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Colectivo sobre Financiamiento
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**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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Background

Given the growing economic influence of China in Latin America, the civil society organizations in Argentina, Brazil, Bolivia, Ecuador and Peru, regard with increasing concerns the involvement of Chinese based companies in the development of extractive, energy and infrastructure projects, which lack due diligence mechanisms ensuring the affected communities human rights. To expose this situation, 21 organizations from the 5 countries have consolidated 8 shadow reports (1 Latin American and 7 Nationals) analysing 18 projects supported by 15 Chinese consortiums and 6 Chinese banks. 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 Organization (UNESCO), and 12 belong to the Ecuadorian, Bolivian and Brazilian Amazonian Region. With these reports, we appeal to the Human Rights Council and the different Permanent Missions, and ask them to assess the compliance of the Chinese State obligations in their third Universal Periodic Review (UPR).

Regulation

In accordance with the concluding observations of the CESCR, we express our concern for the lack of adequate measures on the part of the Chinese State so that their companies, state as well as private owned, abide by the DESC, particularly those operating abroad. CESCR in their General Comment 24, as well as the Maastricht Principles on Extraterritorial Obligation of States in the Economic context, express that China, as State Party of the ICESCR, is under the obligation to protect, respect and fulfil Human Rights, including refraining from interfering with or restricting the enjoyment of the right, preventing individuals and groups against abuses of the rights, and taking positive measures to facilitate the enjoyment of the basic rights (CESCR/2017). In this context, the Committee insists that the Chinese State “demand due diligence from the commercial entities regarding Human Rights to identify, prevent and mitigate risks of violation of the rights under the Covenant, prevent abuse of those rights and account for the negative impacts caused or worsened by their decisions and operations, and by those of the entities they control, on the enjoyment of the rights.” Also, the States Parties to the ICESCR can be directly responsible for the actions, or lack of them, of the commercial entities in different situations, even when “the entity is operating under the instructions of that State, or under its control or direction when implementing the said particular behaviour, as can be the case with public agreements.” In addition, the States “must demand from the companies their best efforts to ensure that the entities related to them, such as affiliates (including all commercial entities they invested in, registered under the laws of the State Party or under the laws of another State) or partners (including vendors, franchisees and subcontractors) respect the rights of the Covenant”.

Cases

Name	Country	Chinese Company	Chinese Bank	Industry	Protected Area	World Heritage/ UNESCO	Indigenous territory	Amazonia
Mirador	Ecuador	Railway Construction Company (CCRC) Tongling Nonferrous Metals Groups Holding Company	Bank of China China Development Bank Export-Import Bank of China Chinese Mercantile Bank Chinese Bank China Construction Bank Industrial and Commercial Bank of China Limited	Mining	X		X	X
San Carlos Panantza	Ecuador	Railway Construction Company (CCRC) Tongling Nonferrous 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
Río Blanco	Ecuador	Junefield Mineral Resources Holdings Limited	No data available	Mining	X	X	X	
Bloque 62	Ecuador	China National Petroleum Corporation (CNPC) China Petrochemical Corporation (SINOPEC)	No data available	Oil	X		X	X



