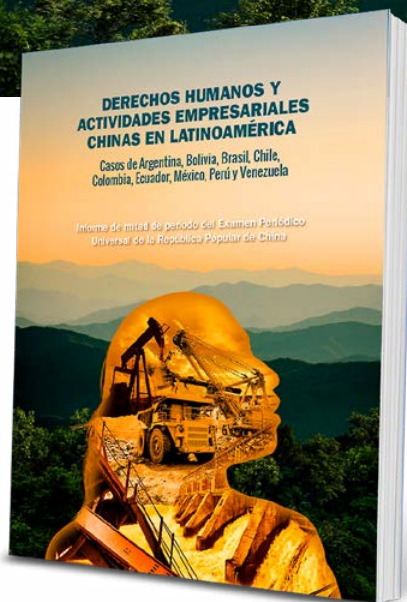


EXECUTIVE SUMMARY



HUMAN RIGHTS AND CHINESE BUSINESS ACTIVITIES IN LATIN AMERICA

Midterm Report on the Universal Periodic Review of the People's Republic of China

More than 60 civil society organizations present a new report that evaluates the social and environmental impacts of Chinese financing and investments in nine Latin American countries and demonstrates the existence of a pattern of noncompliance of the Chinese State with international standards in the areas of human rights and environment.

China has become a strategic actor in the financing and construction of large development projects in Latin America, in the process generating a direct impact on the lives of large numbers of people and their effective enjoyment of human rights. This is concerning, even more so considering that 21 countries in the region have already joined the Belt and Road Initiative (BRI) led by China.

The Chinese State has participated in three cycles of the Universal Periodic Review (UPR) (2009, 2013, 2018) and in the most recent of these the *Colectivo sobre Financiamiento e Inversiones Chinas, Derechos Humanos y Ambiente* [Collective on Chinese Financing and Investment, Human Rights, and Environment] (CICDHA)¹, together with other CSOs, drafted eight Shadow

1. CICDHA's 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).

Reports on the Asian country's extraterritorial responsibilities with regard to the activities of its businesses and banks in Latin America. China assumed several commitments in the last UPR by accepting 284 recommendations, six of which relate to compliance with its extraterritorial obligations to guarantee that its economic activities respect and protect human rights and the environment outside of China.

This midterm report is part of the CSOs' work to monitor the commitments assumed by China in the UPR with regard to controlling and auditing the actions of its businesses and financing in Latin America. The CSOs collaboratively evaluated the violations of human rights and the environment in 26 projects in which China participates (23 consortia and at least six banks) that are being developed in nine countries in the mining (12), hydroelectric (6), and other (5) sectors.

Main findings

The general conclusion of this report is that the Chinese State has made insufficient effort to comply with the commitments it assumed in the UPR to guarantee human rights beyond its national territory. Evidence demonstrates that the pattern of human rights violations described in 2018 continues to be systematic.

There are at least 20 Chinese companies involved in the projects analyzed, with the most significant ones by sector being as follows:

- Mining: Railway Construction Company (CRCC); Tongling Nonferrous Metals Groups Holding Company; and China International Trust and Investment Corporation (CITIC)
- Hydroelectricity: Sinohydro Corporation Limited and the consortium between China International Water & Electric Corporation (CWE) and China Three Gorges Corporation (CTG)
- Hydrocarbons: the three projects are the responsibility of China National Petroleum Corporation (CNPC) and China Petrochemical Corporation (SINOPEC)
- Other infrastructure projects: China Communications Construction Company (CCCC)

All of these companies have a greater incidence in impacts on rights related to the environment and indigenous peoples.

Furthermore, the funders with the greatest amount of investment are the Industrial and Commercial Bank of China (8 projects), Export-Import Bank of China (7), China Development Bank (7), and Bank of China (5). These banks tend to act jointly in the same projects, primarily in mining, the sector with the greatest number of violations of environmental and indigenous peoples' rights.

There were violations of the right to live in a healthy environment and environmental harms in 24 cases. All of the extractive and infrastructure projects affect fragile ecosystems, generating intergenerational impacts by transforming the territory and social, economic, and symbolic relations developed by communities. Irregularities were confirmed in the environmental impact studies: the lack of prior studies, conflicts of interest in the approvals, and improper modifications after approval.

In at least 18 cases there were violations of the rights to participation and free, prior, and informed consultation. Confirmation was obtained of the lack of prior consultation; significant deficiencies in its development resulting from the provision of incomplete or modified information; the use of language different from the one used by the communities; processes to fragment the communities; and the lack of guarantees of compliance with the will expressed in the consultations held.

In at least half of the cases there were violations of the rights to land, territory, and adequate housing. Furthermore, in eight of them there were forced displacements that linked practices such as pressure to acquire lands, inadequate compensation, disproportionate use of the police and violence against the civilian population, restrictions to the freedom of movement, and even the emergence of irregular 'grupos de choque' [clash groups].

In at least 10 cases there were violations to fundamental civil and political rights, [including] violations of the rights to life, integrity, freedom, and free assembly, primarily in mining projects. The significant amount of societal conflict has even led to scenes of violence and the loss of environmental defenders' lives. In addition, the intimidation of opponents has become common practice in their territories, including with participation from irregular surveillance groups, and the judicial system has been utilized to pursue opponents.

There were violations of individual and collective labor rights in nine cases. The projects have impacted the world of work in the impacted communities and the weak institutions in each country have contributed to deepening the effects on labor rights. In some cases, joining a labor union has been prohibited and criminalized through the application of practices of persecution, firings, delayed pay, censure, and failure to renew labor contracts. In the most extreme of cases, the inadequate management of labor risks has led to the loss of life of some workers, primarily in the mining sector.

