



Extraterritorial obligations of the People's Republic of China in the field of human rights with regards to business activities in Latin America

Report for the adoption of the List of Issues for the review of the People's Republic of China during the 69th session of the Committee on Economic, Social and Cultural Rights

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EXECUTIVE SUMMARY

The International Service for Human Rights (ISHR) is a non-governmental organization based in Geneva that supports human rights defenders in their advocacy with the UN human rights mechanisms to bring about meaningful human rights change.

The Collective on Chinese Financing and Investments, Human Rights and the Environment ('Colectivo sobre Financiamiento e Inversiones Chinas Derechos Humanos y Ambiente, Spanish acronym CICDHA) is a coordination space for Latin American civil society organisations that advocate for the incorporation of effective mechanisms guaranteeing human rights, transparency, participation, and environmental sustainability for investments and financial projects by Chinese actors. The current members are: Fundación Ambiente y Recursos Naturales, FARN (Argentina), el Centro de Documentación e Información Bolivia, CEDIB (Bolivia), Brics Policy Center (Brazil), la Iniciativa para las Inversiones Sustentables China-América Latina, IISCAL (Ecuador) y CooperAcción (Peru).

Kanan Human Rights is a collective dedicated to activism, the promotion and defense of human rights in the Yucatan Peninsula (Mexico). It supports the defense of the rights of indigenous Mayan peoples, the environment, and equality and non-discrimination, mainly through strategic litigation.

ISHR prepared this report in the context of the Concluding Observations of China's second periodic review by the Committee on Economic, Social and Cultural Rights ('the Committee') in 2014, as well as domestic policy developments in the People's Republic of China in the years since, and developments in the international legal framework for the protection of the rights enshrined in the International Covenant on Economic, Social and Cultural Rights ('the Covenant') in the context of business activities. It aims to provide insight into the scope of Chinese business investment and operations in Latin America and their impact on human rights. Working with partner organizations in third countries, ISHR also seeks to support and elevate the voice of local groups working on the accountability of Chinese companies in the region.

This report focuses on the Latin American region through the analysis of eight cases in Argentina, Bolivia, Brazil, Ecuador, Mexico, Nicaragua, and Peru (document in the Annex). The cases reflect abuses committed by companies or consortia under Chinese jurisdiction which affect the environment and the enjoyment of economic, social and cultural rights by indigenous and local communities. Most of these abuses occur in the context of 'megaprojects' in the mining, oil and hydroelectric sectors, and can be found in indigenous territories, protected natural areas, including UNESCO-recognized natural and cultural heritage areas in the Amazon basin (in the Brazilian, Bolivian, and Ecuadorian areas).

This report includes: I) contextual elements on the respect for human rights by Chinese companies; II) noteworthy developments in international jurisprudence on the subject in general, and the work of other United Nations mechanisms with respect to the People's Republic of China in particular; and III) the main thematic areas of concern, and a list of recommended questions to be raised.

The findings of the report indicate that major challenges remain and lead to violations of rights enshrined in the Covenant. With most of Chinese overseas projects implemented in indigenous protected territories, the lack of free, prior, and informed consent is at the root of a range of rights violations that affect indigenous peoples' traditional ways of life, social-political organization, culture, right to housing, and

relationship with their land and territories. When consultations are held, they fall short of the minimal standard of effective participation from indigenous representatives and affected communities that render them incompatible with international human rights standards. The Committee has underscored in its General Comment 24 the duty of States and businesses to respect the right to free, prior and informed consent; the latter is also guaranteed under ILO Convention 169.

Business projects also present a multi-faceted impact on the environment, having an adverse effect on the enjoyment of a range of rights guaranteed by the Covenant. This includes the right to water and the right to food when projects – in particular in the mining sector – contaminate surrounding land and water streams, provoking serious damage to local communities' traditional means of subsistence. Megaprojects implemented in protected natural areas, in particular in the Amazon Basin, constitute serious risks to biodiversity and ecosystems, causing additional damages to the environment. In this context, the Committee recognized in its General Comment 14 the right to a healthy environment as one of the core underlying determinants of the right to health.

The Committee has clarified in its General Comment 24 that a State, in order to fulfill its obligation to 'respect' the rights enshrined in the Covenant, must ensure businesses under its own jurisdiction don't commit human rights abuses overseas. This obligation is particularly relevant to China, given the presence of State-owned enterprises behind the consortiums or subsidiaries operating projects in Latin America. This obligation should be read in conjunction with due diligence duties laid out in the UN Guiding Principles on Business and Human Rights to identify, prevent, mitigate, address and account for human rights abuses, *in addition* to the duty to comply with obligations provided in law in the host country. This report concludes that the Chinese Government has failed to comply with such extra-territorial obligations, as it did not ensure the right to free, prior and informed consent – including the obligation to provide public information in the form of environmental and human rights impact assessments –; or the right to seek remedy when abuses occur. Of particular concern are instances where economic, social, and cultural rights defenders have been subjected to acts of intimidation and reprisals in relation to the cases documented in the Annex.

In sum, affected communities face companies that are not complying with international human rights and due diligence standards, not issuing public information about the environmental and human rights damage, nor are receptive to any channel of dialogue with affected communities and human rights defenders.

In this context, we urge the Committee to request the Chinese Government to submit detailed information on the existing policies, mechanisms, and regulatory framework to monitor the implementation of its extra-territorial obligations with regards to business activities overseas; to disseminate publicly environmental and human rights impact assessments; to address violations of rights enshrined in the Covenant; as well as to ensure the rights to free, prior and informed content, and to seek redress. In addition, the Committee should ask detailed information around the existing channels for affected communities and civil society organisations to submit complaints and communicate with relevant governmental bodies.

I) BACKGROUND

In 2014, during the last review of the People's Republic of China (PRC), the Committee included important attention to the impact on Covenant rights of investment, development assistance and the operations of companies overseas.¹ While welcoming the stated expansion in economic and technical assistance, the Committee noted with concern that some projects had 'reportedly resulted in violations of economic, social and cultural rights in the receiving countries', and recommended that China's international cooperation adopt a human-rights based approach through undertaking human rights impact assessments (HRIAs), establishing a monitoring mechanism, and ensuring an accessible complaint mechanism in the receiving country.² The Committee further raised concern about the lack of adequate measures to ensure respect for Covenant rights by Chinese companies, and recommended the establishment of a clear regulatory framework for companies, to include legislative and administrative measures to ensure legal liability of companies operating in or managed from China, as well as their subsidiaries, in the context of overseas projects.³

In the years since, there is no doubt that China has become one of the most significant players in the arena of international and multilateral investment.

In March 2015, the Chinese government formalized its outbound investment agenda by announcing the "Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road", also known as the Belt and Road Initiative. In 2018, despite a sharp decline in international direct investment around the world, China maintained high levels of foreign direct investment (US\$143.04 billion) and continued to strengthen its status as a major foreign investment country. Such efforts have also seen formal, political legitimacy increase through China's active participation in multilateral fora. Key examples include the close co-operation of the OECD in support of China's G20 Presidency in 2016, and cooperation between China and UN technical agencies (and political leadership) to align the Belt and Road Initiative with the 2030 Agenda.

