNPC) | China Petrochemical Corporation (SINOPEC)	No data available	Oil	X	X	X	X
6.	Bloque 17	Ecuador	China National Petroleum Corporation (CNPC) | China Petrochemical Corporation (SINOPEC)	No data available	Oil	X		X	X

#	Name	Country	Chinese Company	Chinese Bank	Industry	Protected Area	World Heritage/ UNESCO	Indigenous Territory	Amazonia
7.	Bloque 79	Ecuador	China National Petroleum Corporation (CNPC) | China Petrochemical Corporation (SINOPEC)	No data available	Oil	X	X	X	X
8.	Bloque 83	Ecuador	China National Petroleum Corporation (CNPC) | China Petrochemical Corporation (SINOPEC)	No data available	Oil	X	X	X	X
9.	Multiple Purposes Project Chone, Phase 1-Río Grande Dam and San Antonio Drain	Ecuador	Tiesiju Manabí| Tiesiju Civil Engineering Group Co	China Development Bank	Water				X
10.	Electrical Project Toachi Pilatón	Ecuador	International Water Electric (CWE)	National and Russian Financing	Water				X
11.	Hydroelectric Project Coca Codo Sinclair	Ecuador	Sinohydro	Export-Import Bank of China	Water	X		X	X
12.	Toromocho	Peru	Chinalco (Aluminium Corporation of China)	China Development Bank Export-Import Bank of China	Mining			X	
13.	Mina Marcona	Peru	China Shougang International Trade & Eng.Corp |Beijing Shougang Company Lmtd. |Shougang Jingtang Iron and Steel Co.| Beijing Shougang Cold-Sheet Co. | Qinhuangdao Shouqin Metal Materiales Co. Ltd. | Shougang Shuicheng Iron & Steel Co.Ltd. | Shougang Changzhi Iron & Steel Co.Ltd.| Tonghua Iron & Steel Group Co.Ltd. | Shougang Mining Company | Shougang Generación Eléctrica S.A	Industrial and Commercial Bank of China Limited	Mining				

#	Name	Country	Chinese Company	Chinese Bank	Industry	Protected Area	World Heritage/ UNESCO	Indigenous Territory	Amazonia
14.	Las Bambas	Peru	China Mineral and Metals Group (MMG)	Bank of China China Development Bank Export-Import Bank of China Industrial and Commercial Bank of China Limited	Mining			X	
15.	Río Blanco	Peru	Zijin Mining Group Co. Ltd.| Tongling Non-Ferrous Metals Group Holdings Co. Ltd. | Xiamen C&D Inc	Financing Interest from	Mining	X		X	
16.	Bloque Nueva Esperanza	Bolivia	BGP Bolivia | China National Petroleum Corporation	Public Financing from the National Treasury of the country	Oil			X	X
17.	Industrial and Commercial Bank of China Limited	Argentina	China Gezhouba Group Corporation (CGGC)	Bank of China China Development Bank Industrial and Commercial Bank of China Limited	Water	X	X	X	
18.	Usina Hidroeléctrica (UHE) São Manoel	Brasil	China Three Gorges (CTG)	Guarantee from the China Development Bank	Water			X	X

Introduction

1. The vast majority of loans, direct investment and trade flowing from China to countries in Latin America and the Caribbean (LAC) has been channelled into natural resource extraction, infrastructure projects and the export of raw materials. All of these economic activities have given rise to acute socio-environmental conflicts in the five countries discussed in this report.

2. Since 2009 until 2017, China's loans to LAC countries amounted to a total of USD 145 billion, a sum that exceeds the amount borrowed from the World Bank and the Inter-American Development Bank.[1] In 2017, Chinese direct investment reached a cumulative total of USD 113,662 million, 65% of which was directed towards the extraction of minerals, oil and gas. There was a twenty-six-fold increase in bilateral trade between China and the LAC region between 2000 and 2016, with LAC exports to China dominated by petroleum, mineral products and agricultural goods.[2]

3. Financial flows from China will undoubtedly continue to grow and expand into new areas of activity in the future. With that goal in mind, in 2016 the Chinese government produced its second policy document in relation to Latin America and the Caribbean (LAC) countries and a new financial cooperation plan known as '1+3+6'.[3] Under this framework, China has pursued a number of multilateral agreements, including the China–Latin America and Caribbean Countries Cooperation Plan 2015–2019 and 2019–2021, and bilateral agreements aimed at identifying projects in the fields of infrastructure, energy and the extractive industries for Chinese banks and companies to finance and develop.

4. In this context, it is a cause for concern that China's companies and banks have shown a lack of responsiveness and openness when confronted with the adverse effects of their investments on human rights. It is in fact China's obligation to act with due diligence, by conducting human rights impact assessments before finance and trade decisions are made, and to ensure that those affected have access to an effective remedy. In light of the above, the authors of this report see the Universal Periodic Review as an opportunity for China to establish positive actions to protect and respect human rights in Latin America and the Caribbean, particularly with respect to the population groups mentioned here.

1. Margaret Myers and Kevin Gallagher, The Dialogue and the Global Economic Governance Initiative at Boston University,
2. Statistical Bulletins of China's Ministry of Commerce, https://goo.gl/VT7pYE
3. President Xi Jinping announced China's strategy for cooperation with the LAC region, '1+3+6', in 2014. '1' represents the China-LAC Cooperation Plan 2015–2019; '3' represents the three drivers: trade, investment and finance; and '6' represents six sectors: energy and resources, infrastructure, science and technology, manufacturing, agriculture and construction.

III. China's Extraterritorial Obligations

5. The Human Rights Council (UNHRC) has acknowledged that the Universal Periodic Review is intended to '[e]nsure the participation of all relevant stakeholders, including non-governmental organisations and national human rights institutions'.[4] It is therefore in our interest to examine the extent to which China is fulfilling its obligations to promote and protect human rights, including outside its borders — particularly with regard to activities carried out in other countries by Chinese companies and subsidiaries. These issues have already been raised in the Final Report on China's Second Periodic Review. Nevertheless, we believe it is appropriate that China be emphatically reminded of the need to fulfil its extraterritorial obligations.

