



Universal Periodic Review, Third Cycle

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

March 26, 2018

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, Brazil, 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
(Does not have logo)

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 (Does not have logo)

Frente de Defensa de los Intereses y Desarrollo de la Provincia de Cotabambas, Perú (Does not have logo)

FNTMMSP - Federación Nacional de Trabajadores Mineros, Metalúrgicos

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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. Between 2009 and 2016, China's loans to LAC countries amounted to a total of USD 136 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

¹ Margaret Myers and Kevin Gallagher, The Dialogue and the Global Economic Governance Initiative at Boston University, 'Chinese Finance to LAC in 2016', February 2017

² Statistical Bulletins of China's Ministry of Commerce, <https://goo.gl/VT7pYE>

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 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.

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 organizations 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.

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.

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>

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 Rights⁶ 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 Comments⁹ 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

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

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).

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

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

12. This report documents China’s failure to fulfil its extraterritorial human rights obligations resulting from the actions of at least 15 Chinese companies and consortia, backed by 7 Chinese banks, in Argentina, Brazil, Bolivia, Ecuador and Peru. Of these 15 cases, 7 relate to the mining industry, 3 to oil extraction and 5 to the water industry. Furthermore, 8 cases concern lands held by indigenous groups, while 4 concern protected areas.

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

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)

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 Electroingeniería 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 Shuar and Kichwa 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. 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

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.

Supreme Court of 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 CESCR²⁷ and the Basic Principles and Guidelines on Development-Based Evictions and Displacement²⁸ 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 way²⁹ 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.³¹ Turning to *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

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].

company involved in the Río Blanco project has purchased land and registered the title with different boundaries in order to appropriate community-held territories.

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.

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

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

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).

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 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

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

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/EzxxJw>.

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>.

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 30 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 Chalhuanahuacho, Haquira and Mara. On 10 January 2018, a state of emergency was declared for the Apurímac–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

34. In July and October 2017, amid protests by indigenous Mundurucu communities over the impact of the *São Manuel HEPP*, the EESM consortium led by CTG Brazil requested a federal

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.

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

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.

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.

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 In *Río Blanco*, the actions of Ecuagoldmining South America S.A have caused 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

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

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.

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. 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 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

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).

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. 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 & 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.⁵³ Finally, since Chinese companies took possession of *Blocks 14, 17 and 62* in 2006, there have been reports of

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

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.⁵⁴

Conclusions

44. These 15 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.

⁵⁴ Perú.com, '*Río Blanco: Trabajadores murieron de hipotermia, reveló necropsia*' [in Spanish], Piura, 9 August 2015, <https://goo.gl/eUs2rG>.

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.⁵⁵ 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.’⁵⁶ 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 guidelines⁵⁷ for companies and banks to follow in their operations abroad, which underline their obligation to 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?

Recommendations

⁵⁵ *Id.*, ‘International Cooperation’.

⁵⁶ *Id.*

⁵⁷ ‘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).

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 adhere to its extraterritorial obligations with respect to human 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 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 consultation 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.