The 19th National Congress of the Communist Party of China in 2017 clarified that strengthening China's competency during international economic cooperation was a strategic goal of the Xi administration, and further linked this goal to concrete cooperation under the Belt and Road Initiative. The Congress adopted the principles of "Guided by government, dominated by corporates, operated by the market, and aligned with international standards", which eventually aims at strengthening policy guidance, improving regulatory services, creating a good environment, and achieving steady and orderly development of foreign investment.

An update on these issues has been partially provided in the current [State Party report](#). The report focuses on the amount of funding provided in the form of overseas development assistance, both bilaterally and through UN agencies and multilateral agreements. In addition, it devotes paragraphs to 'the protection of human rights in the provision of international assistance' and 'business and economic, social and cultural rights'. In these, the State states that a national monitoring mechanism has been established based on random inspections and disclosure of information, as well as a 'general system of legal advice in large

¹ E/C.12/CHN/CO/2, published 13 June 2014.

² Ibid, para 12.

³ Ibid, para 13.

state-owned enterprises under centralised management'. The State also highlights as a measure that the government 'encourages enterprises to establish and improve compliance systems applicable to overseas operations and processes to ensure that they comply with local laws and regulations'.

From 2017 to 2018, in response to the rising cases of violations by PRC companies' overseas investment, the PRC government launched [Guidelines for overseas investment](#), [Guidelines for Compliance Management Systems](#) and [one set of guidelines especially for SOEs](#). Among other things, these documents encourage companies to establish a general legal adviser system and compliance systems to ensure that they conduct their operations in compliance with laws and regulations in host countries. In addition, a new type of supervision mechanism was established in 2015 through the '[Notice of the General Office of the State Council on Promoting Random Spot Checks to Regulate Interim and Ex Post Supervision](#)', which is referred to in the State Party report as 'double random and single open' supervision. In principle, during this supervision process, both the inspected entities and the legal inspectors are randomly selected, and inspections and investigation results are randomly chosen to be disclosed to the public in a timely manner.

A number of Chinese institutions have promulgated a series of social and environmental guidelines for Chinese companies' operations abroad⁴, both in general and in sectoral areas: ministerial-level bodies (such as the Ministry of Commerce, the Ministry of Finance, or the State-Owned Assets Supervision and Administration Commission (SASAC) that regulates the 26 major state-owned enterprises (SOEs) and their subsidiaries), but also business associations and chambers of commerce. Many of these guidelines, particularly those in the mining and agricultural sector, mention Environmental Impact Assessments and the need for free, prior and informed consent, as well as compliance with national laws of host countries; some even reference human rights due diligence, such as the Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains⁵. Unfortunately, such guidelines are not mandatory, but merely constitute guiding principles, whereas companies and funders almost systematically fail to take them into account when planning or implementing their activities.

As the cases included in the Annex to this report demonstrate, there is no doubt that the Chinese government - as with the leaders of any economic power - can make much greater efforts to ensure responsible behaviour by corporate actors. This responsibility weighs even more heavily when the main economic actors are also public actors, as is the case with China's major state-owned enterprises (SOEs).

II) RELEVANT JURISPRUDENCE

With the adoption of **General Comment No. 24** in 2017, the Committee set out to 'clarify the duties of States parties to the International Covenant on Economic, Social and Cultural Rights in such situations [where failure to ensure compliance resulted in negative effects of corporate activities], with a view to preventing and addressing the adverse impacts of business activities on human rights'.⁶ Of particular relevance to the upcoming review of the PRC is that determination of the Committee that State parties may be held responsible for the action or inaction of business activities in three cases, including when 'the

⁴ These guidelines have been compiled by IISCAL and can be found here: <https://iiscal.org/en/chinese-guidelines/>

⁵ These Guidelines were issued by the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters (CCCMC), but have not been endorsed at the ministerial level.

⁶ E/C.12/GC/24, para 1. 10 August 2017.

entity concerned is in fact acting... under its control or direction... as may be the case in the context of public contracts'.⁷ And finally, the Committee repeated its long-standing view that 'States parties' obligations under the Covenant [do] not stop at their territorial borders', and that they are 'required to take the steps necessary to prevent human rights violations abroad by companies domiciled in their territory and/or jurisdiction', **without prejudice to steps taken or not taken by host States**.⁸

In its line of work on the state as an economic actor, the UN Working Group on Business and Human Rights has called attention to the specific implementation of the **UN Guiding Principles on Business and Human Rights** ('the UN Guiding Principles'). For example, Guiding Principle 4 requires 'additional steps' to protect against human rights abuses by, *inter alia*, state-owned enterprises (SOEs), citing reasons for State leadership such as policy coherence, legal compliance, and legitimacy and credibility.⁹ The Working Group recommends that these additional steps by States could include legal requirements for SOEs to respect human rights throughout their operations; to conduct human rights due diligence; and to engage in reporting on environmental, social and governance factors, including human rights.

During its 2018 **Universal Periodic Review**, the Chinese government [accepted six recommendations](#) relating to implementation of the UN Guiding Principles on Business and Human Rights.¹⁰ While there has been some limited action in the interim, the economic shock of COVID-19 has stymied some of these efforts, even at the rhetorical level. At the same time, the increasing imperative of the 'smart mix' of voluntary and legally-binding measures generate momentum for concrete policy change within the Chinese state.

The **Special Procedures** of the Human Rights Council regularly receive information about the negative impacts on a range of human rights of Chinese operations overseas. Six letters ('communications') have been sent to the Government and made publicly available since 2018, each requesting information about policies for Chinese businesses operating abroad to respect human rights, in particular where such businesses receive support from the State and/or are state-owned enterprises.¹¹ In the communications about the Las Bambas case (Peru)¹² in 2019, and the Río Blanco case (Ecuador) in 2018¹³, the Government was requested to provide detailed information on the 'steps that [it] had taken, or is considering to take, to protect against human rights abuse by business enterprises and ensuring that business enterprises domiciled in its territory and/or jurisdiction conduct effective human rights due diligence to identify, prevent, mitigate and account for how they address their adverse impacts on human rights throughout their operation, as set forth by the UN Guiding Principles'. In its response to the communication on the

⁷ Ibid, para 11.

⁸ Ibid, para 26.

⁹ A/HRC/32/45, paras 22-28 and paras 98 and 102.

¹⁰ A/HRC/40/6, namely paras 28.130-28.135.

