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CICDHA
Colectivo sobre Financiamiento
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CHINA: HUMAN RIGHTS AND CHINESE BUSINESS ACTIVITIES IN LATIN AMERICA

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EXTRATERRITORIAL HUMAN RIGHTS OBLIGATIONS OF THE PEOPLE'S REPUBLIC OF CHINA IN RELATION TO BUSINESS ACTIVITIES IN LATIN AMERICA

Report for the review of the People's Republic of China by the United Nations (UN) Committee on Economic, Social and Cultural Rights (CESCR).

Cases from Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Peru and Venezuela.

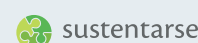
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REPORT: EXTRATERRITORIAL HUMAN RIGHTS OBLIGATIONS OF THE PEOPLE'S REPUBLIC OF CHINA
IN RELATION TO BUSINESS ACTIVITIES IN LATIN AMERICA



The International Service for Human Rights (ISHR) is a Geneva-based non-governmental organisation dedicated to supporting human rights defenders in their advocacy efforts to influence UN mechanisms to promote change in the field of human rights.

Colectivo sobre Financiamiento e Inversiones Chinas, Derechos Humanos y Ambiente (CICDHA) is a space for the articulation of Latin American civil society organisations that seeks to influence the incorporation of effective mechanisms for the guarantee of human rights, transparency, participation and environmental sustainability of investments, and project financing involving Chinese participation. Current members are: Amazon Watch (regional), Alianza de Organizaciones por los Derechos Humanos (Ecuador), BRICS Policy Center (Brazil), Centro de Documentación e Información Bolivia, CEDIB (Bolivia), CooperAcción (Peru), Fundación Ambiente y Recursos Naturales, FARN (Argentina), Latinoamérica Sustentable, LAS (regional), Observatorio Latinoamericano de Conflictos Ambientales, OLCA (Chile), Perú Equidad (Peru), Red Muqui (Peru), Sistema de Alerta Temprana (regional), and Sustentarse (Chile).

Additional organisations have joined this initiative and have provided information on the cases covered in this report: Movimiento Ríos Vivos (Colombia), Kanan Derechos Humanos (Mexico), Observatorio de Ecología Política (Venezuela), Provea and Grupo de Trabajo Sobre Asuntos Indígenas, GTAI-ULA (Venezuela), Coletivo Proteja (Brazil), Asamblea Ciudadana de Última Esperanza, ACUE (Chile), Semillas del Lirén (Chile), and Somos Biobío (Chile).

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Child of the Mundurucu people observing the destruction caused by the São Manoel hydroelectric power plant in their territory. (Brazil) © Juliana Pesqueira, Coletivo Proteja, 2017

EXECUTIVE SUMMARY

In the last two decades, economic and financial ties between China and Latin America have deepened unprecedentedly. Chinese (state) policy banks have become the main creditors of several governments in the region (even ahead of multilateral development banks), while commercial banks are becoming important financiers¹. Chinese companies, the vast majority State-owned, have invested around \$172 billion and built more than 200 infrastructure projects (mainly in the energy and transport sectors) worth at least \$98 billion in more than 20 Latin American countries.² In addition, trade has increased 26-fold since 2000; trends show that this amount may double by 2035.³

- 1 There are two types of banks in China's international financing. The policy or development banks (China Development Bank (CDB) and Export-Import Bank of China (Eximbank)) and the public commercial banks (such as Bank of China (BoCh), China Construction Bank (CCB), Industrial and Commercial Bank of China (ICBC), among others). Although both types of banks are State-owned, loans granted by commercial banks are not considered as official loans of China. For more information see: LAS (2022). China Development Bank: Financing, governance and socio-environmental challenges for Latin America and the Caribbean. <https://latsustainable.org/wp-content/uploads/2021/11/Reporte-LAS-BDC-en-ALC.pdf>
- 2 Dussel Peters, Enrique (2022). 'Monitor de la OFDI china en América Latina y el Caribe 2022' and 'Monitor de la Infraestructura china en América Latina 2022'. Mexico: LAC-China Network. <https://www.redalc-china.org/monitor/>
- 3 Sahd, Jorge (January 2022). 'China and Latin America: keys to the future'. Santiago: Centro de Estudios Internacionales de la Pontificia Universidad Católica de Chile. <http://centroestudiosinternacionales.uc.cl/medios/4821-china-y-america-latina-claves-hacia-el-futuro>

Today, 21 Latin American countries have joined the Belt and Road Initiative, which, alongside the stated ambition to close a supposed infrastructure gap in the region and efforts to overcome the post-pandemic economic crisis from a developmentalist approach, foreshadows a considerable increase in Chinese investment and financing for the construction of infrastructure megaprojects. These will continue to focus on the extraction of natural resources (mining, hydrocarbons, food and agriculture) as well as energy and transport infrastructure. This trend also comes at a key moment in China's foreign policy. At its 20th National Congress in October 2022, the Communist Party of the People's Republic of China (CPC) signalled its intention to 'promote high-quality development', in line with the new Global Development Initiative presented by President Xi Jinping at the United Nations General Assembly in September 2022.

The expansion of China's international business and financial activities has been accompanied by a considerable increase in civil society complaints about human rights abuses and major environmental impacts on the ecosystems where Chinese operations are located. Also, documentation and periodic reviews carried out by United Nations (UN) human rights mechanisms, such as the Universal Periodic Review (UPR), the Special Procedures of the Human Rights Council, and the Committee on Economic, Social and Cultural Rights (CESCR) indicate that the Chinese State has failed to comply with its obligations under international law to ensure that those under its jurisdiction or effective control, such as Chinese companies and investors, do not violate individual and collective human rights wherever they operate, whether inside or outside its territory.

The information presented by Latin American civil society organisations during the third UPR cycle of China in 2018 provided abundant evidence of the lack of compliance with the extraterritorial human rights obligations of the Chinese State and of Chinese State-owned companies and financial institutions. Based on these reports, Peru, Ecuador and other Global South countries issued a series of recommendations related to the protection of local communities and the environment, which the Government of China accepted for implementation. In addition, since 2018, several UN Special Rapporteurs have addressed eight letters to the Government of China on human rights abuses in Chinese business projects abroad, including three Latin American cases.

In March 2021, the CESCR, which is the body responsible for ensuring that States comply with their obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR), which China ratified in 2001, began the process of periodic review of China. At this first stage, the Committee sent a 'List of Issues' in preparation for the dialogue with the Government of China. This list included issues related to mechanisms and measures to incorporate human rights due diligence, monitor compliance by Chinese companies, and provide effective remedies to victims. All of these were expressed with emphasis on the Principle of Extraterritorial Obligations that should be observed by the Government of China.

Between 13 February and 3 March 2023, the Committee will proceed to the second stage of its review of China by elaborating final recommendations based on dialogue with the Government, feedback from civil society, and the universal human rights system. These recommendations will not only consolidate a compelling and authoritative legal analysis of the Chinese State's obligations, but may also facilitate dialogue with its representatives at various levels.

This report has been prepared with the aim of providing civil society input to the Committee on the non-compliance of the Government of China with its extraterritorial obligations in the context of the operation of companies and banks under its jurisdiction in Latin America.

The report analyses 14 projects operated by 11 companies and/or financed by Chinese banks, in nine Latin American countries (Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Peru and Venezuela). These projects are in the following sectors: mining (6), hydroelectric (4), hydrocarbons (2), infrastructure (1) and food and agriculture (1). The report identifies patterns of serious abuses of the rights of indigenous peoples, the right to health, a healthy environment, water, food, housing, labour rights, and various civil and political rights. In addition, the projects analysed are located in areas marked by high social conflict and great environmental and cultural diversity, particularly in indigenous territories and protected areas.

Table 1. Summary of cases assessed and rights violated

Sector	No. cases	Main rights affected				Impacted environment			
		Environmental	Indigenous Peoples	Labour	Civil and Political	Fragile Ecosystems	Amazon	Protected Areas	UNESCO Heritage
Mining	6	6	3	4	6	6	2		
Hydropower	4	4	4	2	2	4		1	
Hydrocarbons	2	2	2	1	1	2	1	2	1
Infrastructure	1	1	1	1	1	1		1	1
Food	1	1	1			1			
	14	14	11	8	10	14	3	4	2

Source: own creation

All projects take place in fragile ecosystems and have a detrimental impact on the enjoyment of the right to a healthy environment as a result of deforestation, air and water pollution, which compromise food sovereignty and access to water for surrounding communities and indigenous peoples.

In 11 cases there is evidence of abuses of the rights of indigenous peoples, who lacked adequate consultation processes to ensure their free, prior and informed consent (FPIC) before the development of the projects. Forced evictions, the restriction of access to housing and the destruction of indigenous peoples' land and territory have negatively affected their individual and collective mental health and have strongly weakened their community fabric and socio-cultural organisation.

Labour rights abuses are also documented in just over half of the projects (8), including poor working conditions, the use of subcontracting to avoid employment obligations and the absence of effective measures to ensure minimum occupational health and safety standards. It should be noted that the Covid-19 pandemic has exacerbated the impact of these poor working conditions.

Such abuses fuel a high level of social conflict, resulting from the sustained lack of response or willingness of companies and Chinese representatives to engage in dialogue with affected communities or civil society organisations (CSOs). Moreover, it shows how companies, through private security forces or through agreements with national security forces, have encouraged a repressive response to the peaceful protests of the affected communities, including the excessive, and in some cases lethal use of force, physical and judicial harassment, and arbitrary detention.

These violations arise in the absence of a regulatory and policy framework in China to identify, prevent, mitigate and respond to abuses committed by companies and financiers under Chinese jurisdiction, and to demand that these actors establish and implement effective measures to guarantee and protect

human rights beyond their borders and comply with social and environmental guidelines aligned with international standards.

Finally, this report concludes with a number of key recommendations for the Committee to raise with the Government of China during the review, as well as other recommendations addressed to their companies and financiers due to their state and parastatal status as entities that are majority-owned by the Chinese State.

It is crucial that the Committee demands the Government of China to redouble efforts to comply with its obligations under international human rights treaties and other relevant international and domestic standards, and that Chinese companies and financial entities operating abroad implement these commitments and comply with their extraterritorial human rights obligations throughout the project cycle. Finally, it is essential that the Committee calls on the Government of China to establish permanent and systematic spaces and mechanisms for dialogue with all stakeholders, in particular with affected communities, to address social and environmental problems and prevent early escalation of conflict and violence in the projects analysed in this report.



Toromocho mine (Peru) © Red Muqui

1. Introduction

China in the United Nations human rights system

The extraterritorial obligations of the Government of the People's Republic of China (China), in light of the impact of Chinese projects outside national territory, have been the subject of several human rights reviews by United Nations (UN) bodies since 2016. These include the Committee on Economic, Social and Cultural Rights (CESCR), the Universal Periodic Review (UPR), and the Special Procedures of the Human Rights Council.

The **Committee on Economic, Social and Cultural Rights**⁴ (CESCR), one of the ten 'human rights treaty bodies'⁵, is charged with examining through periodic reviews that States respect, protect and guarantee the rights enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR).^{6,7} As such, the Committee is considered the 'guardian' of fundamental economic, social and cultural rights, such as the right to education, health, and labour rights, as well as environmental rights, such as the right to water and a healthy environment.

The Government of China ratified the Covenant on 27 March 2001 in the framework of its accession to the World Trade Organisation (WTO). **In March 2021**, in the first stage of China's third periodic review,

4 [Official website](#) of the Committee on Economic, Social and Cultural Rights (CESCR).