6. Moreover, both General Comment No.24 of the Committee on Economic, Social and Cultural Rights (CESCR)[5] and the Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights[6] maintain that, as a state party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), China has an obligation to protect, respect and fulfil human rights. This means that it must 'refrain from interfering with or curtailing the enjoyment of human rights'; 'protect individuals and groups from human rights abuses'; and 'take positive action to facilitate the enjoyment of basic human rights.' 'The obligation to protect means that States Parties must effectively prevent the infringements of economic, social and cultural rights in the context of business activities.'[7] Furthermore, states must require 'business entities to exercise human rights due diligence in order to identify, prevent and mitigate the risks of violations of Covenant rights, to avoid such rights being abused, as well as to account for the negative impacts caused or contributed to by their decisions and operations and those of entities they control on the enjoyment of Covenant rights.'[8]

7. The CESCR has also confirmed, in a number of its General Comments[9] and particularly in General Comment No.24, that these obligations apply 'outside the national territory in situations over which States Parties may exercise control'[10] and that states must 'take the necessary steps to prevent human rights violations abroad by corporations domiciled in their territory and/or jurisdiction (whether they are incorporated under their laws, or have their statutory seat, central administration or principal place of business on the national territory)'.[11]

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4. Human Rights Council, Institution-building of the United Nations Human Rights Council para. 3(m), UN Doc. A/HRC/RES/5/1 (June 6 2007); see also Universal Periodic Review: information and guidelines for relevant stakeholders' written submissions, para. 2, https://goo.gl/kgEv18

5. See CESCR General Comment No.24 (2017) on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, E/C.12/GC/24.

6. Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, 2011.

7. General Comment No.24, para. 14

8. *Idem.* para. 16

9. General Comment No.3, The Nature of States Parties Obligations (1991), CESCR, U.N. Doc. E/1991/23, para. 14.; General Comment No.14, The Right to the Highest Attainable Standard of Health (2000), CESCR, U.N. Doc. E/C.12/2000/4, para. 35; General Comment No.12: The Right to Adequate Food (Art. 11) (1999), CESCR, U.N. Doc. E/C.12/1999/5, para. 27; Statement on the Obligations of States Parties Regarding the Corporate Sector and Economic, Social and Cultural Rights (2011), CESCR, U.N. Doc. E/C.12/2011/1; General Comment No.16 on State obligations regarding the impact of the business sector on children's rights (2013), CRC, U.N. Doc. CRC/C/GC/16; General Comment No.15, The Right to Water (2003), CESCR, U.N. Doc. E/C.12/2002/11; General Comment No.22, The Right to Sexual and Reproductive Health (2016), CESCR, U.N. Doc. E/C.12/GC/22; General Comment No.23, The Right to just and favourable conditions of work (2016), CESCR, U.N. Doc. E/C.12/GC/23.

10. General Comment No.24, para. 10.

11. *Idem.* para. 26 (citing CESCR, Statement on the Obligations of States Parties Regarding the Corporate Sector and Economic, Social and Cultural Rights**,** para. 5, UN Doc. E/C.12/2011/1 (12 July 2011).

8. The Maastricht Principles stipulate that 'States must adopt and enforce measures to protect economic, social and cultural rights through legal and other means, including diplomatic means (...) as regards business enterprises, where the corporation, or its parent or controlling company, has its centre of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned'.[12]

9. States parties to the ICESCR can be held directly responsible for the actions or inactions of commercial entities in various situations, including 'if the entity concerned is in fact acting on that State Party's instructions or is under its control or direction in carrying out the particular conduct at issue, as may be the case in the context of public contracts'.[13] States 'should also require corporations to deploy their best efforts to ensure that entities whose conduct these corporations may influence, such as subsidiaries (including all business entities in which they have invested, whether registered under the State party's laws or under the laws of another State) or business partners (including suppliers, franchisees or sub-contractors) respect Covenant rights.'[14]

10. Those General Comments preceding the CESCR, in which the Committee sets out its interpretation of the provisions of the ICESCR, concur with the Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights.[15]

11. For a report on his mission to China in 2015,[16] an Independent Expert appointed by the United Nations compiled a substantial number of arguments to establish China's extraterritorial obligations to protect human rights in communities affected by the actions of financial institutions 'that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies... .'[17] 'Where a business enterprise is controlled by the State or where its acts can be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the State's own international law obligations.'[18] 'The duty of international assistance and cooperation enjoins States to ensure that their activities, and those of their residents and corporations, do not violate the human rights of people abroad'.[19]

12. Maastricht Principles, para. 25

13. General Comment No. 24, para. 11

14. *Idem.* para. 33; Guiding Principles on Extreme Poverty and Human Rights, Special Rapporteur on Extreme Poverty and Human Rights, UN Doc. A/HRC/21/39, 90 (b), 99, 102; Report of the Special Rapporteur on the right to food, Olivier De Schutter, Large-scale land acquisitions and leases: A set of minimum principles and measures to address the human rights challenge, A/HRC/13/33/Add.2, para. 5

15. Maastricht Principles; Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, O. De Schutter et al., 34 Hum. R. Qty. 1084 (2012), cmts. 3, 13.

16. Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to China**,** A/HRC/31/60/Add.1 (March 1 2016).

17. General Comment No.24, para. 19 (citing Principle 4 of the Guiding Principles on Business and Human Rights, A/HRC/17/31, annex)

18. *Idem*, p.9.

19. *Id.* para. 14 (quoting the Guiding principles on foreign debt and human rights, A/HRC/20/23, annex, para. 22).