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Name	Country	Chinese Company	Chinese Bank	Industry	Protected Area	World Heritage/ UNESCO	Indigenous territory	Amazonia
Bloque 14	Ecuador	China National Petroleum Corporation (CNPC) China Petrochemical Corporation (SINOPEC)	No data available	Oil	X	X	X	X
Bloque 17	Ecuador	China National Petroleum Corporation (CNPC) China Petrochemical Corporation (SINOPEC)	No data available	Oil	X		X	X
Bloque 79	Ecuador	China National Petroleum Corporation (CNPC) China Petrochemical Corporation (SINOPEC)	No data available	Oil	X	X	X	X
Bloque 83	Ecuador	China National Petroleum Corporation (CNPC) China Petrochemical Corporation (SINOPEC)	No data available	Oil	X	X	X	X
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
Electrical Project Toachi Pilatón	Ecuador	International Water Electric (CWE)	National and Russian Financing	Water				X
Hydroelectric Project Coca Codo Sinclair	Ecuador	Sinohydro	Export-Import Bank of China	Water	X		X	X
Toromocho	Peru	Chinalco (Aluminium Corporation of China)	China Development Bank Export-Import Bank of China	Mining			X	
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				
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	
Río Blanco	Peru	Zijin Mining Group Co. Ltd. Tongling Non-Ferrous Metals Group Holdings Co. Ltd. Xiamen C&D Inc	Financing Interest from China Development Bank	Mining	X		X	
Bloque Nueva Esperanza	Bolivia	BGP Bolivia China National Petroleum Corporation	Public Financing from the National Treasury of the country	Oil			X	X
Hydroelectric Complex Cóndor Cliff - Barrancosa	Argentina	China Gezhouba Group Corporation (CGGC)	Bank of China China Development Bank Industrial and Commercial Bank of China Limited	Water	X	X	X	
Hydroelectric São Manoel	Brazil	China Three Gorges (CTG)	Guarantee from the China Development Bank	Water			X	X



These cases show a systematic violation of the right to free and informed prior consulting, the right to environmental consulting and public/citizen participation. There are also irregular land purchases and forced evictions of whole communities. Recurrent destruction of places of cultural and natural importance, violation of the right to work, peaceful assembly and association, criminalization of community leaders opposed to the development of the projects, and even threats the very existence of isolated indigenous populations.

Supported by this evidence, the written contributions show a behavioural pattern characterized by, i) Defiance of the fundamental rights, but above all, the economic, social, cultural and environmental rights (ESCER), infringement of 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 UNO.

Question for the State

- The ICESCR urged China to adopt a human rights-based approach in its international cooperation policies: (a) Undertake a human rights impact assessment prior to taking financing decisions; (b) Implement an effective monitoring mechanism to regularly assess the human rights impact on its policies and projects in the receiving countries and to take remedial measures when required; (c) Ensure that there is an accessible complaint mechanism for violations of economic, social and cultural rights in the receiving countries. **What specific measures has the Chinese State taken to implement these recommendations?**
- The ICESCR recommended that China “adopt appropriate legislative and administrative measures to ensure the legal liability of companies and its subsidiaries domiciled under the State Party’s jurisdiction for violations of economic, social and cultural rights in their projects abroad committed directly by these companies or resulting from the activities of their subsidiaries” (E/2012/22, Annex VI, sec. A). **Which legislative and administrative measures has adopted the Chinese State to ensure the liability of its companies regarding the violations of economic, social and cultural rights?**
- The Chinese State has established rules and regulations to guide companies and banks through their operations abroad, highlighting the need to comply with all local laws of the countries they operate in. **What has the Chinese State done to ensure its companies and banks know and respect the regulations of the host countries regarding human rights and environmental legislation?**

Recommendations

We request Chinese cooperation with OHCHR Regional Office for Central America to integrate human rights-based principles, agreements and conventions in China’s strategies, policies, plans and investment projects in Latin America and the Caribbean.

Furthermore, we urge the Chinese State to ratify ILO Convention no. 169, and to fulfil its extraterritorial obligation regarding human rights, particularly:

- Create a detailed plan with goals and stages to allow Chinese banks and companies to understand and apply human rights instruments, including economic, social, cultural and environmental in their operations abroad.
- Establish mechanisms to ensure human rights protection, respect and fulfilment in Chinese companies operating abroad. Specifically; i) Ensure binding participating process, especially on free and informed prior consulting and environmental consulting; ii) Human rights due diligence assessment throughout the project; iii) Ensure effective complaint mechanism; and iv) Establish access means to justice and reparation for the victims.
- To give up existing projects, and publicly express their commitment to not participate in future projects in territories of indigenous peoples in voluntary isolation, as 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 with Chinese bankers and companies intervention in Argentina, Brazil, Bolivia, Ecuador and Peru regarding the compliance of human rights international instruments and environmental laws, regarding individual and collective rights, and others promoting social participation and transparent information. On the results of the assessment, suspend those projects currently irregular and lacking compliance with the domestic regulatory framework and with human rights international instruments.