5 International Service for Human Rights (ISHR). [ISHR Academy, Treaty Bodies](#).

6 ISHR, 2021, '[The UN Committee on Economic, Social and Cultural Rights. A summary for civil society](#)'.

7 [International Covenant on Economic, Social and Cultural Rights](#), 16 December 1966.

the Committee adopted a List of Issues⁸ on mechanisms and measures to incorporate human rights due diligence, monitor companies' compliance with their human rights obligations, and provide effective remedies for victims of corporate abuse. This document lays the groundwork for the dialogue⁹ that the Committee will hold with the Government of China and civil society in Geneva at its 75th session (12 February to 1 March 2023).

In order to support this first stage of the review process, ISHR together with CIDH and Kanan Human Rights presented in December 2020 a report on China's extraterritorial human rights obligations in relation to business activities in Latin America¹⁰. Based on the analysis of eight projects of Chinese consortiums or companies in Peru, Bolivia, Mexico, Argentina, Ecuador, Brazil and Nicaragua, the report demonstrated patterns of abuse of indigenous peoples' rights, impacts on the enjoyment of the right to water and a healthy environment, as well as the absence of policies of the Government of China and companies, mostly State-owned and based in China, to ensure respect for and protection of human rights abroad.

However, the CESCR is not the first UN space to highlight the negative human rights and environmental impact of Chinese projects abroad. **In November 2018**, the Government of China underwent the third cycle of its **Universal Periodic Review (UPR)**¹¹, a process of assessment of its human rights situation by UN member States. This intergovernmental review process is periodic (approximately every five years) and universal (examining all human rights - civil, political, economic, social, cultural, or other - regardless of the treaties ratified by each State).

In this framework, CIDH and the International Federation for Human Rights (FIDH) presented a first NGO report¹² on 18 projects with Chinese involvement (particularly in the mining, oil and hydroelectric sectors), marking a first fundamental step towards greater international visibility of abuses committed by Chinese companies in Latin America. The Government of China accepted nearly 20 recommendations¹³ related to human rights and the environment, of which six were issued by Ecuador, Peru, South Korea, Palestine, Haiti and Kenya with specific reference to the accountability of companies and financiers.¹⁴ Although the UPR recommendations are voluntary, the analysis carried out by a technical body such as the CESCR reinforces these recommendations within the framework of international law.

As a follow-up to the 2018 review process, on **23 March 2022**, ISHR, CIDH and FIDH submitted a mid-term report¹⁵ analysing 26 projects operated or financed by Chinese consortia in Latin America. The purpose of this report was to assess the level of implementation of six key recommendations, in the absence of a mid-term UPR report prepared by the Government of China.¹⁶

8 CESCR, List of issues relating to the third periodic report of China (E/C.12/CHN/Q/3), 2021, <https://bit.ly/3HpCd7k>.

9 SHR (2021), 'China. UN committee questions government on human rights impact of Chinese overseas projects', on: ISHR website, <https://bit.ly/3G9jZ9I>

10 ISHR, ICHRDHR and Kanan Human Rights, China's extraterritorial human rights obligations in relation to business activities in Latin America, Report for the adoption of the List of Issues for the consideration of China during the 69th session of the CESCR, 2020, <https://bit.ly/3G90vBZ>.

11 For more information, see the official website of China's third UPR: <https://bit.ly/3jKrnkg>

12 CIDH, FIDH et. al, Civil Society Assessment of the People's Republic of China's Extraterritorial Obligations: Cases of Argentina, Bolivia, Brazil, Ecuador and Peru, 2018, <https://bit.ly/3Vz22Xz>

13 Fermín Koop and Robert Soutar (2019), 'China recognises Latin America's human rights demands', in: Diálogo Chino, <https://bit.ly/3Z2ySmL>

14 For example, the Government of Peru recommended: 'Consider establishing a legal framework to ensure that the activities of industries under its jurisdiction do not adversely affect human rights abroad'.

15 ICHRDD, FIDH, ISHR, Human Rights and Chinese Business Activities in Latin America, Mid-term Report of the Universal Periodic Review of the People's Republic of China, 2022, <https://bit.ly/3vCJISN>

16 ISHR, Civil Society Guide: Monitoring and Follow-up to the Universal Periodic Review (UPR) of China, 2021, <https://bit.ly/3vycnbG>

In addition to the Committee and the UPR, **Special Procedures** mandates¹⁷, more commonly known as Special Rapporteurs and Working Groups, have regularly shared their concerns about specific projects over the past four years. They have sent eight letters (known as 'communications') to the Government of China, requesting information on policies adopted to ensure respect for human rights by Chinese companies operating abroad, in particular when they are State-supported and/or State-owned enterprises¹⁸. In its response¹⁹ to the Rio Blanco case, the Government of China stated that 'there is no factual basis for the allegations mentioned in the communication', indicating that Chinese companies are 'required to comply with local laws and regulations and respect local customs and ways of life when engaging in overseas cooperation and investment', and that 'companies are required to comply with relevant international conventions'.

As early as 2016, the Special Rapporteur 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 rights²⁰ in a report of a visit to China, noted several elements to establish China's extraterritorial obligations to protect the human rights of people affected by business activities 'that are owned or controlled by the State, or that receive substantial support or services from State or credit agencies, such as export credit agencies, official investment insurance or guarantee agencies (...)'²¹ The report stated that 'if a business enterprise is controlled by the State or its acts are otherwise attributable to the State, a human rights abuse by the business enterprise may imply a violation of the State's own international law obligation.'²² Furthermore, the report emphasised that 'the duty of international assistance and cooperation requires States to ensure that their activities, and those of their residents and corporations, do not violate the human rights of persons abroad.'²³

The CESCR evaluation process for China

In **June 2014**, during the last CESCR review of China, the Committee paid close attention to the impact on the rights enshrined in the Covenant regarding investment, development assistance and operations of Chinese companies abroad.²⁴ While the Committee welcomed the stated expansion of economic and technical assistance, it also noted with concern that some projects 'have led to violations of economic, social and cultural rights in host countries,²⁵ and recommended that China's international cooperation adopt a human rights-based approach by conducting human rights impact assessments, establishing a monitoring mechanism and ensuring an accessible grievance mechanism in the recipient countries. The Committee also expressed concern about the 'lack of adequate and effective measures taken by the State to ensure that Chinese companies, both State-owned and private, respect economic, social and cultural rights, in particular when operating abroad'. The Committee also recommended

17 Office of the High Commissioner for Human Rights (OHCHR), Special Procedures of the Human Rights Council, <https://bit.ly/3jicfuq>.

18 Since 2018, the following communications have been sent to the Chinese state: [CHN 9/2018](#) (tobacco estate in Zimbabwe); [CHN 11/2018](#) (Rio Blanco mine, Ecuador); [CHN 18/2018](#) (sugar cane cultivation in Cambodia); [CHN 2/2019](#) (road infrastructure project in the Democratic Republic of Congo); [CHN 8/2019](#) (Las Bambas mine, Peru); [CHN 15/2020](#) (Sepik Development Project dam, mine and infrastructure projects in Papua New Guinea); [CHN 1/2022](#) (migrant labour trafficking, factory construction in Zrenjanin, Serbia); and [CHN 7/2022](#) (Veladero mine, Argentina). All communications are available on the OHCHR [database](#).

19 Official reply from the Permanent Mission of the Republic of China, November 2018, <https://bit.ly/3VJkNri>.

20 Human Rights Council, 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), 2016, <https://bit.ly/3i8WoxQ>.

21 Ibid, para. 19.

22 Ibid, para. 9.

23 Ibid., para. 14 (citing the Guiding Principles on Foreign Debt and Human Rights, A/HRC/20/23, para. 22).

24 CESCR, Concluding Observations on China's second periodic report, including Hong Kong, China and Macao, China, 2014, <https://bit.ly/3GvTjBm>

25 Ibid, para. 12.

the establishment of a clear regulatory framework for business, including 'appropriate legislative and administrative measures to ensure the legal accountability of business enterprises and their subsidiaries operating in or under the control of the State for violations of economic, social and cultural rights in the context of their projects abroad'.²⁶

In the context of its third evaluation cycle, in **August 2020**, the Government of China submitted a report to the Committee in which it devoted only one paragraph to the area of business and human rights, highlighting that it had established a 'comprehensive legal advisory system in large State-owned enterprises' to 'ensure that their operations are carried out in accordance with laws and regulations'. The government stressed that it 'encourages enterprises to establish and improve compliance systems applicable to overseas operations and processes to ensure that they conform to local laws and regulations'. The Government of China did not refer to the creation of a binding regulatory framework or an obligation to comply with international standards, limiting itself to Chinese and host country regulations. It also highlighted a 'new type of supervision mechanism' at the national level that allows for 'random selection of inspectors and inspected enterprises and disclosure of the results', without specifying whether it would apply to abuses committed outside its national territory.

As mentioned above, on **22 March 2021**, the Committee proceeded with the adoption of its List of Issues to the Government of China²⁷, based on the Government's report²⁸ and its annex²⁹ (only available in Chinese), as well as contributions from civil society, including the report submitted by ISHR, CICDHA and Kanan Human Rights³⁰. The Committee also held a formal meeting with civil society, in which it highlighted the absence of a channel for dialogue with Chinese companies and authorities, and asked the Committee to inquire about what steps the Government of China has taken to receive complaints, communicate and engage in dialogue with civil society and affected communities.³¹

The CESCR List of Issues (paragraphs 5 and 7(c)) also requested the Government of China to provide more detailed information on:

- 'the efforts made to incorporate human rights due diligence into the systems (...) and the various regulations and guidelines established by business and financial institutions for foreign investments and business entities domiciled in China and operating abroad';
- 'the mechanisms established to monitor and report on the compliance of corporate entities, including State-owned enterprises, with these regulations and guidelines', as well as 'the reports issued by such mechanisms';
- 'measures taken to provide effective remedies for victims of corporate human rights abuses, as well as relevant examples';
- 'the measures taken to ensure that overseas extractive activities by China-domiciled business entities, including State-owned enterprises, and transnational investment projects financed by investment banks (...) do not hinder host countries' efforts to mitigate the adverse effects of climate change'.

²⁶ Ibid, para. 10.

²⁷ CESCR, List of issues relating to the third periodic report of China (E/C.12/CHN/Q/3), 2021, <https://bit.ly/3HpCd7k>

²⁸ CESCR, Third periodic report of China due in 2019 under articles 16 and 17 of the Covenant (E/C.12/CHN/3), 2020, <https://bit.ly/40elsU5>

²⁹ CESCR, Annex to China's third periodic report, 2020, <https://bit.ly/3Qcadbw>.

³⁰ ISHR, ICHRDHR and Kanan Human Rights, China's extraterritorial human rights obligations in relation to business activities in Latin America, Report for the adoption of the List of Issues for the consideration of China during the 69th session of the CESCR, 2020, <https://bit.ly/3G90vBZ>.

³¹ ISHR, Twitter communiqué, 2021. https://twitter.com/ISHR_esp/status/1370039608424026115?s=20

The Committee also raised questions on the measures taken by the Government of China to ensure the debt sustainability of countries participating in the Belt and Road Initiative (BRI), assessing the impact on human rights in the context of development assistance and its influence on international financial institutions to ensure that their lending does not lead to unwarranted retrogression in the enjoyment of human rights.

In **May 2022** the Government of China submitted the response to the List of Issues³² with three paragraphs dedicated to the issue of business and human rights, highlighting the publication and implementation of the Guidelines for Compliance Management of Overseas Business Operations, which 'clarify the basic standards and specific requirements for overseas business operations' giving 'full consideration to requirements in areas such as the protection of human rights'. However, the Government of China has not provided details on the applicable human rights standards, nor the measures taken to guarantee the right to an effective remedy for victims. In addition, these guidelines are addressed only to State-owned enterprises. However, it does not provide information in the area of extractive activities, as requested by the Committee. Finally, the Government highlights the publication of the Green Development Guidelines for Foreign Investment and Cooperation directed towards countries participating in the Belt and Road Initiative to address the impact of climate change.