IV. Human Rights Violations Observed in Argentina, Brazil, Bolivia, Ecuador and Peru



Aerial photo of the Mirador project in Ecuador. © CASCOMI

12. This report documents China's failure to fulfil its extraterritorial human rights obligations resulting from the actions of at least 18 projects operated by 15 Chinese business consortia, backed by 6 Chinese banks, in Argentina, Brazil, Bolivia, Ecuador and Peru. Of these 18 documented cases, 7 relate to the mining industry, 6 to oil extraction and 5 to the water industry. Furthermore, 15 involve indigenous territories, 11 natural protected areas, 5 have been declared Natural and Cultural World Heritage by the United Nations Educational, Scientific and Cultural Organization (UNESCO), and 12 belong to the Ecuadorian, Bolivian and Brazilian Amazonian Region.

Projects studied by country:

Ecuador

13. ***Mirador*** and ***San Carlos Panantza***, two open-cast mega-mining projects for the extraction of copper, gold and molybdenum, located in the provinces of Zamora Chinchipe and Morona Santiago in the country's Amazon region. These projects are operated by Ecuacorriente S.A. and Explorcobre S.A., both subsidiaries of the CRCC-Tongguan Consortium formed by the Chinese Railway Construction Company (CCRC) and Tongling Nonferrous Metals Group Holding Company. ***Río Blanco***, an underground mining site in Azuay Province operated by Ecuagoldmining South America S.A., a subsidiary of Junefield Mineral Resources Holdings Limited.

14. ***Blocks 62, 14 and 17*** and ***Blocks 79 and 83,*** oil extraction projects in the provinces of Sucumbíos, Orellana and Pastaza in the Amazon region. These projects are operated by Andes Petroleum Ecuador Ltd and PetroOriental S.A., subsidiaries of the state-owned companies China National Petroleum Corporation (CNPC) and China Petrochemical Corporation (SINOPEC).

15. ***Chone Multi-purpose Project, Phase I —*** Río Grande Dam and San Antonio Drainage Canal, a dam and drainage canal in Manabí province, built by a consortium formed by Tiesiju Manabi and Tiesiju Civil Engineering Group Co. Ltd. ***Toachi Pilatón Hydroelectric Project*** in the provinces of Pichincha, Santo Domingo de los Tsáchilas and Cotopaxi, built by China International Water & Electric Corporation (CWE). ***Coca Codo Sinclair Hydroelectric Project***, built by Sinohydro Corporation in the provinces of Napo and Sucumbíos.

Peru

16. ***Toromocho***, a copper and molybdenum mine in Yauli Province, operated by Chinalco Perú S.A., a subsidiary of the state-owned company Aluminium Corporation of China. ***Shougang Hierro Peru SAA***, an open-cast mine for the extraction of iron and other minerals, operated by Shougang Corporation, a joint enterprise between China Shougang International Trade & Eng. Corp, Beijing Shougang Company Ltd, Shougang Jingtang Iron and Steel Co., Beijing Shougang Cold-Sheet Co., Qinhuangdao Shouqin Metal Materials Co. Ltd, Shougang Shuicheng Iron & Steel Co. Ltd, Shougang Changzhi Iron & Steel Co. Ltd., Tonghua Iron & Steel Group Co. Ltd., Shougang Mining Company and Shougang Generación Eléctrica S.A. ***Las Bambas***, a copper mine in Cotabambas in the Apurímac region, majority owned and operated by the consortium China Mineral and Metals Group (MMG). ***Río Blanco***, a copper and molybdenum mine in Piura, majority owned by private Chinese consortium Zijin, comprising Zijin Mining Group Co. Ltd, Tongling Non-Ferrous Metals Group Holdings Co. Ltd. and Xiamen C & D Inc.

Bolivia

17. ***Nueva Esperanza Block,*** an oil exploration site in the Madre de Dios river basin in the Bolivian Amazon, operated by Chinese company BGP Bolivia, a subsidiary of BGP Inc., and the state-owned company China National Petroleum Corporation (CNPC). BGP Bolivia has been awarded a contract by a public company, Yacimientos Petrolíferos Bolivianos, to conduct a 2D seismic survey.

Argentina

18. ***Cóndor Cliff Hydroelectric Complex — Barrancosa*** on the Santa Cruz river. The complex is to be built by a UTE (Unión Transitoria de Empresas, similar to a joint venture) composed of China Gezhouba Group Corporation (CGGC) and two Argentine companies: Hidrocuyo S.A. and Electroingenería S.A.

Brazil

19. ***São Manoel Hydroelectric Power Plant (HEPP)*** on the Teles Pires River, which flows into the Tapajós basin that straddles the states of Mato Grosso and Pará. The plant is operated by Empresa de Energía São Manoel (ESSM), a consortium dominated by the China Three Gorges Group (CTG) and Brazilian companies Eletrobrás Furnas and Energía de Portugal (EDP). Its construction was financed through the Brazilian National Economic and Social Development Bank (BNDES), with a completion guarantee provided by the China Development Bank (CDB).

Violations of the Right to Participation and Consultation

20. Many of the documented projects demonstrate that the companies involved failed to implement environmental consultation processes aimed at the general population, as set out in Principle 10 of the Rio Declaration on Environment and Development. Nor did they follow processes of free, prior and informed consultation with indigenous groups meeting the standards established in Convention 169 of the ILO and in the UN Declaration on the Rights of Indigenous Peoples.

21. The ***Mirador*** and ***San Carlos Panantza*** mining projects are located in the Cordillera del Cóndor (Condor Mountain Range) in Ecuador, a uniquely biodiverse ecosystem and home to several indigenous Kichwa and Shuar communities. These projects are particularly notable for their failure to provide detailed information, their non-disclosure of the Environmental Impact Assessments (EIA) and the selective and exclusionary way that information has been disseminated, bypassing part of the population concerned.[20] With the ***Río Blanco*** project, while the EIAs have been made public, the environmental consultation did not meet national standards and no prior consultation with indigenous communities took place. On June 1st, 2018, the Civil Judge from Cuenca ordered the mining exploitation suspension of Río Blanco project, because of the violation of the right to prior, free and informed consulting established under articles 57 and 398 of the Constitution, and established the process as obligatory. This was ratified after an appeal was made by the Corte Provincial de Justicia de Azuay on August, 3rd, 2018. Turning to oil exploration and extraction, the prior consultation with regard to the tender for ***Blocks 79 and 83***, which fall inside the territories of three indigenous groups (the Sápara, the Shiwiar and the Pueblo Kichwa de Sarayaku), was carried out with individuals who were not members of the affected communities.[21] It should also be noted that this process once again goes against the judgment of the Inter-American Court of Human Rights in the Sarayaku v. Ecuador case, which prohibited any new oil exploration in Sarayaku territory.[22]