¹¹ These include CHN 9/2018 (child labour in tobacco industry in Zimbabwe) ; CHN 11/2018 (attacks on defenders of indigenous rights and the rights to a healthy environment and safe water, in the context of mining in Ecuador); CHN 18/2018 (land use and lack of community consultation in sugar cane cultivation in Cambodia); CHN 2/2019 (reprisals, including death threats and attempted kidnapping, for engagement with World Bank on the ProRoutes road project in the Democratic Republic of Congo); CHN 8/2019 (criminalisation of indigenous communities defending the environment in the context of the Las Bambas mining project in Peru); and CHN 15/2020 (risks to the enjoyment of human rights arising from a dam, mine, waste discharge and infrastructure projects linked to the Sepik Development Project in Papua New Guinea).

¹² [JAL CHN 8/2019](#), June 17, 2019.

¹³ [JAL CHN 11/2018](#), June 26, 2018.

Río Blanco case, the Government claimed there is 'no factual basis to the allegations in the communication', and indicated that it 'consistently requires Chinese enterprises to abide by local laws and regulations and respect local customs and living habits when conducting investment cooperation overseas', as well as to 'abide by the relevant international conventions'.¹⁴

III) THEMATIC PERSPECTIVE

Civil society organizations at the local, national, and regional levels have expressed growing concern about the environmental and human rights impacts of projects in Latin America involving the participation and financing by Chinese companies, conglomerates, and other entities. Abuses committed by these companies infringe the economic, social, and cultural rights, guaranteed by the International Covenant on Economic, Social and Cultural Rights (ICESCR) and also result in non-compliance with international standards set out in the UN Guiding Principles, and other international instruments, such as ILO Convention 169.

In April 2020, about 260 civil society organizations from around the world, many of which are working on the cases presented in the *Annex*, sent a letter to eight Chinese governmental and financial bodies, requesting the Chinese government to 'ensure that COVID-19 related financial assistance for projects in the Silk Road Belt [...] that are at risk are allocated only to those 'high quality' projects that meet strict and specific criteria, avoiding bailing out projects that have already presented environmental, social, biodiversity, climate or financial risks before the start of the COVID-19 pandemic.' This initiative comes as a result of the lack of response to several joint letters previously sent to government authorities, and, while it is not opposed to the Belt and Road Initiative, expresses serious concern that its numerous projects present high environmental and human rights risks. To date, the organizations have not received any response.

1) RIGHTS OF INDIGENOUS PEOPLES

Article 2, paragraph 2 of the Covenant stipulates the principle of non-discrimination as an obligation of States in the implementation of all the rights outlined in it. In its **General Comment No. 24** on the non-discrimination obligations of States, the Committee stresses in particular that indigenous peoples are 'among the groups that are disproportionately affected by the adverse effects of corporate activities [...] in particular concerning the development, use or exploitation of land and natural resources'.

The vast majority of megaprojects by Chinese companies in Latin America are taking place in areas of indigenous territories, often recognized as such by national law, as well as protected and heritage areas recognized by UNESCO. This has had a serious impact on the traditional ways of life of indigenous peoples and communities, particularly with regard to their relationship with their land and territory, structural

¹⁴ <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34296>

elements of their social and political organization, and their cultural and spiritual life, as well as on their local economy, posing serious risks to the enjoyment of the rights to food and water.

The lack of free, prior, and informed consultation ('FPIC') is almost always the cause of such risks and abuses. In some cases, the company and the authorities do not carry out any consultation at all, as in the cases of Mirador (Ecuador), the Santa Cruz River dams (Argentina), the Interoceanic Canal case (Nicaragua), or the Las Bambas case (Peru), where substantial changes were made to the environmental impact assessment without consulting those affected. In other cases, these consultations are inadequate and do not follow international standards on FPIC, as set out in ILO Convention 169, among other instruments. The case of Yucatan Solar (Mexico) exemplifies the need for consultations in accordance with the culture and traditions of the affected communities. In the case of the Mayan Train (Mexico), the Special Rapporteur on the rights of indigenous peoples emphasized the importance of carrying out indigenous consultations 'with the representative structures appointed by the indigenous communities themselves'¹⁵: this project is of particular concern since the first section was commissioned to a joint venture made up of a Chinese company, which began construction ignoring a statement of the OHCHR Mexico Office which said that the indigenous consultation process 'had not complied with all international standards'.¹⁶

In its **General Comment No. 24**, the Committee reiterates the obligation of States and companies to 'respect the principle of free, prior and informed consent of indigenous peoples concerning all matters that may affect their rights, including their lands, territories, and resources which they have traditionally owned, occupied or otherwise used or acquired'.

Corporate projects in indigenous territories have resulted in violations in particular of the right to adequate housing, stipulated in Article 11 of the Covenant. In most cases, in the absence of adequate consultation, affected indigenous communities are victims of forced and often violent evictions carried out by national police agencies, with the authorization of the local or national government, as in the Mirador (Ecuador) and Port São Luís (Brazil) cases. These two cases were marked by the violence of the evictions and the systematic denial of legal protection before the courts.

In its General Comment No. 24, the Committee states that, during evictions and displacements in the connection with investment projects, 'the cultural values of indigenous peoples and the rights associated with their ancestral lands are particularly threatened'. The Committee also confirmed the exceptionality of circumstances that may justify forced evictions, and the obligation to comply with relevant principles of international law and guarantee the right to an effective remedy, due process, non-discrimination, and effective consultation and participation in decision-making.

¹⁵ JAL MEX 11/2020, September 21, 2020

¹⁶ https://www.hchr.org.mx/index.php?option=com_k2&view=item&id=1359:onu-dh-el-proceso-de-consulta-indigena-sobre-el-tren-maya-no-ha-cumplido-con-todos-los-estandares-internacionales-de-derechos-humanos-en-la-materia&Itemid=265

2) ENVIRONMENTAL IMPACTS AND RELATED ISSUES

The Committee has examined 'on several previous occasions the increasing impact of corporate activities on the enjoyment of specific rights stipulated in the Covenant relating to health, housing, food, water'.¹⁷

Article 12 of the Covenant guarantees 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 an inclusive right that also encompasses the 'underlying health determinants', including a 'healthy environment', food, and access to clean drinking water. In the same Comment, the Committee highlighted the obligation of States to 'take measures against the dangers to health posed by environmental pollution'.

Mega-projects carried out in protected natural areas, particularly in the Amazon basin, carry substantial risks to biodiversity and the ecosystem, resulting in deforestation and significant environmental damage. This environmental impact has been documented not only in the context of projects implemented in areas of great environmental diversity, but also for projects that pass through these areas, whether for tourism purposes, as in the case of the Mayan Train (Mexico), or as traffic routes between extraction sites and ports or towns, as in the case of Las Bambas (Peru). In the vast majority of cases, the project either lacks an Environmental Impact Study, or it is incomplete, delayed, or not publicly disclosed.

In addition to direct damage to the environment and biodiversity, the environmental impact of megaprojects, particularly extractive projects, leads to the violation of rights such as the right to a healthy environment and an adequate standard of living. The health issues caused by the dust generated by the construction project in the case of the Port of São Luís (Brazil) or by the 'mining road' in the case of Las Bambas (Peru), limit the right to health of the affected communities.