The report: objectives and methodology

At the February 2023 session, the Committee will proceed to the second stage of China's review, through dialogue with the Government, civil society and the drafting of recommendations, known as 'Concluding Observations'. This final stage of the Committee's work provides an opportunity to obtain recommendations based on input from global civil society, particularly on China's extraterritorial obligations in relation to the conduct of its companies abroad. These recommendations will consolidate a compelling and authoritative legal analysis of China's State obligations, which can facilitate dialogue with its representatives at various levels, and form a solid basis for preparations ahead of China's fourth UPR cycle scheduled for early 2024.

Against this backdrop, ISHR and CIDHA present this report which seeks to **highlight patterns of human rights abuses specific to Chinese business projects in Latin America**, and to urge the Committee to **make strong and detailed recommendations** on China's extraterritorial obligations in relation to abuses of economic, social and cultural rights by companies and financiers under its jurisdiction and with operations abroad.

As such, the current report analyses 14 projects operated by 11 Chinese-domiciled companies, individually or in consortium, and/or financed by Chinese companies in nine Latin American countries: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Peru and Venezuela. These projects are in the mining (6), hydropower (4), hydrocarbons (2), infrastructure (1) and food industry (1) sectors. The **Annex** to this report includes detailed information on the 14 projects, and an analysis by company, financier, human rights violated, and environmental zone affected.

Each case was documented and analysed by one or several local civil society organisations, based on primary (environmental impact studies, previous complaints and testimonies of local organisations) and secondary sources of information. The Annex also includes the documentation methodology for each case.

³² CESCR, Replies of China to the list of issues in relation to its third periodic report, 2022, <https://bit.ly/3Jtu8B6>

The patterns of human rights abuses observed in these projects are analysed in light of China's binding legal obligations under the Covenant and the General Comments³³ adopted by the CESCR in order to detail States' obligations under specific rights and provisions of the Covenant. The Government of China is also subject to binding obligations under other international treaties it has ratified and customary international law in the field of human rights, such as the prohibition of torture and the principle of non-discrimination. While non-State actors, such as companies and financiers, are not subject to any obligations under international law, the Committee highlights extraterritorial obligations of governments in relation to human rights abuses committed by non-State actors over which they exercise control and/or which are under their jurisdiction.

This report also refers to non-binding standards, in particular those contained in the Guiding Principles on Business and Human Rights³⁴ which clarify States' obligations to promote respect for human rights by business, and provide guidelines for companies to respect human rights, including mechanisms for due diligence, monitoring and oversight of business and financial activity, and remedy for harm to victims.

33 CESCR, General Comments, <https://www.ohchr.org/en/treaty-bodies/cescr/general-comments>

34 OHCHR, Guiding Principles on Business and Human Rights: Implementing the UN 'Protect, Respect and Remedy' Framework, 2012, <https://www.ohchr.org/en/publications/reference-publications/guiding-principles-business-and-human-rights>



Dumestre Hydrobiological Resources Processing Plant (Chile) – CICDHA. © Greenpeace

2. Contextualisation

China's expanding presence in Latin America

Cooperation between China and Latin America took off from an incipient phase of diplomatic, trade and investment agreements during the 1980s and 1990s. However, since the beginning of the 21st century, in addition to trade, large investment packages, financing and plans for the construction of mega-infrastructures have been developed. This phase of expansion and deepening of relations between China and the region began with the 'Going Out Policy' aimed at securing the supply of raw materials, access to new markets for China's growing State-owned enterprises, and consolidating the 'One China' principle at the global level. This plan was complemented by the White Papers on China's foreign policy towards Latin America (2008 and 2016) and the 1+3+6 and 3x3x3 cooperation frameworks launched in 2014 and 2015 respectively, which defined loans, direct investment and trade as the main entry mechanisms for Chinese companies and capital into the sectors of mainly natural resources (mining, hydrocarbons, agro-industry, food), infrastructure (transport, ports and connectivity), and energy.³⁵ Projects in these sectors, largely related to extractive activities, involve significant social, environmental and governance challenges in the territories where they operate.

³⁵ Zhu Qingqiao, director general of the Latin America and Caribbean Department of the Chinese Ministry of Foreign Affairs, in a meeting with media at the China-Latin America and Caribbean Press Centre, explained that 'one means the China-Latin America and Caribbean cooperation planning 2015-2019; three refers to the three drivers: trade, investment and finance; six refers to the six areas, energy and resources, infrastructure, culture, manufacturing industry, scientific and technological innovation and information technology'.

Such a strategy was consolidated in 2018, when the Belt and Road Initiative (BRI), President Xi Jinping's flagship project launched in 2013 as a Eurasian project, expanded to the world, including Latin America. The BRI represents the latest and most ambitious stage in China's relationship with the region and heralds a period of major funding and investment to connect major global supply chains to China. As of December 2022, 21 Latin American countries have officially joined the BRI.

In 2017, just before expanding the BRI globally, at the 19th National Congress of the Communist Party, the Government of China declared that strengthening China's international economic cooperation was a strategic goal of President Xi Jinping's administration, and further linked this goal to the expansion of the BRI. The Congress adopted the principles of 'Government-led, enterprise-dominated, market-operated, and aligned with international standards', stating that it aims to strengthen public policy guidance, improve regulatory services, create an enabling environment, and achieve steady and orderly development of foreign investment. Moreover, on that occasion President Xi declared that China could serve as a 'model' for other countries.³⁶ However, at the recent 20th National Congress³⁷ (October 2022) there was a shift in China's foreign policy away from the BRI in favour of a new and broader 'Global Development Initiative' (GDI)³⁸, which was presented by President Xi at the United Nations General Assembly in September 2022.

In light of the data, the expansion of China's relationship with Latin America over the last two decades is evident. In terms of financing, between 2007 and 2017, Chinese policy banks were among the region's main creditors, disbursing around \$138 billion to governments and State-owned enterprises³⁹. This amount came to represent almost 35 per cent of Latin American public debt and was significantly larger than loans from multilateral banks in the same period. From 2018 onwards, these loans declined as commercial bank lending became more prominent - between 2018 and 2021 they granted 23 loans to private and State-owned companies, mostly to finance investments in socially and environmentally fragile sectors such as energy, extractives (mining and hydrocarbons) and infrastructure.⁴⁰

In terms of Chinese foreign direct investment, of the nearly \$172 billion that entered Latin America between 2000-2021, 45 per cent came in the last five-year period 2016-2021 (\$77.98 billion).⁴¹ These figures do not take into account the nearly 200 infrastructure projects built with Chinese companies as contractors (not investors), for around \$98 billion across the region.⁴²

In the commercial sphere, Latin America has deepened its role as a primary exporter and an extractivist model to supply China's growing demand for natural resources. Between 2000 and 2020, trade between the two regions grew 26-fold.⁴³ In 2021, the total value of trade increased

36 Xi Jinping, *Secure a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Strive for the Great Success of Socialism with Chinese Characteristics for a New Era*, 2017, presented to the 19th National Congress of the Communist Party of China, <https://bit.ly/3jNYLGY>.

37 Ministry of Foreign Affairs of China, *Full text of the report to the 20th National Congress of the Communist Party of China*, 2022, <https://bit.ly/3Q6qhvc>.

38 Ministry of Foreign Affairs of China, *Jointly Advancing the Global Development Initiative and Writing a New Chapter for Common Development*, 2022, <https://bit.ly/3vx5gjW>.

39 Margaret Myers (2021), 'China-Latin America Commercial Loans Tracker,' in: *The Inter-American Dialogue*, <https://cutt.ly/i2aTMUy>

40 Kevin Gallagher and Margaret Myers (2022), 'China-Latin America Finance Database,' in: *The Inter-American Dialogue*, <https://cutt.ly/O2aYznl>

41 Enrique Dussel Peters (2022), 'Monitor de la Infraestructura china en América Latina', in: *LAC-China Network*, <https://bit.ly/3VG3Kqn>

42 Dussel Peters, Enrique (September, 2022). 'Monitor de la Infraestructura china en América Latina. Mexico: LAC-China Network. https://www.redalc-china.org/monitor/images/pdfs/menuprincipal/DusselPeters_Monitor_Infraestructura_2022_ESP.pdf

43 Jorge Sahd (2022), 'China y América Latina: claves hacia el futuro', in: *Centro de Estudios Internacionales de la Pontificia Universidad Católica de Chile*, <https://bit.ly/3WFXDb>

by 41.1 per cent compared to 2020, with an all-time record of US\$451.591 billion.⁴⁴ China is currently South America's largest trading partner and the second largest in the entire region. Four countries have signed a Free Trade Agreement with China: Chile (2005), Peru (2009), Costa Rica (2010), and most recently Ecuador (2022). Uruguay, Nicaragua, and El Salvador have officially announced that they will start negotiations in 2023.

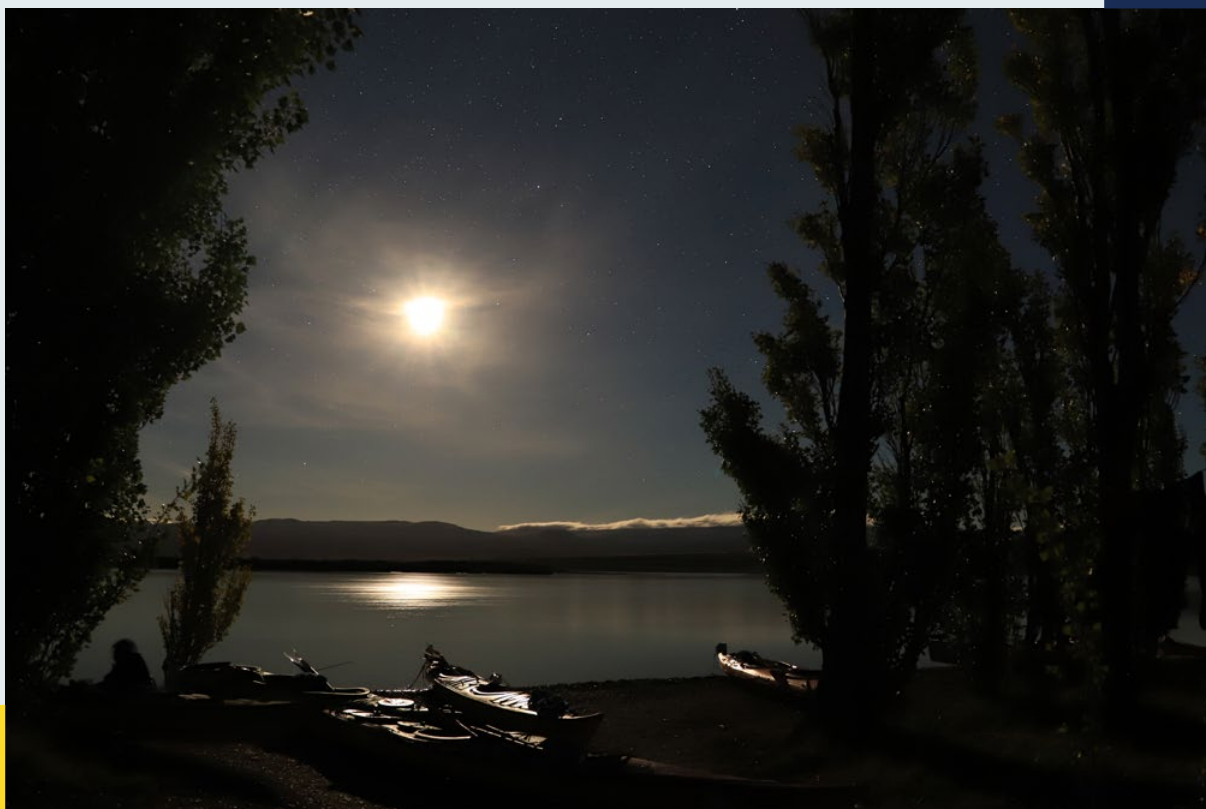
The expansion of Chinese projects in Latin America, channelled through these three channels – financing, investment, and trade – has been concentrated and continues to increase in sectors linked to extractive activities in areas of high social and environmental vulnerability.⁴⁵ Previously mentioned reports by CICDHA and FIDH (for China's UPR, 2018) and by ISHR, CICDHA and Kanan Human Rights (for the CESCRC evaluation, 2021), show that Chinese operations have been accompanied by increasing allegations of human rights abuses and significant environmental impacts. This is happening in a region that is home to approximately 60 per cent of the world's known terrestrial species. The Amazon alone is home to 10 per cent of the planet's biodiversity.⁴⁶ In addition, Latin America is home to approximately 58 million people belonging to more than 800 indigenous communities, representing almost 10 per cent of the regional population.⁴⁷