22. In Bolivia, the ***Nueva Esperanza*** oil block extends into one of the indigenous Tacana people's three territories, which is also inhabited by an indigenous group living in voluntary isolation, the 'Toromona'. The Tacana were opposed to oil exploration, but nevertheless the Bolivian government pushed the project through. A consultation was carried out, during which certain conditions were agreed in order to safeguard the territory and protect the Tacana and Toromona people. However, BGP ignored the agreements and inflicted damage on the environment that compromised their livelihoods.[23]

23. In Argentina, the construction of the ***Cóndor Cliff – Barrancosa Hydroelectric Complex*** is already in its supplementary phase, without any consultation with the indigenous communities affected by the project, chief amongst them being the Lof Fem Mapu. Moreover, the environmental consultation failed to meet the minimum standards, prompting Argentina's Supreme Court of

20. FIDH, CEDHU, Acción Ecológica, INREDH, *'Vulneraciones de derechos humanos y de la naturaleza en la cordillera del Cóndor'* [in Spanish], December 2017, pp. 23–24. See: https://goo.gl/u9Zc9v

21. According to the Pachamama Foundation, only 39% of all indigenous communities and 7% of the affected population were included in the consultation, rendering the process ineffective. See: https://goo.gl/TLCMF2

22. IACHR, *Pueblo Indígena Kichwa de Sarayaku v. Ecuador*, Judgment of 27 June 2012.

23. The communities living in the Tacana II territory know this group as the Toromona, but some experts believe they could in fact be a subset of the Ese Ejja people.

Justice to stall the construction of the dams on 21 December 2016 until an environmental impact assessment could be carried out and approved.[24]

Violation of the Right to Land, Territory and Adequate Housing

24. The UN Declaration on the Rights of Indigenous Peoples provides for the right 'to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired', and stipulates that 'States shall give legal recognition and protection to these lands, territories and resources.'[25] Similarly, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests advocate respect for tenure rights and equitable access to land, fishing grounds and forests.[26] Finally, the CESCR[27] and the Basic Principles and Guidelines on Development-Based Evictions and Displacement[28] set out guidance for protecting populations affected by development.

25. Nevertheless, the Chinese mining companies involved in the ***Mirador*** and ***San Carlos Panantza*** projects in Ecuador have engaged in irregular land-acquisition practices, such as irregular purchase without consultation, arbitrary claims of mining rights of way[29] and filing civil actions against families without property titles.[30] Through such practices, and with the support of the security forces, these companies have brought about the forced eviction and involuntary displacement of a total of 42 indigenous families. As a consequence, a legal process was started for violation of the right to adequate housing of the Tundayme community. This process is currently ongoing and the judge in charge of the case waits for the result of an anthropologic study. Also, the judge accepted the precautionary measures presented and ordered the company and the Ecuadorian State to stop intimidating the communities threatened by the eviction[31]. Regarding ***Blocks 79 and 83***, civil society organisations have warned that oil extraction poses an existential threat to the Sápara and Shiwiar cultures, whose populations number approximately 559 and 667 members respectively. The company involved in the Río Blanco mining project has purchased land and registered the title with different boundaries in order to appropriate community-held territories.

24. The ruling was delivered at a public hearing on 20 July 2017 in the Senate. See: Cámara de Senadores de la Nación. Available at: https://goo.gl/mdaJ66.

25. Resolution adopted by the General Assembly on 13 September 2007, UN Declaration on the Rights of Indigenous Peoples, A/RES/61/295, Articles 26, 27 and 28.

26. Committee on World Food Security and the Food and Agricultural Organisation of the United Nations, Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (2012).

27. CESCR, General Comment No.7, The Right to Adequate Housing: Forced Evictions (1997).

28. Basic principles and guidelines on development-based evictions and displacement, Annex I of the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/4/18 (2007).

29. A legal concept established by Ecuador's Mining Law, which allows inhabited property with property titles to be declared goods of interest for project development.

30. FIDH, CEDHU, Acción Ecológica, INREDH, *Idem*, pp. 30–36

31. Acción Ecológica (2017), 'La herida abierta del Cóndor' [in Spanish]

26. In Bolivia, the ***Nueva Esperanza*** exploratory project carried out by BGP directly threatens the Toromona people, a group living in voluntary isolation, whose members are being forced into contact due to pressures exerted by the company. In response to this threat, the indigenous Tacana group called for safeguards to be put in place and operations to be suspended, but the company disregarded their demands. Exploration works on the area have finished, but the effects remain and will do on a long term. There are no reparation effective measures for the violated rights, nor impact mitigation regarding indigenous peoples. On the contrary, the state-owned company Yacimientos Petrolíferos Bolivianos and BGP Bolivia have said they will continue their activities.

27. Dams forming part of the ***Condor Cliff and Barrancosa*** project in Argentina will have an impact on the cultural and archaeological heritage of indigenous communities belonging to the Mapuche Tehuelche de Lof Fem Mapu people, and on their social dynamics and symbolic representations based around the river — an essential social space in their world view.[32]

28. The ***São Manoel HEPP*** in Brazil has destroyed sacred spaces of immense cultural value to the indigenous Munduruku, Kayabi and Apiaká people. These include the site known as 'Morro de los Monos' ('monkey nose'), described by indigenous people as the place where the spirits of animals dwell. The destruction wrought by the HEPP has exacerbated the damage caused by HEPP Teles Pires, about 40 km upstream, which flooded a sacred place known as 'Siete Caídas' ('seven falls'), inhabited by 'the Mother of fish, a musician named Karupi, the spirit Karubixexé and the spirits of ancestors'. In many cases, the destruction of sacred places also entails the loss of breeding grounds for migratory fish, a staple food source for the indigenous population.[33]

32. Information provided by FARN, the Banco de Bosques Foundation, FUNDEPS and Movimiento Patagonia Libre, in the course of producing an alternative report on the impacts of Chinese companies in Argentina with a view to China's UPR.