The occupation and dispossession of land resulting from the development of megaprojects, as in the case of Mirador (Ecuador), also deprives local communities of access to their land, often their main means of subsistence and the basis of food and the local economy, putting at risk the right to food of the affected people and the food sovereignty of the community. In the case of hydroelectric dams, such as Rositas (Bolivia), the diversion of waterways and the flooding of land also results in the destruction of critical areas for the food supply of small and medium-sized farmers and communities.

Article 11 of the Covenant stipulates the right to an adequate standard of living for oneself and one's family, including food and housing. In its **General Comment No. 12**, the Committee considers that the right to food includes the 'availability of food', by which it means 'the possibilities for the individual to feed himself either directly, or by exploiting productive land or other natural sources of food'.

On the other hand, the enjoyment of the right to water of communities affected by megaprojects is hampered in several ways. In the case of mining projects such as Las Bambas (Peru) or Mirador (Ecuador), the discharge of waste and toxic substances, and the lack of treatment of contaminated water, generate high levels of water pollution, preventing access to drinking water, and contaminating local food production. The impact is particularly serious when fishing is one of the primary sources of food, as in the

¹⁷ General Comment 24 (E/C.12/GC/24)

cases of Mirador (Ecuador) and the Port of São Luís (Brazil). The case of the Santa Cruz River dam (Argentina), which is under construction, could affect the third largest mass of ice in the world, is also alarming: the diversion of rivers threatens access to water for future generations and generates a negative impact on large river systems and glaciers.

The right to water is stipulated in articles 11 and 12 of the Covenant. In its General Comment No. 15, the Committee details the obligations of States to respect, protect and fulfill the right to water. This includes ensuring the availability of water in sufficient quantities to meet basic needs, water quality free of pollutants and acceptable for human consumption, and accessibility to water. The Committee emphasizes the 'obligation under article 1, paragraph 2, of the Covenant, which provides that a people may not be deprived "of its means of subsistence"', and the obligation on States to 'ensure sufficient access to water for subsistence agriculture and to ensure the livelihood of indigenous peoples'.

3) LACK OF DUE DILIGENCE IN HUMAN RIGHTS AND OVERSEAS OBLIGATIONS

While the violations and abuses in the cases documented in this report highlight the responsibilities of the host country, it also makes evident the responsibility of the Chinese State under overseas obligations set out in the Covenant, and detailed in the Committee's **General Comment No. 24**, resulting from the responsibility of the companies and joint ventures under its jurisdiction that operate these projects in Latin America. These companies may be involved in abuses directly, as well as through the lack of due diligence when financing or being awarded the project, being aware of pre-existing human rights violations and risks, or the lack of a consultation process following international standards.

In this respect, the Chinese State has an obligation to 'protect' against human rights abuses committed by companies under its jurisdiction, and in particular by its numerous State-Owned Enterprises (SOEs). The Committee thus determines that the State may be directly responsible for corporate action or inaction 'if the enterprise in question is, in fact, acting on the instructions of that State or under its control or direction [...] as may be the case in the context of contracts awarded by public authorities'. The Committee also underlines the State's obligations to 'adopt a legal framework requiring companies to exercise human rights due diligence to identify, prevent, and mitigate risks of violations against Covenant rights'.

In turn, companies, regardless of their size, sector, location, ownership, and structure, have a responsibility to respect human rights. **Principle 13 of the UN Guiding Principles on Business and Human Rights** requires them to 'avoid causing or contributing to adverse human rights impacts through their activities and to address those impacts [, and] seek to prevent or mitigate' such impacts. This responsibility is complementary to that of complying with the requirements of national laws for the protection of human rights. To fulfil this responsibility, companies must take a series of measures, including adopting a human rights due diligence process to identify, prevent, mitigate and account for their impact, as well as victim remediation processes.

As mentioned above, the documented cases all share in common a total or partial absence of FPIC: as in the case of Yucatan Solar (Mexico), such processes are regularly informative, rather than truly

consultative, with no objective of obtaining consent. Informed consultation also requires the safeguarding of the right to information, including thorough and complete Environmental Impact Assessments. However, in cases such as Rositas (Bolivia), affected communities have not been able to access public information on contracts and environmental studies, even though their availability as public documents is required by national law. The environmental and economic impact caused by the subsequent redesign of the hydroelectric complex on the Santa Cruz River (Argentina) demonstrates the importance of a comprehensive Environmental Impact Study, not presented in haste and lacking key analysis and information. It is also essential that the study is submitted not only prior to the consultation but also prior to the start of the project: in the case of the Interoceanic Canal (Nicaragua), the Hong Kong-based company submitted its study two years after the project was approved.

The main challenge faced by the organizations and groups involved in the cases documented in the Addendum is the lack of any response or channel for dialogue on the part of the Chinese companies or authorities, diminishing the importance of effective communication and participation of civil society and affected communities. Organizations have attempted to submit timely and updated information to companies, diplomatic and governmental authorities on documented abuses through various official channels, without any response. These efforts are becoming increasingly cumbersome given the lack of contact information and responsiveness by these agencies and companies. This lack of responsiveness by the State is illustrated in the Mirador case (Ecuador), where a letter originally addressed to the Government received in exchange a confirmation of receipt from the Chamber of Commerce of Importers and Exporters of Metals, Minerals, and Chemicals of China (CCCMC). In other cases, such as the Port of São Luís (Brazil), the companies - or in this case the joint venture - have appealed all the claims filed by civil society and representatives of affected communities.

In these cases, affected communities are dealing with companies and state actors that: do not comply with their due diligence obligations; do not carry out consultations under international standards; do not produce or publish information on the environmental impact of human rights risks; are not receptive to any channel of dialogue. Deprived of any other form of expression, and faced with the seriousness of the risks to their fundamental rights, these communities and civil society organizations resort to peaceful protests and legal actions to block projects or obtain public information. As a result, they are victims of harassment and intimidation for using legal and formal means to assert their rights. In all cases, the companies have failed to provide any reparations.

In the cases of Rositas (Bolivia) and the Mayan Train (Mexico), the organizations and social leaders involved have been victims of intimidation by the authorities and project supporters; however, no prevention or remediation measures have been adopted by the contractors. The Mirador (Ecuador) and Puerto São Luís (Brazil) cases are of particular concern due to acts of retaliation against the local and national Ombudsman's Offices, which are state entities (albeit autonomous) of the host country.

Human rights defenders have also suffered judicial harassment by the contractors, and in more serious cases, lethal violence during protests. At the beginning of the construction of the Interoceanic Canal in Nicaragua in 2015, there were massive mobilizations that were repressed with excessive use of force and

the perpetration of dozens of arbitrary arrests by the National Police¹⁸. To date, victims of the disproportionate violence still face the after-effects of the injuries, without receiving justice or reparations for the violations.