44 Jorge Hurtado (2022), 'Trade between Latin America and China grows without precedent, experts call for 'caution'', in: France24, <https://bit.ly/3WCJgjC>

45 For example, between 2013 and 2020, the Business and Human Rights Resource Centre recorded 679 allegations of human rights abuses linked to Chinese business conduct abroad. See: Business and Human Rights Resource Centre, 'Going out' responsibly: The Human Rights Impact of China's Global Investments', 2021, <https://bit.ly/3WFXx2T>

46 United Nations Environment Programme (UNEP; 2017), 'Indigenous People and Nature: A Tradition of Conservation', on: UNEP website, <https://bit.ly/3VMGt6g>

47 Economic Commission for Latin America and the Caribbean (ECLAC), 'El impacto del COVID-19 en los pueblos indígenas de América Latina-Abya Yala: entre la invisibilización y la resistencia colectiva', 2020, <https://bit.ly/3lqmmYa>



Hydroelectric complex on the Santa Cruz river (Argentina): La Porteña, first night. © Ignacio Otero

3. Applicable international standards

In the area of business and human rights, the Chinese State's obligations under international law derive primarily from the **International Covenant on Economic, Social and Cultural Rights (Covenant)** interpreted in accordance with CESCR General Comment No. 24, and other applicable international human rights standards, covered by the **UN Guiding Principles on Business and Human Rights (the Guiding Principles)** adopted by the Human Rights Council in 2011.⁴⁸

International treaties ratified by States impose legally binding obligations on them. Thus, within the framework of the Covenant, the Chinese State has the obligation to respect, protect and guarantee the economic, social and cultural rights of individuals in a progressive, non-discriminatory manner and to the maximum of its available resources. The Covenant enshrines rights such as the right to health, of which a 'healthy environment' is a determining factor, as well as water, food, housing, and labour rights, among other fundamental rights.

While States are the duty bearers to comply with and implement international treaties, non-State companies and financial institutions must respect human rights and refrain from violating them. Furthermore, the State's obligation to 'protect' requires it to take measures to prevent human rights abuses by third parties (non-State actors) under its jurisdiction or control, such as companies and financiers.

⁴⁸ Obligations arising from international treaties ratified by China, such as the ICESCR, as well as Conventions of the International Labour Organisation (ILO), are of a binding nature, as opposed to non-binding ones such as the Guiding Principles.

In this regard, the UN Working Group on Business and Human Rights, formed in June 2011, has drawn attention to the implementation of specific provisions of the Guiding Principles. For example, Guiding Principle 4 requires States to take 'additional' measures to protect against human rights abuses by, among others, State-owned enterprises, citing reasons of policy coherence, legal compliance, legitimacy and credibility.⁴⁹ According to the Working Group, these 'additional' measures could include legal requirements for State-owned enterprises to respect human rights in all their operations, conduct human rights due diligence, and engage in reporting on environmental, social and governance factors, including human rights. In addition, Guiding Principle 14 states that 'the corporate responsibility to respect human rights applies to all companies regardless of size, sector, operational context, ownership and structure'.

Furthermore, States' obligations, including actions relating to actors under their jurisdiction, transcend national territory and extend beyond their borders. These obligations were clarified in the **Maastricht Principles on Extraterritorial Obligations (ETOs) of States in the Area of Economic, Social and Cultural Rights**⁵⁰ which stipulates that States have the obligation to respect, protect and fulfil economic, social and cultural rights both within and outside their territory. It also stipulates that State responsibility extends to 'acts and omissions of non-State actors acting at the direction or under the direction or control of the State concerned; and acts and omissions of persons or entities other than organs of the State, such as commercial and other enterprises'.

In this regard, in **General Comment No. 24**⁵¹ of 2017 on State obligations in the context of business activities, the Committee recognised that 'corporate activities have negatively affected economic, social and cultural rights' and set out to 'clarify the duties of States parties to the International Covenant on Economic, Social and Cultural Rights in such situations, with a view to preventing and addressing the adverse impacts of business activities on human rights.' The Committee stresses that '[t]he extraterritorial obligation to protect requires States parties to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control.' This includes all companies domiciled in their territory and/or jurisdiction.⁵²

It also reiterates the Committee's long-standing view that 'the obligations of States under the Covenant do not stop at their territorial borders' and that they must 'take the steps necessary to prevent human rights violations abroad by corporations domiciled in their territory and/or jurisdiction', **regardless of the measures taken or not by host countries**.⁵³ Therefore, 'corporations domiciled in the territory and/or jurisdiction of States parties should be required to act with due diligence to identify, prevent and address abuses to Covenant rights in a business entity's supply chain and by subcontractors, suppliers, franchisees, or other business partners, wherever they may be located.'⁵⁴

49 Human Rights Council, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (A/HRC/32/45), paras. 22-28, 98 and 102, <http://bit.ly/3JtwPCI>

50 Published three months after the adoption of the Guiding Principles when a group of international experts systematised customary and treaty standards relating to extraterritorial obligations under international law. See the full document: <https://bit.ly/3GyUoZd>

51 CESCR, General Comment No. 24 (2017) on States' obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities (E/C.12/GC/24), 2017, para. 1, <https://bit.ly/3JsDm0A>

52 Ibid. para. 30.

53 Ibid. para. 26.

54 Ibid. para. 33.

In addition, the CESCR establishes that States can be held directly responsible for the action or inaction of corporate entities when the enterprise acts on the instructions of that state or under its control or direction; when the enterprise 'is empowered to exercise elements of governmental authority'; or when the state 'acknowledges and adopts such conduct as its own.'⁵⁵ Moreover, even in cases where international responsibility is not incurred, the State "would be in breach of its obligations" if it had not taken "reasonable measures that could have prevented [the rights violations] from occurring."⁵⁶

⁵⁵ Ibid. para. 11.

⁵⁶ Ibid. para. 32.



Rucalhue hydroelectric plant (Chile): Marcha Quilaco © Semillas del Lirken

4. Chinese action plans and guidelines for overseas operations

Over the past few years, a number of Chinese promulgating institutions⁵⁷ have issued plans and guidelines to direct their companies' and financiers' operations abroad. These documents have progressively moved away from a previous purely 'deferential' approach⁵⁸, focused on compliance with domestic regulatory frameworks (which vary between host countries), taking initial steps towards an approach that emphasises their commitment to also comply with international best practices and standards. Although these plans and guidelines are indicative and non-binding, the shift towards compliance with international standards signals 'a growing commitment by the Government of China, business and financial sectors to take co-responsibility for the results of their intervention in projects' and to guide their companies and banks in respecting the environment, local communities and good governance in the territories where they are involved.⁵⁹

⁵⁷ China's promulgating institutions can be: government regulators and agencies, business associations or guilds, and banks or companies.

⁵⁸ Initiative for Sustainable Investment China-Latin America (IISCAL), Handbook on Chinese Environmental and Social Guidelines for Overseas Lending and Investment, A Guide for Local Communities, 2018, p. 10, <https://bit.ly/3Q6x8ok>

⁵⁹ Initiative for Sustainable Investment China-Latin America (IISCAL), Caring for the Planet is Everyone's Responsibility, Compilation of Chinese Environmental and Social Guidelines for Overseas Operations, 2020, p. 6, <https://bit.ly/3WGbdXD>.

In the specific area of human rights, the Government of China formulated national action plans four times (2009, 2012, 2016, and 2021). The latest Human Rights Action Plan⁶⁰ (2021-2025) seeks to 'promote responsible business conduct in global supply chains.' Unlike its predecessors, the plan places greater emphasis on international standards by encouraging 'Chinese companies to comply with the Guiding Principles [...] in their foreign trade and investment, to conduct human rights due diligence and to fulfil their social responsibility to respect and promote human rights.'

In the case of the guidelines⁶¹, there have been several developments in recent years to guide business and financial conduct on social and environmental issues. In particular, the Green Development Guidelines for Foreign Investment and Cooperation⁶² (July 2021) urge Chinese investors to go beyond 'host country rules' and Chinese actors (companies or banks) to adopt Chinese standards or international best practices where local regulations are lacking. Likewise, the Guidelines for the Ecological Environmental Protection of Foreign Investment Cooperation and Construction Projects⁶³ (January 2022) stipulate that, if host country rules and laws are not adequate or sufficient, companies should use international and/or Chinese standards if the latter are stricter (Art. 3, 7 and 22).

This increased alignment to international instruments is also seen in the Joint Green Development Advocacy Views for the Belt and Road Initiative⁶⁴ (March 2022), which alludes to compliance with the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, as well as the reports of the Belt and Road Initiative Green Development Coalition (BRIGC), which is an international network created in 2019 with the mission to integrate the BRI with the 2030 Agenda and international standards. The recent Measures for Compliance Management of Central Enterprises (September 2022)⁶⁵ also promotes the compliance of State-owned enterprises with international good practices.

In the financial sector, the Green Finance Guidelines for the Banking and Insurance Industry⁶⁶ (June 2022) for the first time encourage Chinese banks and insurers, albeit in a very incipient way, to establish grievance mechanisms. If established, this could provide civil society organisations and local communities with a channel to demand that Chinese banks implement formal communication mechanisms, environmental and social standards, and access to information policies in the 'country or region where the project is located [...] and ensure that project management is meaningfully consistent with international good practice'(Art.25).

60 State Council of the People's Republic of China, China's Human Rights Action Plan (2021-2015), 2021, <https://bit.ly/3VDDzR4>. For a discussion of this and other Chinese plans, see the official website of Sustainable Latin America, Chinese Documents section: <https://bit.ly/3vxzDXs>.

61 These vary depending on: 1) their scope: general or sectoral; 2) who promulgates them: regulators or government agencies, business associations, or banks and companies; and 3) who they are aimed at: companies/investors or financial institutions. For more information see the official website of Sustainable Latin America, Chinese Guidelines section: <https://latsustainable.org/>

62 Ministries of Commerce and Ecology and Environment of China, Green Development Guidelines for Foreign Cooperation and Investment, 2017, <http://xhjjxh.cn/data/show-53-2489.htm>.

63 Ministries of Commerce and Ecology and Environment of China, Guidelines for Ecological Environmental Protection of Foreign Investment Cooperation and Construction Projects, 2022, <https://bit.ly/3VCp2VS>.