33. Acerca de los sitios arqueológicos y lugares significativos: los impactos ambientales y violaciones de los derechos culturales. de los pueblos indígenas y tradicionales por los proyectos de centrales hidroeléctricas en la cuenca del río Tapajós [in Spanish], by Francisco Antonio Pugliese Jr and Raoni Bernardo Maranh. Valle, in: OCEKADI (2016).



Mapuches and civil society mobilize to defend the Santa Cruz River in Argentina. © FARN

Violations of the Right to Integrity, Liberty and Security of the Person, and of the Right to Peaceful Assembly and Association

29. Despite the fact that these rights are recognised in the Universal Declaration of Human Rights, Chinese companies have filed criminal charges against leaders, persons of authority and individuals who oppose their actions. At the same time, the suppression of protests by national security forces has resulted in arbitrary detentions, clashes and even the deaths of community leaders.

30. Also, the methods these companies adopt in order to appropriate land tend to provoke large-scale social conflict, which in turn triggers the suppression and criminalisation of protest in relation to mega-project construction.

31. The ***San Carlos Panantza*** project in Ecuador has been associated with a number of raids, arbitrary detentions and judicial inquiries targeted at indigenous leaders, following confrontations over the forced evictions that took place in August 2016. The clashes left one police officer dead and nine people injured.[34] During a peaceful protest staged by the community of ***Río Blanco*** between August and October 2017, a woman was injured and a disabled minor was arrested, with the company pressing charges of assault and resistance. After the tender for ***Blocks 79 and 83*** was refused, nine indigenous leaders were taken to court, some of whom were subjected to

34. FIDH, CEDHU, Acción Ecológica, INREDH, *Idem*, pp. 34–35

aggression and harassment.[35] Furthermore, Mr José Isidro Tendetza, a Shuar leader of the Yanúa Kim community who had openly opposed the ***Mirador*** project, disappeared on 29 November 2014 and was found dead on 2 December. The public prosecutor confirmed that he had met with a violent death, but nobody was convicted in relation to the case, which is currently in the admissibility stage before the Inter-American Commission on Human Rights. Along with other leaders, José Isidro Tendetza had brought various legal actions and claims against EcuaCorriente S.A., and he was intending to participate in the Rights of Nature Tribunal organised as part of the Peoples' Summit at COP20 in Lima.[36]

32. Since 2009 in Peru, mining companies have been able to hire security forces, both public and private, to protect their operations. This practice was recently called into question by the IACHR.[37] For the ***Toromocho*** project, Chinalco reached an agreement with the Peruvian National Police (PNP) to manage the company's security. The PNP went on to commit acts of intimidation, harassment and surveillance against local residents. Similarly, the PNP entered into an agreement to provide security services for the ***Las Bambas*** project, subsequently engaging in excessive use of force. This resulted in clashes in September 2015, which left three protesters dead and 15 injured, while about 17 people were held on the mine's premises for more than 24 hours.[38] In another case, in 2016, a PNP officer fired a bullet at random in an attempt to break up a protest, resulting in the death of Mr Quintino Cereceda.[39] Between August 2017 and January 2018, a state of emergency was declared on six separate occasions in the districts of Chalhuahuacho, Haquira and Mara. On 10 January 2018, a state of emergency was declared for the Apurimac–Cusco–Arequipa mine road corridor. This was extended on 8 February, thus 'normalising' the state of emergency as a condition for the project's operations.[40] In 2009, against a backdrop of opposition to the ***Río Blanco*** project, police officers from the National Directorate of Special Operations (DINOES) carried out a raid that resulted in the deaths of Vicente Romero Ramírez and Cástulo Correa Huayama.[41] At the time of writing, no one has been charged.

33. In Bolivia, indigenous Tacana authorities and environmental monitors demanded that agreements be honoured and work discontinued in areas inhabited by groups living in isolation. In response, the coordinator of the indigenous environmental monitors was taken to court, with the company involved falsely accusing him of kidnapping. Although the company later dropped the charges, it succeeded in undermining the indigenous organisation to the extent that the agreements were overturned.[42]

35. Front Line Defenders reported that on 19 August 2015, three police officers burst into the home of Ms Gloria Ushigua, alarming her with electric pistols, blows and tear gas which left witnesses suffering from asphyxia: https://goo.gl/EzxwJw.

36. FIDH, CEDHU, INREDH, *'Criminalización de la protesta social frente a proyectos extractivos en Ecuador'* [in Spanish], International Research Mission, October 2015, p. 24, https://goo.gl/Do16ZQ.

37. The IACHR has stated that hiring police officers is ill-advised in situations of social conflict, as the public security forces will protect whoever is paying for their services: https://goo.gl/hK78eW.

38. Report No.062-2015-REGPOL-APU/DEPESEGEST-AB, 'Las Bambas: Violaciones de derechos humanos y protesta social' [in Spanish], November 2015, p. 7

39. El Comercio, *'Las Bambas: sepultan a comunero Quintino Cereceda en Tambobamba'* [in Spanish], Lima, 20 October 2016, https://goo.gl/uBM7zy