In the case of Las Bambas (Peru), the violent response to protests by the National Police, under an agreement with the MMG Las Bambas joint venture, resulting in the assassination of four social leaders. These events led to legal action and increased conflict; but in the face of this, the MMG Las Bambas joint venture opted to become a civil party in lawsuits demanding civil reparations and prison sentences for more than 30 leaders on trial, while more than 300 other defenders were investigated. On June 17, 2019, five United Nations Special Procedures mandates sent a letter to the Chinese Government and MMG Las Bambas, expressing 'grave concern' about the investigations, and 'human rights violations related to land and territory, such as the lack of a consultation to obtain their free, prior and informed consent'. In this way, all the problems that arise in a mining conflict can be identified in the Las Bambas mine, not only due to weak national regulations but also to the lack of compliance with human rights due diligence by the Chinese company, to apply social and environmental responsibility standards recognized both in China and globally

IV) CONCLUSION AND QUESTIONS TO THE COMMITTEE

Given the violations of the rights stipulated in the Covenant, the need for monitoring, due diligence, and accountability processes in the context of human rights violations in Latin America committed by companies under Chinese jurisdiction (particularly state-owned) becomes fundamental. These violations are exacerbated by China's failure to adopt and implement a legal and regulatory framework to identify, prevent, mitigate and respond to abuses committed by companies under Chinese jurisdiction, and to provide effective measures to comply with the State's overseas obligations under international treaties, as well as recommendations of UN mechanisms, and commitments under the Universal Periodic Review. Furthermore, the State should take appropriate measures to ensure that existing guidelines become legally binding instruments.

These measures are critical in light of China's growing economic role in the Latin American region, and the impact of investments and projects (mostly mining, oil, and hydroelectric) in areas of high social conflict, environmental and cultural diversity, particularly indigenous territories and protected areas. State and non-state actors must also commit to open channels of dialogue with affected communities and civil society organizations, as well as prevent acts of harassment and attacks against human rights defenders, and investigate and punish those responsible.

¹⁸ Semana. Unos 87 heridos en las protestas contra el Canal de Nicaragua en: <http://www.semana.com/mundo/articulo/unos-87-detenidos-en-las-protestas-contra-el-canal-de-nicaragua/413318-3>. See also: Semana. Canal Interoceánico en Nicaragua genera protestas. En: <http://www.semana.com/mundo/articulo/canal-interoceanico-en-nicaragua-genera-protestas/413075-3>; La Prensa: Desaparecidos de Rivas están detenidos en El Chipote <http://www.laprensa.com.ni/2014/12/24/nacionales/1669487-cenidh-prepara-habeas-corpus-para-evitar-arrestos>

In this framework, we encourage the Committee to include the following questions in its List of Issues addressed to the Government of China:

- **What are the policies, regulatory frameworks, and mechanisms at the disposal of the Chinese State to recognize and monitor the overseas application of obligations under international law to respect and protect human rights with regard to its companies and non-State actors?**
- **What are the policies, regulatory frameworks, and mechanisms through which the Chinese state prevents and responds to human rights abuses committed overseas by companies under its jurisdiction or with state involvement?**
- **What policies and regulatory frameworks does the Chinese state have in place to investigate, punish, and provide remedy to victims of human rights abuses and violations and harm caused overseas by companies under its jurisdiction or with state involvement?**
- **What measures has the Chinese State adopted to promote transparency of financing and award agreements, in order to encourage its companies to disclose information on environmental and human rights impact studies?**
- **What are the existing policies, regulatory frameworks, and mechanisms that impose due diligence, disclosure of human rights impact assessments, and free, prior, and informed consultation with affected communities on companies under its jurisdiction or with state participation?**
- **What actions has the Chinese State taken to receive complaints, comments, communicate and engage in dialogue with civil society organizations and communities affected by projects involving companies under its jurisdiction or with state participation?**

ANNEX

CASE #1: LAS BAMBAS (PERU)

Type of project: Extractive (mining).

Project status: In operation since January 2016.

Is it part of the Belt and Road Initiative? No.

The 'Las Bambas' mine is one of the most important copper mines in Latin America. It is located in the Apurimac region (Cotabambas province) in Peru, and it is operated by the joint venture MMG Las Bambas, formed by Minerals and Metals Group MMG Limited, Guoxin International Investment Co. Ltd., and CITIC Metal Co. Ltd. The project foresees an investment of USD 10 billion by four Chinese banks: China Development Bank, Industrial and Commercial Bank of China, Bank of China, and Export-Import Bank of China.

During the exploration and construction stage of the mine, substantial changes were made to the Environmental Impact Study without consulting the population and without providing adequate remediation measures for the subsequent negative impacts. These decisions led to a series of violations of social and environmental rights: the project has caused health problems in about 120 towns in the territories of the peasants and rural communities, due to noise pollution and dust pollution caused by traffic from the mine to the port, on an unpaved road known as the 'mining corridor'. This has also caused damage to the lands of affected communities, water contamination, and environmental damage to local wildlife. During the COVID-19 pandemic, the company has also been responsible for abuses of workers' labor rights.

Affected communities and social leaders who expressed their concerns about the project have faced excessive use of force by the Peruvian National Police (PNP) under a Private Security Contract provided to MMG Las Bambas, resulting in executions, physical harm, and arbitrary arrests. In 2015, communities and civil society organizations peacefully protested the lack of consultation. The peaceful mobilization was heavily repressed resulting in three peasants killed by the PNP. In 2016, the communities again protested because the mining road ceased to be owned by the communities and became the responsibility of the national government: repression by the PNP resulted in the murder of leader Quintino Cereceda. Besides, more than 300 provincial leaders were investigated by the Public Prosecutor's Office and 30 of them went to trial. The company became a civil party in the trials, demanding civil reparations and jail time for the accused, and appealing sentences that acquitted the accused.

In the Roundtable that was established as a result of the conflict, a humanitarian pension was agreed for two years as a reparation measure for the families who lost their relatives; however, to date, there is no sustainable solution to repair the families. The Roundtable held some meetings until July 2016, before the change of government. During 2017 and 2018, no space for dialogue or negotiation took place. The new

Dialogue and Compliance Roundtable was only installed in May 2019, as a result of the conflict over the construction of the mining road; however, the company MMG Las Bambas has refused to sign a Framework Agreement with the Province of Cotabambas, despite having expressed its support and endorsed its approval.

On [June 17, 2019](#), six United Nations human rights experts sent a letter to the Governments of China and Peru, and the MMG Las Bambas and MMG companies, expressing 'grave concern' about investigations against indigenous community leaders, violations of land and territory rights, and the lack of free, prior and informed consultation.

Since 2015, CooperAcción has accompanied leaders in discussion and advocacy sessions at the United Nations, including with the Working Group on Business and Human Rights, and in the framework of the Universal Periodic Review. The organizations are seeking to resume dialogue with the company MMG Las Bambas so that the Dialogue and Compliance Roundtable can resume its work.

The affected communities demand that MMG Las Bambas take responsibility for the public health problems affecting the communities; mitigate the damages caused by the project; and address the demands of the families of the people killed in the conflicts caused by the project.

CASE #2: ROSITAS (BOLIVIA)

Type of project: Energy (hydroelectric dam).