64 National Development and Reform Commission, et. al., Views on Joint Promotion of Green Development for the Belt and Road Initiative, 2022, <https://bit.ly/3i1zylx>.

65 These measures are an update to those mentioned by the Government of China in its March 2022 response to CESCR's questions: Guidelines for Managing the Compliance of Overseas Operations of Enterprises (2018) that emphasise 'full consideration' of compliance with requirements for the protection of human rights under local, national and international laws and regulations.

66 China Banking and Insurance Regulatory Commission (CRBSC), Green Finance Guidelines for the Banking and Insurance Industry, 2022, unofficial translation by Sustainable Latin America, <https://bit.ly/3jMfNFr>

Despite progress in the promulgation of these plans and guidelines, the Government of China's main challenge remains implementation by financial institutions and companies, as well as supervision by the Chinese authorities to enforce compliance in overseas projects. On the one hand, these documents are not distributed to business and financial actors operating abroad. On the other hand, even in cases where they are communicated, there are no monitoring or accountability processes for compliance, given the non-binding nature of these guidelines and the absence of effective monitoring mechanisms. This implementation gap is evident in the cases analysed in this report.



Kayabi leader observing the start of construction of the São Manoel hydroelectric plant in his territory.
© Caio Mota, Coletivo Proteja

5. Cases: main patterns of human rights abuses and environmental damage

More than 50 civil society organisations endorsing this report believe that the Chinese State is making insufficient efforts to protect human rights in the context of Chinese investment and financing projects in Latin America. The cases analysed reveal abuses committed by Chinese companies that violate the economic, social and cultural rights enshrined in the Covenant. Furthermore, these abuses are not in line with other international standards such as the UN Guiding Principles on Business and Human Rights and contravene Conventions such as ILO Convention 169, which has been ratified by all the host countries in the cases documented in the Annex, but not by China.

The 14 projects documented in this report (Annex) are located in nine Latin American countries: Argentina (1), Bolivia (1), Brazil (1), Chile (2), Colombia (1), Ecuador (3), Mexico (1), Peru (3) and Venezuela (1). Six of the projects are in the area of mining, mostly in the Andean region (Ecuador, Peru, Colombia); four are hydroelectric projects, mostly in the Southern Cone (Argentina, Brazil, Chile), and Bolivia; two are hydrocarbon exploitation projects (Ecuador and Venezuela), both run by China National Petroleum Corporation (CNPC) and Chuangqing Drilling Engineering Company Limited (CCDC); one infrastructure project (Mexico) and one food production project (Chile).

The 14 projects are in the hands of 11 Chinese companies or consortia, and are financed by six Chinese banks. Most of the investments come from the China Development Bank, the Export-Import Bank of China, the Industrial and Commercial Bank of China and the Bank of China. Details of each project and an analysis of the impact of each project by company and bank involved can be found in the Annex.

Table 2: Projects Reviewed

No.	Project / Country	Chinese companies	Chinese financiers	Main rights affected				Impacted environment			
				Environment	Indigenous Peoples	Labour	Civil And Political	Fragile Ecosystems	Amazon	Ramsar Sites	Protected Area
Mining											
1	Proyecto Gran Buriticá S.A.S. (Buriticá Mine) (Colombia)	Zijin-Continental Group	No information	X		X	X	X			
2	Mirador Mining Project (Ecuador)	CRCC-Tongguan, jointly owned by China Railway Construction Corporation (CRCC) and Tongling Nonferrous Metal Group (TNMG)	China Development Bank, Bank of China, Export-Import Bank of China, China Merchant Bank, China Construction Bank, Industrial and Commercial Bank of China, Industrial and Commercial Bank of China	X	X	X	X	X	X		
3	San Carlos-Panantza (Ecuador)	CRCC Tongguan Investment Co. Ltd, Tongling Nonferrous Metals Group Holdings Co. Ltd (TNMG) and China Railway Construction Corporation (CRCC)	Bank of China, China Development Bank, Export-Import Bank of China, China Merchant Bank, China Construction Bank, Industrial and Commercial Bank of China, Industrial and Commercial Bank of China	X	X		X	X	X		
4	Las Bambas Mining Project (Peru)	Minerals and Metals Group MMG Limited, Guoxin International Investment Co. Ltd. and CITIC Metal Co. Ltd.	Development Bank of China, Export-Import Bank of China, Industrial and Commercial Bank of China, Bank of China	X	X		X	X			
5	Marcona Mine (Peru)	Shougang Corporation	Industrial and Commercial Bank of China	X		X	X	X			
6	Unidad Minera Toromocho (UMT) (Peru)	Aluminum Corporation of China (CHINALCO)	Development Bank of China, and Export-Import Bank of China	X		X	X	X			
Hydropower											

REPORT: EXTRATERRITORIAL HUMAN RIGHTS OBLIGATIONS OF THE PEOPLE'S REPUBLIC OF CHINA
IN RELATION TO BUSINESS ACTIVITIES IN LATIN AMERICA

No.	Project / Country	Chinese companies	Chinese financiers	Main rights affected				Impacted environment			
				Environment	Indigenous Peoples	Labour	Civil And Political	Fragile Ecosystems	Amazon	Ramsar Sites	Protected Area
7	Hydroelectric Complex on the Santa Cruz river (Argentina)	China Gezhouba Group Company Ltd.	Development Bank of China, Industrial and Commercial Bank of China, and Bank of China	X	X	X	X	X			X
8	Ivirizu Hydroelectric Project (Bolivia)	Sinohydro Corporation Ltd.	No Chinese financier	X	X	X		X		X	
9	São Manuel Hydroelectric Project	China Three Gorges	China Development Bank	X	X			X			
10	Rucalhue Hydroelectric Plant (Chile)	China International Water & Electric, a subsidiary of China Three Gorges Corporation	No information	X	X		X	X			
Hydrocarbons											
11	Drilling and exploitation of Ishpingo A Field, part of Block 43-ITT (Ecuador)	China National Petroleum Corporation (CNPC) from its branch office Chuangqing Drilling Engineering Company Limited (CCDC)		X	X			X	X		X
12	Development of the Orinoco Oil Belt (Venezuela)	China National Petroleum Corporation (CNPC)	China Development Bank	X	X	X	X	X			X
Infrastructure											
13	Mayan Train Project (Mexico)	China Communications Construction Company		X	X	X	X	X			X
Food											
14	Planta Procesadora de Recursos Hidrobiológicos Dumestre (Chile)	Joyvio, a subsidiary of Legend Holdings Corp. (Lenovo)	No previous history	X	X			X			

Source: own creation

Most of the projects analysed stand out for their size. For example, in Peru, the Las Bambas mining project is the largest acquisition of mining assets by a Chinese entity abroad and it is responsible for 2 per cent of global copper production.⁶⁷ The hydroelectric complex on the Santa Cruz river⁶⁸ has an estimated cost of USD 4.7 billion and is the third largest hydroelectric project in Argentina and the largest to be financed and built by Chinese companies outside China. In turn, the Tren Maya is Mexico's largest rail transport project of the 21st century and foresees the creation of 1,554 kilometres of railways across five Mexican States.⁶⁹

Actions by affected communities and civil society organisations to demand accountability from Chinese regulatory institutions, companies, and banks are characterised by a total lack of response from the Government of China. For example, in the Las Bambas mining project (Peru), six dialogue tables have been held without any agreement being reached on resettlement and land acquisition, and civil society organisations have received no response from the company or from the Chinese diplomatic mission in Peru and at the UN in Geneva. In the case of the Santa Cruz River hydroelectric complex (Argentina), five letters sent by civil society to the Ministry of Commerce, the President of State-owned Assets Supervision and Administration Commission of the State Council (SASAC), the Ministry of Foreign Affairs, the Bank of China and the Chinese Embassy since 2020 have gone unanswered. On several occasions, Chinese institutions, such as the Chinese embassy in the country, the parent company in China and the control and supervisory bodies of Chinese companies abroad, have received communications from Latin American organisations and have not responded. This is the case, among others, of the Ivirizu (Bolivia) and Rucalhue (Chile) hydroelectric projects.

In April 2019, nine of the most important institutions for the promotion, control and supervision of Chinese investment and financing abroad received letters from Latin American civil society organisations with specific recommendations that, within the framework of the social and environmental guidelines issued by these institutions, should seek to implement the recommendations that China accepted in the third cycle of the UPR. Also in June, six Chinese institutions received new communications from Latin American organisations urging them to ensure that Chinese companies and banks promote the implementation of China's social and environmental guidelines in relation to the list of issues that the Committee on ESC Rights drew up for China that year. Finally, in April 2022, seven Chinese institutions received submissions from Latin American organisations that prepared the UPR midterm report on Chinese business activities and human rights in Latin America⁷⁰ with specific recommendations for each entity to align Chinese business activities with human rights conventions and standards. Unfortunately, despite the efforts of civil society, there was no response from the Chinese institutions and it was not possible to establish channels of communication between these entities and/or Chinese diplomatic missions to address concerns and dialogue on recommendations to China. This demonstrates that there is no intention to expand mechanisms for accountability, access to information and/or attention to victims of corporate abuses of Chinese origin.

67 Environmental Justice Atlas, Las Bambas mining project, Peru, 2021, <https://bit.ly/3vCX15H>.

68 Environmental Justice Atlas, Santa Cruz River Dams, Argentina, 2019, <https://bit.ly/3Cjtylk>.

69 Environmental Justice Atlas, Mayan Train Project in Calakmul, Campeche, Mexico, 2021, <https://bit.ly/3YXSBUJ>.

70 CICDHA, FIDH, ISHR, Human Rights and Chinese Business Activities in Latin America, Mid-term Report of the Universal Periodic Review of the People's Republic of China, 2022, <https://bit.ly/3vCJJSN>.

Environmental impacts and related human rights abuses



Toromocho mine © Red Muqui

All of the projects documented in this report are located in fragile ecosystems and have significant environmental impacts. The three projects in Ecuador, two mining and one hydrocarbon, are located in the Ecuadorian Amazon basin: the Mirador mining project alone affects at least 16 different ecosystems, home to 4,000 plant species and up to 400 species of algae.⁷¹

Four projects in Mexico, Bolivia, Ecuador and Venezuela are located in protected areas. Specifically, the Ishpingo Field in the Yasuní Biosphere Reserve (Ecuador) and the Maya Train in the Petenes Biosphere Reserve (Mexico) are located in areas designated by UNESCO as Biosphere Reserves, and both are listed as Ramsar Sites.⁷² The Ishpingo Field project is located in a wetland of global importance, which is home to 1,500 plant species, 600 bird species and 178 mammal species, including endangered aquatic mammals.⁷³ Projects such as the Junín and Ayacucho fields in the Orinoco oil belt (Venezuela), where an estimated per cent of the world's oil reserves are located⁷⁴, affect one of the largest wetlands in South America and the Orinoco River, the third largest river in the world. In the Buriticá project (Colombia), the tropical dry forest (TDF) is affected, of which only small isolated remnants exist. In this region of the Cauca River, between 1957 and 1986, 66 per cent of the forest was destroyed, leaving only 3 per cent of the original cover, which is now endangered, along with animal species at risk of extinction and/or vulnerable to climate change.

Several projects directly threaten protected species (Dumestre plant), including endemic fauna and flora (Santa Cruz River, Ivirizu hydroelectric plant). Two projects (Tren Maya and Mirador) have also resulted in deforestation of the project site - 1,300 hectares in the case of the Mirador mining project (Ecuador).

⁷¹ Ana Cristina Basantes (2019), 'Los ecosistemas y comunidades que rodean a Mirador', in: GK.City. <https://bit.ly/3WCynyj>.