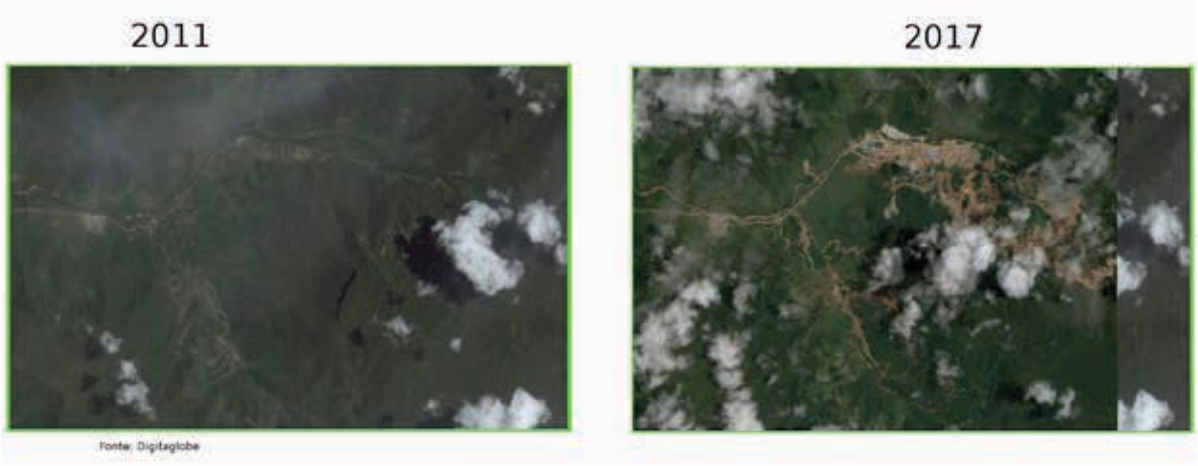
40. The state of emergency was declared by means of Supreme Decrees 085-2017 – PCM N° 006-2018-PCM.

41. Reclaman justicia para comuneros muertos en Huancabamba' [in Spanish], 10 December 2009. See: https://goo.gl/YhNbHb

42. Information provided by CEDIB and the APDHB, in the course of producing an alternative report on the impacts of Chinese companies in Argentina with a view to China's UPR.

34. In July and October 2017, amid protests by indigenous Munduruku communities over the impact of the ***São Manuel HEPP***, the EESM consortium led by CTG Brazil requested a federal judge to grant a 'prohibitive injunction' backed by the police. The judge denied this request, instead calling for dialogue among the indigenous communities, the companies concerned and the government. Nevertheless, neither the government nor the companies adhered to the dialogue agreement, and protests resumed in October 2017. This time, EESM did manage to obtain the issue of the 'prohibitive injunction', and the Ministry of Mines and Energy asked the Ministry of Justice to deploy the military in indigenous territories to protect construction work on the dam. On 1 March 2018, the Ministry of Public Security confirmed that the measure would be extended for a further 90 days. The criminalisation of indigenous communities continues, despite the fact that their claims relate to the infringement of measures to prevent, mitigate and compensate for social and environmental damage.[43]

Violation of the Right to Live in a Healthy Environment



Part of the mountain range before and after the open-air mega-mining project in the Cordillera del Condor. © Digitaglobe

35. The right to live in a healthy environment derives from Article 12 of the ICESCR and is recognised by a number of international instruments, including the United Nations General Assembly Resolution 45/94, the Rio Declaration on Environment and Development and the Framework Principles on Human Rights and the Environment.[44] Yet, many projects run by Chinese companies have serious environmental repercussions, depriving communities of the essential elements that ensure an acceptable quality of life, food security and sovereignty and good health.

36. According to the EIA, the first operational phase of the ***Mirador*** project in Ecuador has already had serious environmental impacts and altered the ways of life of local communities, undermining their food sovereignty, health and livelihoods.[45] On March, 2018, the Ministry of Environment temporarily stopped 40% of the project for non-compliance of the environmental licence and for performance of activities with no permits, particularly en the benefit plan, where minerals are processed, and in the waste deposit. In ***Río Blanco***, the actions of Ecuagoldmining South America S.A have caused

43. Report: 'Intervenção militar no rio Teles Pires' [in Portuguese] [05/03/2018]: See: https://medium.com/fórum-teles-pires/intervenção-militar-no-rio-teles-pires-1bbf3c8fa45c.

44. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/37/59, 24 January 2018.

45. FIDH, CEDHU, Acción Ecológica, INREDH, *Idem*, pp. 40–42.

water sources to become contaminated and dry up, and the company is also responsible for filling up wetlands. These impacts have had a knock-on effect on ecosystems and agricultural production. The dam constructed as part of the ***Chone Multi-purpose Project*** flooded agricultural land, and the reservoir is expected to become a source of greenhouse gases. With respect to oil exploration and extraction, although Ecuador's constitution prohibits the awarding of licenses in protected areas, part of ***Block 14*** overlaps with Yasuni National Park, while both ***Blocks 14 and 17*** fall inside the Yasuni Biosphere Reserve — one of the most biodiverse places on the planet. These blocks also extend into indigenous Waorani territory, where certain indigenous groups living in isolation are now faced with an existential threat. Similarly, part of ***Block 62*** encroaches on the Cuyabeno Wildlife Reserve and indigenous territories held by Siona and Secoya communities. The communities concerned have filed complaints with the Ministry of the Environment, citing the contamination of water, soil and air, a loss of biodiversity and deforestation.

37. In the course of its operations in Peru, ***Shougang Hierro Perú SAA*** has committed more than ten environmental offences, incurring sanctions from the Peruvian state. Among others, these include breaching the permitted pollution limit for waste water effluent and failing to comply with regulations on solid waste management.[46] The 'Nueva Morococha' ('New Morococha') resettlement area (a new town created to make way for the ***Toromocho*** project, which required 98.5% of the population of 'Morococha antigua' ('old Morococha') to relocate) is afflicted with numerous environmental problems. These include heavy metals in concentrations exceeding the permitted upper limit, poor upkeep of tailing basins which could cause the surrounding handmade dyke to rupture and severe damp due to moisture in the subsoil, which is affecting homes and local people's health.[47] Chinalco, however, seems reluctant to respond to the local population's calls for action. With regard to the ***Río Blanco*** mining project, Peru's Supervisory Agency for Investment in Energy and Mining reported several breaches relating to safety, mine hygiene and environmental care and protection, also noting that the company had failed to take remedial measures to counteract the environmental damage it had caused.[48] Finally, the community affected by the ***Las Bambas*** mining project has pointed to an increase in bronchopulmonary diseases due to the effects of the hundreds of lorries used each day to transport minerals on dirt roads, also the mining holder did not submit basic information on mining transport, resulting in an environmental assessment below the minimal standard regarding influence area determination, baseline, impacts and mitigation, prevention and compensation measures. Also, it has been shown that agricultural yields in the area have fallen.[49] Despite being penalised on six occasions in 2008, 2015 and 2016 for failing to comply with the EIA, the company involved has not taken sufficient action to prevent and mitigate harm to the environment.[50]