Project status: Temporarily suspended since September 2018.

Is it part of the Belt and Road Initiative? No

The Rositas hydroelectric dam, located in the department of Santa Cruz, Bolivia, is part of the energy project key to the Bolivian government's economic program for 2020-2025, generating a debt equal to or greater than the GDP (USD 42 billion). With an official cost of USD 1.2 billion for its first phase, the project is being developed by the joint venture Asociación Accidental Rositas (AAR), composed of the companies China International Water & Electric, China Three Gorges Corporation, and Empresa Constructora Reedco SRL.

The project will likely have a significant impact on different ecosystems, flooding close to 45,000 hectares, affecting freshwater sources and a protected natural area, the Kaawazu indigenous territory, and areas of small and medium agricultural producers. It will also destroy agricultural areas, affecting the food supply of towns and small farmers.

As part of the project design, the company forced an alliance between the national Guarani indigenous organization (Asamblea del Pueblo Guarani, or 'APG') and the National Energy Company (ENDE) without the participation of the local Guarani indigenous organization (Kaawazu), thus undermining their organizational structure. The right to consultation has also been violated by the lack of access by the

affected communities to public information on contracts and environmental impact studies, which by law should be accessible in the official public registry.

The indigenous Guarani people of Kaawazu have carried out a systematic process of complaints, sending written communications to ENDE and the Ministry of Public Works requesting official information. In 2018, they initiated a class-action lawsuit against ENDE based on the violation of the constitutional right to prior consultation; that same year, social sectors in the area of direct influence of the project formed the Committee for the Defense of Land and Territory. On February 24, 2018, indigenous women leaders denounced the violation of the right to free, prior, and informed consultation before the 17th session of the UN Permanent Forum on Indigenous Issues.

The AAR company has shown no interest in dialogue and informing affected people; on the contrary, it has stigmatised leaders and promoted their disqualification as valid stakeholders. Various acts of public and private intimidation, including threats, have been documented against affected indigenous leaders, particularly women leaders, as well as environmental activists. The affected communities demand an audit of the contracts and agreements between the state and AAR, as well as of the agreement between ENDE and the Guaraní organisation APG and the management of funds destined for consultation and socialisation of the project.

CASE #3: MAYAN TRAIN (MEXICO)

Type of project: Tourism, transportation infrastructure

Project status: Ongoing

Is it part of the Belt and Road Initiative? No

The mega-project called 'Mayan Train' or 'Tren Maya' in Spanish is the largest public investment of the Mexican Government, consisting of 1,554 kilometers of railroad tracks that will cross five states in the south-southeast of the country (Chiapas, Tabasco, Campeche, Yucatan, Quintana Roo). Formally a means of transportation for tourist purposes, it will serve as a connection for a complex of extractive industries; and will promote the installation of "development hubs" along a route inhabited by hundreds of native communities and high environmental value. The Mexican State is the main promoter of the mega-project, which is managed by the Fondo Nacional de Fomento al Turismo (FONATUR); however, the construction of the project involves at least six different business actors on the seven sections of the train. The joint venture responsible for the first section is made up of the companies Mota-Engil Mexico - Mexico and China Communications Construction Company LTD, a company in which the Chinese state has a majority shareholding through the State-owned Assets Supervision Commission (SASAC).

Although there was a consultation process, the Office of the United Nations High Commissioner in Mexico (OHCHR) [stated](#) on December 19, 2019, expressing its concern due to the fact that the so-called indigenous consultation organized by the Government did not comply with international human rights standards on free, prior and informed consent. On the other hand, the "Mayan Train" project has not met

standards of 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 Environmental Impact Assessment (EIA), denying the affected communities access to information. Contrary to the national legislation itself, the construction of the Train began on April 30, 2020, without having the proper EIA approved by the Ministry of Environment and Natural Resources. When the [EIA](#) was finally presented, the annexes that made it up were not made publicly disclosed; some of them had to be obtained through the intervention of whistleblowers.

Following the submission of the EIA, several civil society organizations have commented on it, expressing their concern that the analysis is limited to environmental impacts and related violations of the right to water and a healthy environment, caused during site preparation, construction, and maintenance; therefore, the proposed mitigation and environmental remediation actions are short-term.

On 21 September 2020, six UN human rights experts addressed a [letter](#) to the Government of Mexico, noting their 'grave concern about the potential impacts [...] for indigenous communities who could be affected in their territorial rights, their right not to be evicted and their right to health'; they also point to an 'inadequate EIA, carrying risks of environmental damage [...] caused by contamination and negative impacts to biodiversity and water'.

Civil organizations, collectives, and communities have filed legal appeals; however, these appeals have been systematically rejected by the courts, while protection measures issued by the National Human Rights Commission have been ignored. This has been accompanied by a stigmatization campaign against individuals and organizations that document human rights abuses related to the project, in some cases reaching the point of intimidation and criminalization.

CASE #4: YUCATAN SOLAR FARM (MEXICO)

Type of project: Energetic (renewable energy).

Project status: under construction since 2017

Is it part of the Belt and Road Initiative? No

The 'Parque Yucatán Solar' project involves the installation of a solar photovoltaic park of approximately 250 hectares in the areas of Valladolid, Cuncunul, and Ebtún, in the State of Yucatán, Mexico. The project is being led by a Chinese company, Lightning PV Park S. de R.L. de C.V. (Mexico), a subsidiary of Lightning PV Park S. de R.L. de C.V. (Mexico). (Mexico), a subsidiary of the parent company Jinko Solar Investment Pte. Ltd. (China); and has the approval of the Mexican authorities, under the management of the Ministries of Energy and the Environment and Natural Resources (Semarnat).

Although the project intends to supply and sell clean, renewable, photovoltaic solar energy, it was imposed on the native Mayan communities of the region because there was no prior consultation process for the indigenous communities, under international standards. Although [a consultation process began](#),

it was never concluded, as it only included the informative phase, but never the consultation and consent of the [affected Mayan communities](#) of Cuncunul, Chichimilá, Dzinup, and Ebtún, whose cultural heritage would be affected.

Besides, the project has already resulted in a process of environmental deforestation over 206 hectares of forest, affecting water bodies and local wildlife. 83 adverse impacts have been identified in the Environmental Impact Study submitted by the company in April 2016, compared to only 15 considered beneficial. Despite these impacts, Semarnat authorized the project in April 2017.

The project has generated social conflicts in the communities, where Mayan environmental defenders, particularly in the affected communities, have been threatened with death for directly opposing the project by taking legal action, including amparo suits. In February 2019, a group of residents of the affected municipalities sued the project in court for violation of the right to free, prior and informed consultation.

CASE #5: INTEROCEANIC CANAL (NICARAGUA)

Type of project: Transportation infrastructure.