⁷² Ramsar Sites Information Service, <https://rsis Ramsar.org/?language=en>

⁷³ Ramsar Convention Secretariat, Cuyabeno Lagartococha Yasuní Wetland Complex, 2018, <https://rsis Ramsar.org/ris/2332>.

⁷⁴ Margaret López (2022), 'Faja del Orinoco: Venezuela awaiting oil investments in a biodiverse region', in: Diálogo Chino, <https://bit.ly/3CgRZj6>

While the Covenant does not enshrine the right to a **clean, healthy and sustainable environment**, which has recently been recognised by the Human Rights Council⁷⁵ and the UN General Assembly⁷⁶, **Article 12** of the Covenant does enshrine the **right to health**, or 'the right to the highest attainable standard of health'. In its General Comment No. 14, the Committee interpreted the right to health as a comprehensive right that also encompasses the 'underlying determinants of health', including a 'healthy environment', food and access to clean and safe drinking water. In the same comment, the Committee emphasized the obligation of States to 'take measures against health hazards caused by environmental pollution'.⁷⁷

Air and water pollution characterise most of the projects analysed in this report. Air pollution is a consequence of at least three projects, due to mineral smelting (Buriticá) and heavy vehicle traffic (Buriticá, Las Bambas, Dumestre plant), which causes dust pollution in populated areas and on crops.

In addition, water pollution has been documented in at least six cases, due to the discharge of waste water and the use of cyanide (Buriticá), the risk of spillage in the event of a rupture (Mirador), the oil spill in the Orinoco projects (Venezuela), the failure of the sub-drainage system and the dumping of sediments in the Toromocho mining unit (Peru), or the disposal of antibiotics and related waste (Dumestre plant).

In its General Comment No. 15⁷⁸, the Committee elaborates on the obligations of States to respect, protect and fulfil the **right to water** as enshrined in **Articles 11 and 12** of the Covenant. These obligations include ensuring the accessibility and availability of water in sufficient quantity to meet people's basic needs. It also includes ensuring the quality of water, that is, that it is free from pollutants and is fit for human consumption. The Committee stresses that 'a people may not be deprived of its own means of subsistence' and underlines the obligation to 'ensure sufficient access to water for subsistence agriculture and to ensure the subsistence of indigenous peoples'.

However, various violations of the right to water have been documented in at least 10 of the projects analysed. In the case of Buriticá, it has been reported that the water sources that supply the communities have dried up. In the case of the hydroelectric complex on the Santa Cruz River, access to water for future generations is at risk, while the South Patagonian Ice Field, the third largest freshwater reserve in the world and the largest non-polar continental ice block with access to land, is affected. Two projects have impacts on water sources or river basins: the Mirador mining project in Ecuador (source of the Amazon River) and the Rucalhue hydroelectric plant in Chile (Biobío River). Impacts on the flow and composition of the Teles Pires River (a tributary of the Tapajós and Amazon Rivers) are also reported for the São Manuel project (Brazil), and on the water table for the Tren Maya project (Mexico). In one case, the risk of flooding is reported in the areas surrounding the project (Mirador).

In at least three cases (Marcona, Orinoco and the Dumestre plant), water contamination, droughts or changes in water flows, and the use of drinking water by companies have led to significant reductions in access to drinking water for project-affected communities. In the case of the mega industrial complex of the Dumestre plant (Chile), the availability of water to neighbouring communities has been reduced by 12,000 litres. In the case of the Orinoco Oil Belt (Venezuela) such restrictions have led to protests.

⁷⁵ United Nations (2021), 'Human Rights Council declares that a clean and healthy environment is a human right', in: UN News, <https://bit.ly/3vyyski4>

⁷⁶ United Nations, (2022), 'Access to a clean and healthy environment is a universal human right', in: UN News, <https://bit.ly/3Gb41vv>

⁷⁷ CESCR, General Comment No. 14, The Right to the Highest Attainable Standard of Health, 2000, <https://bit.ly/3DuUr6d>

⁷⁸ CESCR, General Comment No. 15, The right to water (articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), 2002, <https://bit.ly/3XVpuAy>

In addition to direct damage to the environment and biodiversity, the impact of megaprojects, particularly extractive projects, also has a significant impact on the enjoyment of related rights, including the **right to an adequate standard of living** for the individual and his or her family, including food and housing, rights enshrined in **article 11** of the Covenant. In its General Comment No. 12⁷⁹, the Committee considers that the **right to food** encompasses 'the availability of food', including 'the ability of individuals to feed themselves, either directly or through the use of productive land or other natural sources of food'.

In five of the projects analysed, food insecurity was caused by environmental impacts, both on communities engaged in or dependent on fishing, or on the conservation of flooded forests (Rucalhue, São Manuel, Ishpingo, Orinoco, Tren Maya), and on traditional food sources. The São Manuel hydroelectric complex (Brazil) has blocked the migratory routes of aquatic fauna and altered the seasonal flooding of certain ecosystems. Water pollution from the discharge of waste and toxic substances and the lack of treatment of contaminated water in mining projects such as Las Bambas (Peru) or Mirador (Ecuador) also contaminate local food production.

In seven cases, different types of violations of the **right to housing** were recorded: the weakening of the structure of houses through the use of explosives (Buriticá) or the passage of heavy trucks (Las Bambas); the acquisition of land through irregular and abusive acts (Mirador and San Carlos-Panantza); the impossibility of selling their houses due to the damage and pollution caused by the mega-project (Buriticá). In the case of the Toromocho Mining Unit (Peru), the company Minera Chinalco Perú S.A. used additional methods of pressure on the people who refused to resettle in Nueva Morococha, such as cutting off their electricity supply or restricting their movement in the centre of the resettlement town. In the new town of Nueva Morococha, around 50 per cent of the resettled population is unemployed, and the company has failed to honour agreements to create jobs.

In four cases (Mirador, San Carlos-Panantza, Rucalhue, Tren Maya), people and communities living in the area affected by the mega-project were forcibly and violently evicted. In the Mirador project (Ecuador), the company Ecuacorriente S.A. (ECSA) invoked the administrative measure of the 'mining easement', which allows the State to appropriate communal land to facilitate the operations of the company that holds the concession. In the San Carlos-Panantza mining project (Ecuador), eight families were forcibly displaced and several anti-mining activists were intimidated by the security forces as part of a process of militarisation of their ancestral territory due to the intervention of the company Explorcobres. In none of the cases analysed did the companies take measures to address the gendered impacts on the elderly and people with disabilities.

In its **General Comment No. 7**⁸⁰, the Committee considers the prohibition of forced evictions that do not comply with the principles of legality, necessity and proportionality, which permit restrictions on certain fundamental rights. In all circumstances, 'legal remedies or procedures should be available to those affected by eviction orders' and States must ensure the enjoyment of the 'right to adequate compensation'.

In at least ten cases, the projects lack an adequate environmental licence based on a full Environmental Impact Assessment (EIA) that has been properly socialised with the affected groups. In some cases, the projects are being implemented with an old EIA (San Carlos-Panantza) that is incomplete and lacks socio-environmental impact studies on indigenous peoples (São Manuel). In other cases, projects have been modified and expanded through a procedure called 'pertinencia', which is outside the EIA

79 CESCR, General Comment 12, The right to adequate food (art. 11) (E/C.12/1999/5), <https://bit.ly/3WZMDRq>.

80 CESCR, General Comment No. 7, The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions, 1997, <https://bit.ly/3Cj9rn4>.

system (Rucalhue, Dumestre).⁸¹ It is also evident that the environmental studies are not accessible to the public (Ivirizu) or have not been properly shared with the affected communities (Buriticá, Tren Maya). In the case of Tren Maya (Mexico), the EIA lacks sufficient information based on studies of the feasibility, operation and profitability of the project, while the studies and permits were issued by the same institutions that are now promoting the project. In the case of the Dumestre Plant (Chile), the authorities issued a simple Environmental Impact Statement (EIS), which is less rigorous than an EIA, despite the size of the project.



Bahía de los fósiles. ©Weston Boyles

Hydroelectric complex on the Santa Cruz River (Argentina)

Civil society organisations report that the EIA was rushed, without a thorough analysis of the project's impact on the largest freshwater reservoir, on endemic birds, and without assessing the risks in its construction. The original project also failed to include an environmental impact assessment of the extra high voltage power lines associated with the project. A reflection of the weakness of the EIA is the error in the construction of the Kirchner dam (ex-Cóndor Cliff) that led to a crack in one of the retaining slopes in November 2019, causing further

delays in the work and forcing a complete redesign of the original project and a new addendum to the contract. In 2020, judicial authorities requested new reports from State institutions specialising in glaciers and national parks on the gaps in the environmental studies.

Civil society groups welcome the total or partial interruption of several projects following legal actions (Mirador, San Carlos-Panantza, Toromocho, São Manuel), although most of these legal actions were reversed.

⁸¹ The 'relevance consultation' is a voluntary procedure before the Chilean Environmental Assessment Service (SEA), in which the owner of a project requests a pronouncement on whether the project or its modification should be submitted to the Environmental Impact Assessment System (SEIA). The SEA issues a resolution which is a non-binding administrative act. Although the pertinence is not an authorisation and does not modify an environmental licence or Environmental Qualification Resolution (RCA), it has been used to develop or modify projects outside the SEIA - without submitting an Environmental Impact Declaration (DIA) or an Environmental Impact Assessment (EIA), as the case may be. For more information: <https://www.sea.gob.cl/consulta-de-pertinencia/que-es-una-consulta-de-pertinencia>

Indigenous peoples' rights



Demonstration at the São Manoel hydroelectric plant's construction site. © Juliana Pesqueira, Coletivo Proteja, 2017

Ten of the 14 projects documented have resulted in violations of indigenous peoples' rights, including all hydroelectric, hydrocarbon and infrastructure construction projects. These projects are located in the territories of local communities who oppose these types of activities because of their negative environmental and social impacts. As a result, Chinese investors and financiers are not following due diligence procedures and are choosing to operate in areas with documented high potential for social conflict and social and environmental risks.

The actual and potential impacts of various megaprojects on indigenous peoples are very high and long-term, in some cases leading to their extinction.

San Carlos-Panantza mining project (Ecuador) - The mining project affects 1,200 families in 47 communities, and involves 70 per cent of the ancestral territory of the Shuar Arutam people. The project has been highly conflictive since its early stages: recently, after seven years of legal proceedings, the Constitutional Court of Ecuador ruled that the collective right to free, prior and informed consultation of the Shuar indigenous people had been violated. The ruling declares that the San Carlos-Panantza project has affected the territory of the communities and that the socialisation procedures carried out by the mining company are not equivalent to prior consultation. Thus, it ordered full reparation to the Shuar people, that their decisions be respected in the framework of their organisational and self-determination processes, and that the State offer a public apology⁸².

In two cases, megaprojects affect indigenous peoples in voluntary isolation (São Manuel, Ishpingo). The Ishpingo oil field project (Ecuador) could lead to forced contact with these peoples, with disastrous consequences for their survival and the destruction of their means of subsistence. This case has been referred to the Inter-American Court of Human Rights due to the seriousness of the situation and the possibility of ethnocide.

⁸² Mishell Mantuano (2022), 'Pueblo Shuar Arutam gana acción de protección. Corte Constitucional retira licencia a proyecto minero San Carlos- Panantza', in: Wambra, <https://bit.ly/3jOe7eA>.

In its General Comment No.24⁸³, the Committee reiterates the obligation of States and the responsibility of companies to 'respect the principle of **free, prior and informed consent** of indigenous peoples in relation to all matters that may affect their rights, including lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired'. In the context of forced evictions, the Committee stresses that 'the cultural values of indigenous peoples and the rights associated with their ancestral lands are particularly threatened' and reiterates the obligation to guarantee the right to an effective remedy, due process, non-discrimination and effective consultation and participation in decision-making.