38. In Bolivia, exploration in the ***Nueva Esperanza*** block had adverse consequences for the environment and the livelihoods of indigenous Tacana and Toromona groups. Hundreds of linear kilometres were stripped of their forest cover, damaging sections of chestnut forest and palm

46. Servindi, *'Shougang tiene diez infracciones ambientales'* [in Spanish], 28 May 2015, https://goo.gl/fNReu1.
47. Information provided in the course of producing the alternative report on the impacts of Chinese companies in Peru with a view to China's UPR.
48. OSINERGMIN report: General Management Resolution No.444-2008-1-OS/GFM.
49. CooperAcción, 'Observatorio de Conflicto Mineros en el Perú: Informe Especial Caso las Bambas' [in Spanish], 2015, https://goo.gl/gWQ67i.
50. Directorial Resolution No.774-2016-0EFAIDFSAI (File No.039-2015-0EFAIDFSAI/PAS).
Directorial Resolution No.996-2016-0EFAJDFSAI (File No.039-2015-0EFAJDFSAIIPAS).

groves. Blasts from explosives have altered the routes of underground watercourses and affected the rivers that supply local communities with water. Moreover, the explosions and the presence of oil workers have driven away game species, diminishing the available protein sources for indigenous communities.

39. In Argentina, there has been no adequate assessment of the ***Cóndor Cliff–Barrancosa*** hydroelectric project's environmental impacts on the Southern Patagonian Ice Field: the world's third-largest freshwater reserve. There is a particular need for a more in-depth study by the Argentine Institute of Snow Research, Glaciology and Environmental Sciences (IANIGLA), which is the body responsible for glacier conservation.

40. In Brazil, as a result of the construction of the ***São Manoel HEPP***, indigenous Kayabi, Munduruku and Apiaká communities are suffering the effects of deteriorating water quality and changes in the hydraulic behaviour of the Teles Pires River, which have had an impact on fishing and river turtle hunting. These activities play an important part in meeting local communities' subsistence needs. The local population has also suffered diarrhoea, vomiting and other gastrointestinal problems due to the accumulation of sediment and other pollutants in the river as a result of the hydroelectric plant's operations. The river is the primary source of drinking water for these communities, as no alternative supply is available in this area.[51]

Violations of Workers' Rights and the Right of Association

41. Article 23 of the UDHR and Articles 7 and 8 of the ICESCR protect the right to the enjoyment of just and favourable working conditions, the right to form and join trade unions, freedom to organise and the right to strike. In addition, China has ratified 26 International Labour Organisation (ILO) conventions, including four of the eight that address workers' fundamental rights.[52] Nevertheless, Chinese companies operating in Ecuador and Peru are violating the internationally recognised rights of workers and trade unions.

42. Workers at the ***Mirador*** project have complained of ill-treatment, unlawful dismissal and preventable workplace accidents. In May 2014, EcuaCorriente dismissed 11 workers and technicians in retaliation for their demands for better working conditions. On July, 25th 2018, a contracted lorry driver died in the Mirador mine due to caving. It is thought the accident was the result of earth removal there, and because it's an area with abundant rains, as the mining project creates high soil erosion and high levels of deforestation[53]. According to the Chief of Police at Zamora Chinchipe, the workers at EcuaCorriente S.A. have presented many claims for the violation of their working rights. Also, according to the workers of the mine, there would be ten deaths due to accidents relating to Mirador Project. They ask the prosecution to investigate these deaths. At the time of writing, there is no trade union at Ecuagoldmining South America S.A., the company behind the ***Río Blanco*** project. Workers have stated that there was an attempt to form one, but the company put a stop to it. At the ***Toachi Pilatón*** project, operated by China International Water

51. Foro Pires Teles (2017).

52. Convention 100 on equal remuneration (1951), Convention 111 on discrimination in employment (1958), Convention 138 on the minimum working age (1973) and Convention 182 on the worst forms of child labour (1999).

53. Amazon Conservation, Monitoring of the Andean Amazon Project, Impactos del Proyecto Minero "Mirador" en Amazonía Ecuatoriana. Ver: http://maaproject.org/mirador/

& Electric Corporation (CWE), there were calls in August 2012 for the project superintendent to be removed, following violations of workers' basic rights. Former employees also reported that they had received only derisory profit share payments. They were also seemingly forbidden to form unions, given that those who tried to do so would be dismissed. An examination of the construction of the ***Coca Codo Sinclair*** project reveals glaring deficiencies in terms of workers' health and safety. In December 2014, a collapse cost the lives of 14 workers and left a further 12 injured. The office of the public prosecutor opened an investigation on suspicion of culpable homicide, but the case was shelved, the incident having been deemed a natural tragedy. However, geologists and engineers maintained that the collapse could have been foreseen.[54] Finally, since Chinese companies took possession of ***Blocks 14, 17 and 62*** in 2006, there have been reports of labour disputes over failures to pay out profit shares to workers and forged signatures. In 2009, Ecuador's Constitutional Court ruled in favour of the workers and penalised the companies Andes Petroleum and PetroOriental. Disputes with former employees remain ongoing.

43. In Peru, the National Labour Inspection Superintendent's Office has issued repeated sanctions against ***Shougang*** for breaching labour laws and encouraging hostile actions against workers who join unions. These sanctions have not, however, succeeded in putting a stop to the company's unlawful conduct, which has been noted by the ILO Committee on Freedom of Association. Furthermore, Shougang is failing to adhere to court orders requiring the company to respect the rights of its workers. At ***Las Bambas***, infringements of union rights have been observed; nine days after the company's workers formed a union, its assistant secretary of defence was sacked. Turning to the ***Río Blanco*** project, the company involved failed in its duty to prevent actions putting its workers lives at risk: in 2015, three employees died of hypothermia while scouting for new access routes to the mine site.[55]

54. El Universo, 'Familias batallan por muertes en Coca Codo tras 16 meses de explosión' [in Spanish], Guayaquil, 3 April 2016, https://goo.gl/bfzQYH.