COVID-19 context and the right to health. The lack of biosecurity measures and inadequate practices in the labor milieu of some projects that could lead to increased contagion and mortality were denounced during the pandemic. Improper pressures to increase the length of the workday and [force workers to] sign documents exempting the companies from responsibility were also denounced.

Main recommendations of the report

To the Chinese government:

- 1 Develop a Plan of Action on Companies and Human Rights that adopts measures for ensuring that Chinese entities operating abroad comply with China's extraterritorial obligations contained in international treaties, with an eye to preventing and mitigating the impacts on the environment, human rights, and territory of affected communities. Such a Plan would guide said public entities that formulate policies of international cooperation and perform the duties of approval and control – such as for example the National Reform and Development Commission, Ministry of Commerce, Agency for the Supervision of State Property and Assets, Banking and Insurance Regulation Commission of China, Ministry of Foreign Affairs, Ministry of Finance, and Chinese diplomatic missions – so as to incorporate regulations, principles, and mechanisms for evaluation and environmental and social risk management in commercial or cooperation activities performed by public and private Chinese companies and banks abroad.
- 2 Demand that Chinese banks and companies perform a due-diligence examination of the entire project cycle. Such an examination should be adjusted to the terms indicated by the Banking and Insurance Regulation Commission of China in Article 15 of the Directive on Green Credit, which states: "...The sphere of application of due diligence regarding environmental and social risks shall be defined based on the characteristics of the sector and region in which the client and its project are found, with the goal of guaranteeing that the due

diligence performed is complete, exhaustive, and detailed.” The documents generated in said due-diligence examinations should be public and accessible to all interested parties.

- 3 Adopt judicial and extrajudicial mechanisms that provide effective and timely reparations for negative social, environmental, and human rights impacts occasioned by Chinese entities outside of China, including access to judicial remedies by the victims of human rights violations, through which they can present their demands for reparation in the jurisdiction of their own country or in China.
- 4 Establish an office that performs the tasks of a Complaint Mechanism and is based in Chinese embassies abroad. Said Mechanism should be available to persons affected by its projects. Likewise, it should promote the dissemination and implementation of social and environmental directives, dialogue, and assistance with the resolution of conflicts between Chinese companies and interested parties due to the alleged violations of their rights.
- 5 Ensure that public entities involved in bilateral cooperation, Chinese State-owned companies, and other project-executing entities implement institutional policies that ensure transparency, including the obligation to publish environmental and social information relevant to projects and investments in the stages of study, exploration, implementation, and closure.
- 6 Incorporate into trade agreements clauses related to the protection of human rights, the environment, and sustainability of natural resources, pursuant to applicable national and international law and the 2030 Sustainable Development Agenda commitments.
- 7 Demand that Chinese entities that have enacted environmental and social guidelines steer Chinese commercial and cooperation activities abroad toward the

effective oversight of the implementation of said guidelines. The enacting entities should coordinate with its embassies to ensure the guidelines are translated into local languages [and] disseminated to all interested parties, and that support is provided to the Chinese companies and banks to enable them to implement them in alignment with the Escazú Agreement.

To Chinese companies:

- 8 Abstain from participating in projects in which indigenous peoples living in the areas wherein the projects are to be sited have not given their free, prior, and informed consent in accordance with ILO Convention 169 standards.
- 9 Perform environmental, social, and human rights impact evaluations that take into account direct, indirect, and cumulative impacts; are performed by independent third parties with technical preciseness; and have the full participation of local communities and all interested parties. Disseminate the results completely, publicly, and in a timely manner.
- 10 If inevitable, potential, or real impacts are identified, whether of a social, environmental, or human rights nature, Chinese entities should commit, prior to commencing operations, to publicly and transparently communicating with the affected communities (especially human rights and environmental defenders, women, and indigenous peoples) and civil society organizations and implementing the mitigation plans and corrective measures included in the plans for acquiring lands and resettlement.

To Chinese financial entities:

- 11 Establish environmental, social, and human rights safeguard policies that are thematic, sectoral, detailed, and legally binding. Ensure that these policies are managed in each financial entity by a technical team with the adequate authority, experience, and knowledge, political support,

and sufficient budget and resources to guarantee their implementation.

- 12 Classify the projects according to their potential to generate environmental and social impacts, such that projects with the greatest risks have the most stringent mechanisms for evaluation, approval, and management.

To the States that issued recommendations to China within the framework of the UPR:

- 13 Request detailed information from the government of the People's Republic of China (PRC) regarding the measures it has adopted to implement the recommendations of Ecuador (28.130), Peru (28.131), South Korea (28.132), Palestine (28.133), Haiti (28.134), and Kenya (28.135) that were accepted by the State during the third cycle of the UPR related to companies and human rights.
- 14 Remind the PRC that as long as the State is a member of the United Nations, and pursuant to the commitments it voluntarily

ly assumed by joining international human rights treaties together with its own internal guidelines and standards, the protection of these rights should not only transpire on Chinese territory but rather, be present in all business activities that are carried out under its influence or control, such that they do not cause harm to the rights of persons or the environment of other States.

- 15 Encourage the Chinese government to present a midterm report prior to May 2022.
- 16 Continue utilizing the Universal Periodic Review and other bilateral and multilateral spaces to urge the Chinese government to implement its own social and environmental directives, as well as others that are internationally recognized, and that it adopt measures to establish a binding framework that regulates and supervises the activities abroad of companies within its jurisdiction from a human rights-based perspective.

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CICDHA
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Alianza por los **DERECHOS HUMANOS** ECUADOR



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