Projects located in indigenous territories restrict or cut off indigenous peoples' access to their **lands and territories**, affecting not only the exercise of their rights to food and housing, but also their social and spiritual development in relation to their worldview. Four projects affect land as cultural and archaeological heritage (Santa Cruz, Rucalhue, São Manuel, Buriticá), with the destruction of sacred sites and the displacement of remains and objects of cultural or archaeological value (Santa Cruz, São Manuel), or the alteration of ancestral roads with consequences for the social fabric of the community (Buriticá).

At least eight projects (Mirador, San Carlos-Panantzta, Río Santa Cruz, São Manuel, Orinoco, Rucalhue, Tren Maya, Dumestre plant) are characterised by a lack of adequate consultation to obtain the free, prior and informed consent of the affected communities. In the case of the Santa Cruz River, a federal judge ruled in favour of the communities affected by the project in 2021, requiring the Argentine authorities to fulfil their obligations and commitments, including a consultation process with these communities. Similarly, the Brazilian Federal Court suspended the São Manuel project, although the decision was later overturned.



Somos el río © Semillas de Lirken

Rucalhue Hydroelectric Plant (Chile) -

Families of affected indigenous communities indicated that they had not been consulted, despite the existence of a friendly settlement agreement between the Chilean State and the Mapuche Pewenche families of the Alto Bío Bío recognised by the IACHR that requires the establishment of 'binding mechanisms for all State bodies to ensure the non-installation of future mega-projects, particularly hydroelectric projects, on indigenous lands of the Alto Bío Bío'. The agreement also provided that 'the indigenous lands of the Alto Bío Bío be classified as an area of protection of resources

of natural value or cultural heritage, and consequently, be declared non-buildable areas or areas with restricted building conditions'.

In several projects, the consultation process was not carried out adequately, in accordance with applicable international standards: in the Mirador mining project (Ecuador), consultation was conducted with an unrepresentative number of the affected population, and existing decision-making structures in indigenous communities were ignored.

83 CESCR, General Comment 24 (2017) on States' obligations under the ICESCR in the context of business activities (E/C.12/GC/24), 2017, <https://bit.ly/3kKQow3>.

Tren Maya (Mexico) - The Office of the United Nations High Commissioner for Human Rights (OHCHR) in Mexico issued a statement on 19 December⁸⁴ 2019, expressing concern that the so-called indigenous consultation organised by the government did not comply with international human rights standards on free, prior and informed consent. The Tren Maya project has also lacked the transparency and access to information necessary for the protection of human rights in the context of business activities. The consultation process, carried out at the end of 2019, was conducted without the EIA and in languages foreign to those of the affected communities, denying them access to information. Contrary to national legislation, the construction of the Tren Maya began on 30 April 2020, without a proper EIA approved by the Ministry of Environment and Natural Resources. When the EIA was finally presented, its annexes were not made publicly available; some of them had to be obtained through the intervention of whistleblowers.

In at least three cases (Buriticá, San Carlos-Panantza and São Manuel), civil society organisations report significant impacts on the mental health of the affected indigenous populations, including depression and other psychological effects linked to the disruption of the social fabric and community life promoted by the projects.

Labour rights

Seven of the 14 projects documented have generated labour rights abuses. These include precarious working conditions and low wages (Ivirizu and Buriticá), delays and non-payment (Santa Cruz River complex, Marcona and Tren Maya), non-compliance with negotiations and collective agreements (Marcona and Orinoco), illegal dismissals (Mirador and Marcona), targeting of unionised workers (Marcona), and mass dismissals (Orinoco). In at least two projects (Marcona and Ivirizu), companies resort to precarious contracts through subcontracting to avoid complying with their employment obligations.

Ivirizu hydroelectric project (Bolivia) - An inspection by the Bolivian Ombudsman's Office in April 2021 found precarious conditions for the workers of the company Sinohydro, including the absence of basic biosecurity conditions to prevent Covid-19 infection, precarious hygiene services and housing (4x5 metres in size housing between 6 and 10 people), the absence of adequate work tools to carry out their work safely, basic medical services and social security. Most of the workers did not have a formal employment contract, while 120 workers had been subcontracted to avoid labour obligations.

The accumulation of labour rights violations fuels social conflict in megaprojects. For example, the Shougang company at the Marcona mine (Peru) has faced the highest number of labour disputes related to large-scale mining in Peru, with 19 labour disputes since 2012, and the highest number of strikes in the sector in Peru in the last 20 years.

In its General Comment No. 23⁸⁵ on the **right to just and favourable conditions of work** enshrined in article 7 of the Covenant, the Committee notes that States must 'combat all forms of unequal treatment arising from precarious employment relationships', 'take steps to prevent and remedy occupational accidents and diseases resulting from their acts or omissions', and 'respect collective agreements which aim to introduce and maintain just and favourable conditions of work'. Although only States have

⁸⁴ Office of the United Nations High Commissioner for Human Rights (OHCHR) in Mexico (2019), 'El proceso de consulta indígena sobre el Tren Maya no ha cumplido con todos los estándares internacionales de derechos humanos en la materia', at: <https://bit.ly/3VG0OrM>.

⁸⁵ CESCR, General Comment 23 (2016) on the right to just and favourable conditions of work, 2016, <https://bit.ly/3HGGuDXj>.

binding obligations under the Covenant, the Committee stresses that 'enterprises, trade unions and all members of society have responsibilities to give effect to the right to just and favourable conditions of work' in particular 'in the case of occupational safety and health'. Furthermore, employers are prohibited from restricting the freedom of workers to dispose of their remuneration'.

The Committee states that 'all workers have the right to fair wages [which] reflect not only the result of their work but also the worker's responsibilities, the level of skill and education required to perform the work, the impact of the labour on the worker's health and safety, the specific difficulties associated with the work, and the impact on the worker's personal and family life'. The Committee points out that 'wages should be paid in full, regularly and without delay'.

However, three projects (Mirador, Marcona, Orinoco) document accidents and a lack of health and safety monitoring mechanisms. In the Mirador Project, issues related to the company's health and safety policy led to the temporary suspension of activities in September 2019. Three projects (Toromocho, Marcona, Ivirizu) are also characterised by a lack of measures to prevent and respond to Covid-19 infections.

Marcona Mine (Peru) - In the context of the Covid-19 pandemic where Peru faced the highest per capita mortality rate in the world, workers at the Marcona mine were forced to stay for 30 to 60 days with no other accommodation options than tents that grouped up to 20 workers each, favouring massive contagions. Two dozen workers died of Covid-19-related causes. As a result, SUNAFIL, the Peruvian labour inspection body, issued fines to the company totalling 1'000'000 soles (approximately USD 250,000), and on 12 March 2021 the Congress of the Republic formed a Working Group 'Empresa Shougang Hierro Perú frente al Covid-19' (Shougang Hierro Perú Company versus Covid-19).

Civil and political rights

While this report details the violations of economic, social and cultural rights over which the Committee has competence under the Covenant, it should be noted that in ten of the fourteen projects documented, violations and abuses of civil and political rights were also found, particularly in all mining projects that had a high level of social conflict. Although the main perpetrators of these rights violations are the security forces in complicity with the judicial system of the host State, non-State actors such as the Chinese companies and the private security companies that these companies hire are also responsible for these abuses, which means that there are processes of judicialisation and strategic lawsuits against the public participation of environmental defenders.

Mining projects operated by Chinese companies have been the most contentious. This conflict has taken the form of strikes, road blockades and occupations of installations by the communities affected by the project, as a result of the lack of channels for dialogue. In four cases, excessive force was used by riot police (Buriticá, Las Bambas, Toromocho) or company personnel (Rucalhue). In the Buriticá mining project (Colombia), the Mobile Anti-Riot Squad (ESMAD), which is regularly criticised for its excessive use of lethal force, used tear gas and rubber bullets to disperse a sit-in organised after agreements with the affected communities were not respected.

Partnership between the Peruvian National Police (PNP) and Chinese companies for the provision of private security services.

The Las Bambas mining project and the Toromocho Mining Unit are characterised by the excessive use of force by the PNP in the framework of private security contracts with the companies Minera Las Bambas S.A. (Las Bambas project) and Chinalco Peru S.A. (Toromocho project). In the case of Las Bambas, three young peasants - Beto Chahualló Huillca (24 years old), Alberto Cárdenas Chalco (23 years old) and Exaltación Huamani (30 years old) - were killed by PNP agents in the context of the repression of a mobilisation of affected communities in 2015; another peasant, Quintino Cereceda, was also killed in 2016 in the context of other protests by affected communities. In the Toromocho case, villagers were assaulted by the PNP and private security forces, and two minors were arrested in protests by non-resettled residents on 2 October 2020. Peru's General Law of the National Police authorises the PNP to enter into agreements with private individuals, including extractive companies, for the provision of private security services: civil society organisations have documented at least 138 agreements since 1995⁸⁶. Independent UN experts on human rights defenders⁸⁷ and on business and human rights⁸⁸ have recommended the revocation of such agreements.

In at least three cases (Mirador, San Carlos-Panantza and Toromocho), State and non-State actors are also responsible for the harassment and intimidation of social leaders and members of the affected communities. In five cases (Buriticá, Las Bambas, Toromocho, Rucalhue, Orinoco), community leaders were victims of judicial harassment and arbitrary detention. In the case of Las Bambas (Peru), more than 300 leaders have been investigated by the Public Prosecutor's Office, and 30 participants in the 2015 demonstrations are still facing criminal trials with sentences of up to 17 years in prison. In the case of the Toromocho Mining Unit (Peru), Chinalco Peru S.A filed a lawsuit in January 2022 against 19 families living in the project's area of influence for 'obstructing the normal development of its mining activities'⁸⁹. In the case of the Orinoco oil belt (Venezuela), trade union leaders such as Eudis Girot were arrested by the military after denouncing serious accidents involving workers, and were subsequently charged with terrorism and treason. In the case of the Gran Buriticá mining project (Colombia), ESMAD arrested three community leaders, two of whom denounced abuses.

Mirador large-scale mining project (Ecuador) - In 2014, Shuar human rights defender and environmentalist José Tendetza was murdered in unclear circumstances after denouncing the socio-environmental impact of the country's largest mining project. José Tendetza had been the victim of harassment and death threats by the Chinese company ECSA. His body was buried as an unknown body, and the perpetrators and masterminds of the murder have yet to be prosecuted and convicted.

The high level of conflict and violence in the projects examined shows that Chinese companies have not developed effective mechanisms for prevention, mitigation and attention to the demands of social groups potentially or effectively affected by their projects.

86 Earth Rights International, Instituto de Defensa Legal, and Coordinadora Nacional de Derechos Humanos, Report: Convenios entre la Policía Nacional y las empresas extractivas en el Perú, Análisis de las relaciones que permiten la violación de los derechos humanos y quiebran los principios del Estado democrático de Derecho, 2019, <https://bit.ly/2TYmGRV>.

87 Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders on his mission to Peru (A/HRC/46/35/Add.2), 2020, <https://bit.ly/3i563pb>.

88 Human Rights Council, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Peru, 2018, <https://bit.ly/3CiJKmF>.

89 The lawsuit was admitted in the Second Transitory Court of Lima.



Mother and child of the Munduruku people observing the destruction caused by the São Manoel hydroelectric plant in their territory. © Juliana Pesqueira, Coletivo Proteja, 2017.