55. Perú.com, *'Río Blanco: Trabajadores murieron de hipotermia, reveló necropsia'* [in Spanish], Piura, 9 August 2015, https://goo.gl/eUs2rG.

V. Conclusions

44. These 18 case studies demonstrate that the human rights violations being committed by Chinese companies are not isolated incidents, but reveal a recurring pattern of behaviour marked by: i) a disrespect for fundamental rights and internationally recognised economic, social and cultural rights, non-compliance with international standards and a lack of accountability for human rights violations; ii) continued and knowing engagement in behaviour that violates human rights; iii) failure to monitor and examine the human rights due diligence for projects in other countries; and iv) failure to adopt and implement effective measures for fulfilling China's extraterritorial obligations with respect to its international commitments as a state party to the ICESCR.

Questions for the Chinese Government

45. The CESCR urged the Chinese government to adopt a human rights-based approach in its international cooperation policies, for example by: (a) conducting a human rights impact assessment before financing decisions are made; (b) establishing an effective supervisory mechanism to undertake regular assessments of the human rights impact of Chinese policies and projects on the countries in which they are implemented, and taking corrective measures whenever necessary; and (c) ensuring that an accessible mechanism for reporting violations of ESCE rights is available in those countries.[56] In this context, what specific steps has China taken to put these recommendations into practice?

46. The CESCR recommended that China '[a]dopt appropriate legislative and administrative measures to ensure legal liability of companies and their subsidiaries operating in or managed from the State Party's territory regarding violations of economic, social and cultural rights in their projects abroad.'[57] Accordingly, what legislative and administrative measures has China taken to ensure that Chinese companies are held responsible for violations of ESCE rights?

47. China has enacted regulations and guidelines[58] for companies and banks to follow in their operations abroad, which underline their obligation to know and comply with the laws of the countries in which they are active. In this respect, what has China done to ensure that Chinese companies and banks understand and apply host country regulations with respect to human rights and the environment?

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56. *Id*., 'International Cooperation'.

57. *Id*.

58. 'Environmental Risk-Management Initiative for China's Overseas Investment, Green Finance Committee of the China Society for Finance and Banking (Investment Association of China, Asset Management Association of China, Insurance Asset Management Association of China, China Trustee Association, Foreign Economic Cooperation Office of the Ministry of Environmental Protection, 2017); 'Guidelines for Social Responsibility in Outbound Mining Investments' (CCCMC, 2014); 'Guidelines for Environmental Protection in Foreign Investment and Cooperation' (Chinese Ministries of Environmental Protection and Commerce, 2013); 'Green Credit Directive' (China Banking Regulatory Commission, 2012); 'Guide on Social Responsibility for Chinese International Contractors (China International Contractors' Association, 2012); 'China Banking Association's Corporate Social Responsibility Guidelines' (China Banking Association, 2009).

Recommendations

48. This report is aimed at ensuring that China respects, protects and fulfils the human rights of the communities affected by its companies' extraterritorial operations. To this end, we ask the Chinese State to work in cooperation with OHCHR to integrate human rights principles, conventions and treaties into its strategies, policies, plans and projects in relation to investment in the LAC region.

49. In addition, we ask the Chinese government to ratify Convention 169 of the ILO and to respect its extraterritorial obligations related to human and environmental rights. In particular, we ask China to:

- Produce a detailed plan with targets and time frames to ensure that Chinese companies and banks understand and apply human rights standards, including economic, social, cultural and environmental rights, in their operations in other countries.

- Introduce mechanisms that safeguard the respect, protection and fulfilment of human rights in the activities of Chinese companies abroad. Specifically, we ask China to i) ensure that compulsory participation processes are in place, particularly in terms of free, prior and informed consent, and environmental consultation; ii) undertake human rights due diligence examinations at every phase of a project; iii) ensure the availability of effective mechanisms for reporting infringements; and iv) establish measures to provide victims with access to justice and compensation.

- To abandon existing projects in territories of indigenous peoples in voluntary isolation, and publicly express its commitment to not participate in future projects, as a sign of respect to the sovereign will of these peoples of not contacting the outside world.

- To make a comprehensive and participative assessment of projects involving Chinese banks and companies in Argentina, Brazil, Bolivia, Ecuador and Peru regarding the compliance with human rights and environmental international standards and domestic regulatory framework. On the results of the assessment, suspend those lacking compliance with those standards.

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CDES - Centro de Estudios Legales y Sociales, Ecuador
www.cdes.org.ec
Email: cdes@cdes.org.ec

CooperAcción
Jr. Río de Janeiro 373, Jesús María
Lima 11, Perú
http://cooperaccion.org.pe
Email: jcuadros@cooperaccion.org.pe

CEDIB - Centro de Documentación e Información Bolivia
www.cedib.org
Email: miguel6706@gmail.com

EQUIDAD - Centro de Políticas Públicas y Derechos Humanos
Calle Mariscal Miller 2182, Dpto. 203, Lince, Lima 14, Perú
www.equidad.pe
Email: contacto@equidad.pe

FARN - Fundación Ambiente y Recursos Naturales
Sánchez de Bustamante 27, C1173AAA Buenos Aires, Argentina
Tel: +54 11 4865 1707
www.farn.org
Email: economiaambiental@farn.org.a**r**

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CONTACT US

FIDH
17, passage de la Main d'Or
75011 Paris
Tel: (33-1) 43 55 25 18
www.fidh.org
Twitter: @fidh_en / fidh_fr / fidh_es
Facebook:
https://www.facebook.com/FIDH.HumanRights/

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ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

A universal movement

FIDH was established in 1922, and today unites 184 member organisations in 112 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

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