Project status: Temporarily suspended

Is it part of the Belt and Road Initiative? No

Commissioned in 2013 by the Government of Nicaragua, the project is a 278-kilometre-long canal, 105 kilometres of which are on Lake Nicaragua, connecting the Pacific Coast with the Caribbean Coast, to serve as a passageway for the maritime transit of goods, to capture up to 5% of world trade transport. The project includes the construction of two ports, canal locks, free trade zones, tourist complexes, an international airport, electricity, steel, and cement plants, and has been awarded to HK Nicaragua Canal Development Investment Co., Limited (Hong Kong Special Administrative Region, China). Thus, the company is based in Hong Kong, under legislation in force in the jurisdiction of Hong Kong, and not in 'mainland China'.

The project would have harmful consequences for the enjoyment of the rights to water, housing, and a healthy environment by the affected communities and individuals. In 2015, it was estimated that it would directly affect 30,000 people living along the planned canal route, including indigenous and Afro-descendant communities, in particular five indigenous communities on the Pacific Coast, the Rama and Kriol territory in the Caribbean, and the territory of the indigenous black Creole community of Bluefields.

Approximately 5 to 10 kilometres on both sides of the Canal would indirectly affect a much larger number of people, due to the creation of a 5 to 10 kilometre security zone. Free, prior, and informed consultation was not carried out, although Nicaraguan law recognizes the territorial autonomy of indigenous and Afro-descendant populations, in addition to having ratified ILO Convention 169.

As a result of these abuses, more than 80 peaceful protests against the project have been led by peasant and rural organizations and affected indigenous and Afro-descendant communities. The Inter-American Commission on Human Rights (IACHR) [noted](#) in 2015 that these demonstrations have been systematically oppressed by State security forces, often violently. In 2016, a Citizen's Initiative of Law was submitted to Parliament for the repeal of the land expropriation regime provided by Law 840, corresponding to the legislative framework of exception for the construction of the Canal. Following the rejection of the initiative by the National Assembly, the peasant movement filed a writ of amparo before the Supreme Court of Justice, which was also rejected. Two of the people who have led the opposition to the project are beneficiaries, together with their families, of protection measures from the Inter-American Human Rights System.

The government and the company awarded the contract have shown little openness to dialogue, resulting in non-transparent, restricted, and discretionary handling of information. Within the framework of the project, there has been no real socio-environmental impact assessment (SEIA). At the time of the project concession, the affected communities were unaware of the most essential aspects of the project. Two years after the approval of the project, the concession company submitted the ESIA to the government, acknowledging the need for seven additional studies. Despite this recommendation, the Ministry of Environment and Natural Resources issued the environmental permit for the project.

CASE #6: SANTA CRUZ RIVER (ARGENTINA)

Type of project: Energy (hydroelectric dam)

Project status: Under construction: 17% of the project built by August 2020

Is it part of the Belt and Road Initiative? No

The C6ndor Cliff-Barrancosa Hydroelectric Complex project on the Santa Cruz River is being carried out by the company Uni6n Transitoria de Empresas (UTE) Represas Patagonia, formed by Electroingenieria S.A., China Gezhouba Group Company Limited (a Chinese state-owned company), and Hidrocuyo S.A. It is the third largest hydroelectric project in Argentina, and the largest to be financed and built by Chinese entities outside China. It is being built near the third largest expanse of ice in the world, and the largest non-polar continental one with land access. The cost of the project is USD 4.7 billion, 85% financed by three Chinese banks: China Development Bank, Bank of China, and the Industrial and Commercial Bank of China (ICBC).

The project endangers a natural ecosystem of high preservation value, potentially driving wildlife to extinction. The environmental impact assessment of the project was carried out in a rushed manner and, as a result, lacked key information and analysis of environmental impacts. The deficiency in these prior studies prevented the identification of geological problems that manifested themselves when the construction of the Condor Cliff dam caused a huge crack, generating an additional cost of 5% to mitigate the impact. The dam threatens access to water for future generations, with a negative impact on large river ecosystems and glaciers, such as the iconic Perito Moreno Glacier, a World Heritage Site. Its initial

study did not take into account impacts on the Southern Patagonian Ice Field, the third largest in the world, a critically important freshwater reserve.

The project will have several implications for the life and culture of the indigenous Mapuche Tehuelche people of Lof Fem Mapu, who have been denied their right to free, prior, and informed consultation. During the COVID-19 pandemic, there have also been violations of the labour and health rights of the project workers, particularly in terms of overcrowded work conditions, lack of epidemiological control, lack of testing, and insufficient sanitary quality. Recently, due to a growing outbreak of cases, health authorities ordered a total shutdown of the site for three weeks. Workers have complained of non-payment, threats of layoffs, and non-renewal of their contracts.

Currently, civil society organizations are taking legal action to stop the project. On December 21, 2016, the Supreme Court of Justice of the Nation issued a precautionary measure suspending the works until an Environmental Impact Assessment (EIA) and Public Hearing (PA) are carried out in response to an amparo appeal by two organizations. As a result, the Ministries of Energy and Environment approved the EIA, and the suspension was lifted. Upon appeal by a foundation in October 2020, the Supreme Court of Justice demanded reports from several national entities on the environmental impact studies.

In August 2017, the Lof Fem Mapu community filed an amparo lawsuit against the national and provincial government and the company for the failure to carry out free, prior, and informed consultation. A federal judge ruled positively, ordering the state to set up a roundtable for dialogue; however, to date the roundtable has not begun.

Companies and investors, as well as the Chinese State, have ignored the problems and complaints made by civil society organizations through letters addressed to the government, acting negligently on the required studies. These include a letter addressed on May 20, 2020, by 73 organizations from Argentina, Peru, and Ecuador, to the Minister of Commerce of the People's Republic of China and the President of SASAC, to communicate problems related to COVID-19, among others, in the project "Condor Cliff-La Barrancosa Hydroelectric Complex in Argentina" demanding the immediate action of Chinese institutions to meet the demands of local organizations.

Civil society organizations are calling for the suspension of construction until the process of free, prior, and informed consultation with affected indigenous communities is adequately completed, and the completion of a comprehensive EIA that includes environmental and social effects.

CASE #7: MIRADOR (ECUADOR)

Type of project: Extractive (mining).

Project status: In operation since July 2019.

Is it part of the Belt and Road Initiative? No

This is the first large-scale, open-pit mining project in the country for copper, gold, and silver, and is located in one of the most biodiverse areas in southern Ecuador. Managed by the Ecuacorriente S.A. concession. (ECSA) concession, the project is financed by the China Development Bank, with a total investment of USD 2,015 million. The joint venture is formed by the Chinese company CRCC Tongguan, which in turn is jointly owned by Tongling Nonferrous Metal Group Holdings Co., Ltd. and China Railway Construction Corporation (CRCC-Tongguan).

The development of the project has resulted in violations of the rights of affected indigenous peoples and lacked free, prior, and informed consultation with the affected communities. These abuses took the form of violent evictions and forced land sales, in the face of the rejection by landowners of property purchase negotiations with ECSA, affecting more than 30 families between 2015 and 2016 who lost their homes and farming areas. After two judicial appeals were denied by the judge, the evictions were requested by ECSA to the Ecuadorian government, as foreseen by the Mining Law.