6. Conclusions

Relations between China and Latin America continue to deepen. Under the Belt and Road Initiative, investments by large Chinese companies and financing from Chinese policy and private banks are expected to continue to grow and diversify, especially in the extractive sectors. China plays an important role in the reprimarisation of the regional economy due to its high demand for natural resources, especially strategic minerals. Until December 2022, 21 Latin American countries are part of the Belt and Road Initiative, where they participate in different cooperation initiatives that promote greater extraction and export of natural resources and the expansion of China's presence in energy and transport infrastructure in Latin America. Therefore, their regional relevance demonstrates that without the will of the Government of China, companies and financiers, the effective enjoyment of the rights of the local communities where their companies operate cannot be guaranteed.

The cases analysed in this report point to a pattern of human rights abuses by companies based in, or under the jurisdiction of, China operating in Latin America. In all cases, these corporate abuses take place in fragile ecosystems, often without adequate environmental impact assessments, and cause significant environmental damage that affects the enjoyment of the rights to health and a healthy environment, to water, to food, and other rights enshrined in the Covenant.

Similarly, most of the projects analysed have resulted in violations of indigenous peoples' rights. In these cases, the lack of adequate consultation processes to guarantee free, prior and informed consent before projects are implemented is a constant, as are abuses related to forced displacement or eviction of entire communities and deprivation of the right to adequate housing, the militarisation

of ancestral territories, or the restriction of access to resources and destruction of land. All of these effects result in serious mental health problems and the weakening of their community fabric, socio-cultural organisation and livelihoods.

On the other hand, most companies, through private security forces or agreements with the national police, have encouraged a highly repressive response to peaceful expressions of protest, often resorting to physical and judicial harassment, criminalisation and detention of community leaders, and the excessive and in some cases lethal use of force.

The report also finds labour rights abuses in more than half of the projects. In particular, it notes the precariousness of working conditions, the use of subcontracting to avoid employment obligations, and the absence of effective measures to ensure minimum occupational health and safety standards. Precarious working conditions worsened in the context of the Covid-19 pandemic.

These human rights abuses contribute to a high level of social unrest in most of the projects analysed, which is related to the lack of responsiveness or willingness of Chinese companies or representatives to engage in dialogue with affected communities and civil society organisations. Currently, civil society organisations have no possibilities to bring their concerns to regulators, financial institutions and companies in China. Proactive and regular communication is necessary to avoid and mitigate environmental and social conflicts around projects.

This report also considers the initial steps taken by China's procurement agencies to issue regulations and guidelines to guide the behaviour of its companies and financiers abroad, which are encouraging signs of a willingness to gradually align its practices and legal framework with international standards. However, based on the analysis of these patterns of human rights abuses, we conclude that the Government of China is not making sufficient efforts to ensure that Chinese companies and financiers respect human rights, in particular the rights set out in the Covenant, in their overseas operations.



Hydroelectric complex on the Santa Cruz river (Argentina). © Gastón Luna

7. Recommendations

The purpose of this report is to contribute to the Committee's assessment of China with the aim of ensuring that the Government of China restores, respects and protects the economic, social and cultural rights of communities affected by the activities of Chinese State-owned enterprises and financiers in Latin America and the Caribbean. To this end, we ask the Committee to take into account the proposals made by civil society organisations in its recommendations to the Chinese State and to Chinese State-owned enterprises and financiers. Specifically, we propose the following:

To the Chinese State:

- Urge the Ministry of Commerce, the State-owned Assets Supervision Agency, the Ministry of Environment and Ecology, the Ministry of Foreign Affairs, and the China Banking and Insurance Regulatory Commission, among others, to establish oversight mechanisms to monitor, investigate and sanction abuses and human rights violations resulting from activities undertaken by Chinese financial institutions and companies outside Chinese territory.
- Demand that the financial institutions and Chinese companies involved in the projects reported in this report establish spaces for dialogue with the affected communities in order to seek urgent measures of reparation, redress and remediation of the negative impacts inflicted on such communities and incorporate control mechanisms to ensure that such impacts are not repeated;

- Develop a detailed, ambitious and well-resourced Overseas Chinese Investment Action Plan with institutional support to ensure that Chinese business actors and State financiers operating abroad are aligned and comply with: (i) extraterritorial obligations contained in international treaties and conventions ratified by China and the host country of the investment; (ii) relevant international standards such as ILO Convention 169 and the Escazu Agreement; (iii) Chinese national environmental and social guidelines that apply to the operations of Chinese companies and financial institutions abroad; and (iv) recommendations that apply to Chinese companies and financial institutions operating abroad; and (v) recommendations that apply to Chinese companies and financial institutions operating abroad. 169 and the Escazu Agreement; (iii) Chinese national environmental and social guidelines that apply to the operations of Chinese companies and financial institutions abroad; and (iv), with the recommendations of Ecuador (28,130), Peru (28,131), South Korea (28,132), State of Palestine (28,133), Haiti (28,134) and Kenya (28,135) accepted by the Chinese State during the 2018 Third UPR Cycle;
- Ensure that Chinese embassies and consulates in each Latin American and Caribbean country, as well as the Chinese diplomatic mission in Geneva, become formal channels of communication between civil society organisations in the countries and Chinese institutions. At present, civil society organisations have no means of communicating their concerns to regulators, companies and financial institutions in China. Proactive and regular communication would go a long way towards preventing and mitigating environmental and social conflicts around projects;
- Establish legal mechanisms that allow affected communities to pursue legal claims against Chinese companies and financial institutions on Chinese territory, particularly in the provinces and municipalities where these institutions are domiciled;
- Make mandatory the Chinese environmental and social guidelines that have been issued since the early 2000s, as well as those issued under the Belt and Road Initiative. Enacting entities should train and guide Chinese financial institutions and enterprises to ensure full understanding and implementation of the guidelines, and the establishment of independent and participatory monitoring and reporting systems;
- Establish international cooperation policies that prohibit Chinese companies and financial institutions from participating in projects that affect fragile ecosystems characterised by their important biodiversity, their role in the stability of natural water systems, such as the Amazon biome and glaciers, and in indigenous and community territories where the project does not have the free, informed and prior consent of the local population.
- Instruct Chinese institutions involved in the approval, regulation and supervision of Chinese investment abroad, as well as Chinese embassies and consulates, to take measures to ensure that Chinese companies and financial institutions are fully aware of the domestic environmental and human rights regulatory frameworks of the countries in which they operate, in particular with regard to free, prior and informed consent, due diligence, access to information, and international treaties in force in host countries, including the Escazu Agreement and ILO Convention 169.

- To abandon the position of abstaining on UN General Assembly Resolution 76/300 of July 2022 to declare a 'clean, healthy and sustainable environment' as a universal human right, and to strongly and ambitiously support a more effective environmental multilateralism within the United Nations. We see support for the above-mentioned Resolution as an essential step towards greater commitment to the implementation of the Paris Agreement.
- Ratify ILO Convention 169 on Indigenous and Tribal Peoples.

To Chinese companies:

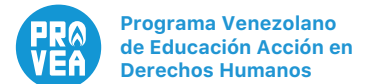
- Immediately establish good faith relations and exchanges with the communities affected by the projects described in this report, with a view to establishing redress and remedies for the negative impacts inflicted on these communities;
- Establish spaces and mechanisms for ongoing and systematic dialogue with local communities throughout the project cycle. Such spaces should be coordinated by an independent actor, ensuring symmetry between all actors in terms of access to information, technical and legal advice, and resources to make participation in dialogue spaces viable, while respecting the rights of all parties. Dialogue processes do not replace the legal obligation of companies to carry out free, prior and informed consultation processes;
- Refrain from entering into private security agreements with the police and/or military forces for the protection of companies and projects, and from promoting and/or participating in legal or informal actions that criminalise, harass, and persecute environmental defenders.
- Carry out due diligence at every stage of the project for both greenfield and brownfield projects, including but not limited to: (i) that the project has the free, prior and informed consent of local communities, otherwise refrain from proceeding with the project; and (ii) that the project has up-to-date, complete and high quality environmental and social studies approved by the competent authority. The studies must include assessments of indirect and cumulative environmental and social impacts, a full evaluation of environmental and social liabilities, and a remediation plan agreed with those affected. These studies should be publicly and widely available in accessible formats and languages, and should be shared with all affected communities and other relevant stakeholders;
- Recommend to the China Chamber of Mines for the Export and Import of Metals and Minerals (CCCMC) that the Consultation and Grievance Mechanism for the Mining Industry and its entire Value Chain (still under consultation at the time of writing) becomes a broadly accessible mechanism whose resolutions are binding on all CCCMC member companies.
- Include in project works contracts (typically in the Environmental Annex) in detail the regulatory framework that applies to the project, which should include: (i) national laws and regulations; (ii) international treaties ratified by both China and the host country; (iii) international industry best practices; and (iv) Chinese environmental and social guidelines applicable to the project. We recommend emphasising in contracts the obligation of all parties to comply with the regulatory framework, as well as detailing the means of monitoring, reporting and sanctioning in case of non-compliance. The Environmental Annex should be public and accessible to local communities in their own language.

To Chinese financial institutions:

- Immediately establish good faith approaches with the communities affected by the projects described in this report with the objective of creating and implementing redress and remediation measures for the negative impacts inflicted on these communities.
- Chinese State-owned, commercial and development banks, as well as other mechanisms to support export or business activities abroad, should have: (i) high quality and mandatory environmental and social standards; (ii) access to information policies; (iii) designated staff to establish dialogue processes with civil society organisations affected by or interested in learning about projects financed by such institutions; and (iv) a clear policy to combat climate change. Such banks must also ensure that these policies are managed by a technical team with authority, political support and sufficient budget and resources to guarantee their implementation.
- Chinese banks are required to publish proposed and approved loans on their websites, together with all information about the project, such as (i) a detailed description of the project (purpose, location, amount, duration, etc.); (ii) the bank's analysis of the environmental and social risks of the project and risk categorisation; and (iii) for approved projects, the bank must publish the documents demonstrating that the project has the appropriate environmental and social licence in the recipient country.
- Chinese banks must conduct a due diligence review throughout the project cycle to ensure that the financed entity has mechanisms in place to create and implement human rights risk identification and mitigation measures, especially in high-risk sectors such as the extractive industry. Such analysis should be in accordance with international best practices and standards, and the terms outlined by the China Banking and Insurance Regulatory Commission in Article 15 of the Green Credit Directive⁹⁰. Documents generated from due diligence reviews should be made public.
- Chinese banks must have independent but empowered complaints mechanisms that are independent of the bank, predictable, of high quality standards, provide safeguards and protection for complainants, and are accessible to which communities affected by Chinese banks' lending can submit appeals and redress for negative impacts suffered as a result of such lending.
- Include in project loan contracts (typically in the Environmental Annex) in detail the regulatory framework that applies to the project, which should include: (i) national laws and regulations; (ii) international treaties ratified by both China and the recipient country; (iii) international industry best practices; and (iv) Chinese environmental and social guidelines applicable to the loan. We recommend emphasising in contracts the obligation of all parties to comply with the regulatory framework, as well as detailing the means of monitoring, reporting and sanctioning in case of non-compliance. The Environmental Annex should be public and accessible to local communities in their own language.

⁹⁰ Article 15: 'The scope of the environmental and social risk due diligence shall be defined according to the characteristics of the sector and the region in which the client and its project are located, in order to ensure that the due diligence is thorough, comprehensive and detailed. Where necessary, banking institutions may seek the support of an independent third party and competent authorities.'

REPORT: EXTRATERRITORIAL HUMAN RIGHTS OBLIGATIONS OF THE PEOPLE'S REPUBLIC OF CHINA
IN RELATION TO BUSINESS ACTIVITIES IN LATIN AMERICA





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