Further adverse consequences of the project include additional violations of the right to food of affected communities, depriving them of the effective use of the land, their primary means of subsistence, and putting the community's food sovereignty at risk. Several serious environmental problems, including improper management and discharge of waste and contaminants during road construction, as well as the lack of treatment of contaminated water at the mine, have been documented by the communities and in a report on irregularities identified at the project between 2013 and 2019 submitted in 2020 by the Comptroller General's Office, including contamination of the Tundayme, Wawayme and Quimi rivers due to exposure to metals such as aluminum, magnesium, and iron, among others. The project is located in an area that the Ministry of the Environment considers a protected area of forests and vegetation, as it is home to 16 different ecosystems.

Moreover, a series of labor rights abuses have been documented since 2014, when Mirador's camps were peacefully occupied over disagreements with the company on labor issues. In 2016, heavy machinery haulers went on strike for four days, claiming that they had not been paid for six months, resulting in the company paying wages to half of the workers and firing all of them. Several workplace accidents were also reported, some of which were fatal. The last one occurred in September 2019, leading to the temporary suspension of the project as there were problems with occupational health and safety policies.

Faced with the dismissals of legal actions filed by civil society organizations for violations of the right to prior consultation and violent evictions, they filed an extraordinary action before the Constitutional Court in July 2019. On May 20, 2020, 73 organizations from Argentina, Peru and Ecuador sent a letter to the Minister of Commerce of the People's Republic of China and the president of the State-owned Assets Supervision Commission (SASAC) to communicate problems related to COVID, among others, in the Mirador Project. The only response received was from an official of the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters (CCCIMC), who indicated that it would be carefully reviewed.

Several stakeholders suffered reprisals for their activities in documenting and denouncing the environmental and human rights impacts of the project. Of particular concern are allegations in a 2019

press release of acts of intimidation via email by Wang Zinan, the company's Special Advisor for Government Relations, against officials of the Ecuadorian Ombudsman's Office.

In the light of the company's non-compliance with environmental regulations, no response has been received from the Chinese government to letters addressed to ministerial bodies in the country and its Permanent Mission in Geneva, indicating difficulties in communicating with state and non-state authorities. The mining company and the China Development Bank have also failed to respond to repeated letters indicating the problems and requesting dialogue. For its part, the Comptroller General's Office detected a lack of oversight by the Ministry of Environment, as between 2016 and 2019 the Ministry did not require the company to take 'corrective action'. This lack of oversight meant that, until the closure of the special review of the project in September 2019, its environmental performance was unknown, and measures aimed at environmental repair, restoration, and remediation were not implemented. In light of this, affected communities are demanding various remedial measures, including adequate relocation, public acts of acknowledgement of responsibility and apology, compensation, and rehabilitation.

CASE #8: 'SÃO LUÍS' PORT (BRAZIL)

Type of project: Transportation infrastructure

Project status: Obtained environmental licenses, resident eviction, and deforestation processes have begun.

Is it part of the Belt and Road Initiative? No

The São Luís Port Complex (Maranhão State) consists of three ports at the eastern end of Brazil's Amazon region. The current project aims to expand the Port Complex with the construction of a new private port, the São Luís Port, to ensure the outflow of agricultural and mineral products. Currently, due to the COVID-19 epidemic, activities at the port construction site have been suspended, but the company continues to work with the Judiciary and the Maranhão State Government to expropriate and displace families still located at the site planned for the port construction. The project is being developed by TUP Porto São Luís SA, a joint venture of three companies, including China Communications Construction Company (CCCC), and represents an investment of USD 2 billion, financed by the Industrial and Commercial Bank of China (ICBC).

The right to housing, land, and territory of the communities has been violated by the forced displacement of approximately 70 families from the community of Cajueiro, also putting at risk 550 other families who are under constant threat of forced eviction. The joint venture submitted a fraudulent title of acquisition of public land for the construction of the private port within the Cajueiro territory, an area that 21 years ago was granted by the government for the establishment of a rural settlement still in the process of regularization. The displacement process took place through individual and irregular negotiations, while the evictions resulted from court orders, with the intervention of more than 200 police officers, using tear gas. Numerous guardhouses have also been installed, restricting the right to mobility of the local

population. In 2014, an armed private security company was hired and operated without authorization from the Federal Police, threatening the inhabitants until 2015.

The construction project is located on the shores of São Marcos Bay, in a vast area of mangroves (an ecosystem subject to the regime of permanent conservation areas according to Brazilian environmental legislation) with species at risk of extinction. The construction process has led to illegal deforestation, the destruction of mangroves and ecologically important areas, and the pollution of water bodies, both of which are extremely important for ensuring the food security of the families. The loss of several species of fish, the basis of the local food supply and economy, also poses serious risks to the enjoyment of the right to food. More than 600 agro-extractive families live in the traditional territory of Cajueiro. The communities' rights to health and water are also affected by the reduction in quantity and quality reduction of fresh, brackish, and saltwater, as well as air pollution from dust generated by deforestation and earthmoving works.

Since 2014, Cajueiro community leaders have sought dialogue with representatives of the Maranhão state government. In 2015, the new governor annulled a decree expropriating the area and suspended the company's environmental license, granted by the previous government. However, in October 2016, the State Government issued a Preliminary License (first stage of the environmental licensing process) in favor of the São Luís Port and, since early 2017, with the signing of a partnership with CCCC, the Maranhão Government began to publicly support the port and to aim its actions to support its execution, breaking the dialogue with the leaders of the Cajueiro community.

Between 2014 and 2016, 13 lawsuits were filed against the company that intends to build the port and, in some of them, also against the State of Maranhão. Several lawsuits were favorable to the community in the first instance. However, the company systematically appealed the decision in the second instance and obtained a favorable decision. In August 2020, 23 organizations operating in Maranhão sent a letter of complaint to nine Chinese governmental and financial institutions. Since then, attempts have been made to contact the Chinese Embassy in Brazil, without success.

In 2017, a complaint was filed before the Brazilian National Human Rights Council, which has since followed the case, having sent a mission to Maranhão in 2019 for on-site verification and, in October 2019, referred the documentation sent to Chinese governmental and financial agencies, to the Chinese Embassy in Brazil, in an attempt to mediate dialogue with the Cajueiro community.

In light of this, the joint venture has appealed all court decisions against the project and has pressured local institutions to act in favor of its execution. In November 2017, the Maranhão State Public Defender's Office sent a letter to the China Banking Regulatory Commission (CRBC) denouncing the environmental and human rights impact of the project. There was no response, and one of the State Public Defenders who signed the letter suffered an administrative complaint by the company and was transferred to another area of the Public Defender's Office, preventing him from acting on the case.

The affected communities demand a halt to the forced displacement initiatives against the families located in the area destined for the construction of the Port so that there is time to conclude the investigation by the police into the legality of the property title presented by the company.