

I. THE PERUVIAN STATE BREACHES ITS DUTY TO PROTECT THE HUMAN RIGHTS OF INDIVIDUALS AND COMMUNITIES NEGATIVELY IMPACTED BY CHINESE MINING INVESTMENTS IN PERU

1. Economic activities of States cannot be carried out to the detriment of their fundamental obligations to respect, protect and fulfil human rights. States of origin of enterprises that execute and benefit from productive investment have obligations that must be guaranteed to ensure that such activities impair the human rights of individuals, communities and peoples.

2. Peru, as a target state of Chinese investments in mining, must prevent, investigate, punish and repair human rights harm related to these investment projects. Peru has an obligation to conduct prior impact assessment and take measures to prevent harm prior to granting permits for these activities, as well as during their implementation, including consultation with parties affected by such investments. However, these obligations have not been respected.

3. In the labor field, several Chinese mining companies operating in Peru stand out because of their ignorance of fundamental rights at work. An example of this is the Chinese mining company **Shougang**, where low remunerative levels prevail, high levels of socio-labor conflict, as well as a long history of denunciations of bad anti-union practices and violation of the right of workers to collectively negotiate the improvement of their conditions of employment. Likewise, due to the recurrence of situations of irregular outsourcing and fraudulent labor recruitment, wage discrimination, non-compliance with health and safety standards at work (including a significant number of fatal accidents) and mass dismissals, which the Labor Administrative Authorities have not been able to prevent or resolve. Moreover, the social conflicts in Shougang have also led to the loss of human lives as a result of shots fired by police officers in the context of the crackdown on trade union protests against the company's facilities.

4. In the case of the “Las Bambas”, mining project operated by **MMG Limited**, a subsidiary of **China Minmetals**, the State is frequently questioned because of its inability to safeguard the labor rights of mining project workers. And this is expressed, in particular, in the complaints filed to deal with various types of violations of the right to trade union immunity.

5. Although several international human rights treaties to which Peru is a party recognize the right of all people to adequate housing and a healthy and protected environment, Perú fails to protect the rights against the, Chinese mining company **Chinalco Peru SA**, in charge of the mining project “Toromocho”, in which these rights are not being adequately guaranteed by the State.

6. In fact, the forced resettlement of the population impacted by the development of the project has been marked by social tensions related to the characteristics, location and quality of life of the new village. It has been reported that the process followed for the election of the new

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location of the population was inadequate and the procedures established by the law were not followed. In addition, that the new built houses do not offer security for the families when rising on a zone of bofedales. And that in the new city there are cracks in the walls and floors of the houses located there. The mining project Toromocho, in addition, did not keep its promises made to the population, by not providing permanent jobs or decent housing to the villagers, but the State has done little to reverse this situation.

7. It has even been reported the case of a population of the city that was displaced that reported that personnel of Chinalco Peru S.A. Demolished his house without previous notice and without mediate court order, being inhabited. And that said eviction action was carried out by police officers hired by the company. The same that has also been object of repairs to pour acid waters in the lagoons of Huacrococha and Huascacocha.

8. Although Peru has undertaken to guarantee the right of everyone to an adequate environment, which includes the right to enjoy a safe environment. Obligation of the public authorities to ensure the rational use of natural resources, in the case of the chinese mining company Shoguan, the few existing guarantees in environmental matters are clearly reflected in the complaints it faces due to the environmental impact of its operations. And, at the same time, by the huge amount of fines accumulated for non-compliance with environmental pollution regulations. Fines which, however, do not seem to have been effective in preventing the continuity of this situation.

9. Something similar happens with the Las Bambas mining project, run by the company MMG Limited, which has been the subject of great social unrest. Conflict which, in addition to causing the loss of human lives, is based on the opposition of the communities surrounding the project, which denounce the pollution caused by the transfer of minerals from the company to land that is owned and inhabited by members Of it. Changes have also been implemented to the Environmental Impact Study (EIA) of the project that have been carried out without consultation or consent of the population, and have involved the change of the location of the processing plant and the transportation system of the mineral.

10. The Ombudsman's Office of Peru has denounced that these abuses occurred in a context of lack of transparency and in the context of offers to the population that were not met or respected. Protests against the mining project have been accompanied by repression of the population mobilized by the national police, with serious consequences (thirteen people injured and one deceased). It is particularly shocking that this happened in a context in which it is a population (such as the provinces of Grau and Cotabamas) that almost 90% live in poverty and without access to basic services, and in which the national police provides private services to the Las Bambas project through contracts with the State

11. In the case of the "Rio Blanco" mining project by **Xiamen Zijin Tongguan Investment Development Corporation**, the project has been stopped by the opposition of the peasant communities of Ayabaca and Huancabamba Segunda and Cajas y Yana in Piura. Authorities

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their total paralysis denouncing that they do not have the social license to operate in the area. Due to the serious environmental and social impacts it has caused for 13 years; And also because they have not respected the right conferred on them by ILO Convention 169 which recognize their communal autonomy and the right to prior consultation, which must be applied before any decision that may affect them.

12. The villagers questioned the modification of the updating of the Project Rehabilitation Plan approved by the State, which decided a period of execution of this project in 7 years, ignoring the will of the settlers who manifested mostly against mining activity in their territories. A popular consultation carried out in several districts involved resulted in a 97% of respondents rejecting mining activity in the Andean moors and mist forests, demanding that the state give priority to agricultural production, livestock and sustainable tourism.

13. In November 2014, villagers reported a massive burning of trees in the surrounding mountains, which would have compromised approximately 26 thousand pines, without this environmental disaster raising any alarm among public authorities, who remained passive in the face of this fact. The Ombudsman also found that despite express legal mandates, the authorities did not comply with requiring the company to prove the existence of an authorization of the owners of the surface land where the project was to operate, nor verified the legal formalities Which must comply with such authorizations. He also complained that there was an error regarding the publication regarding the location of the project, syndicating it in the locality of Huarmaca instead of in Carmen de la Frontera, where it was really going to be implemented. This had a negative impact on the purpose of the normative mandate of publicity of the procedure, whose purpose is to ensure that any interested party can submit to the Ministry of Energy and Mines comments on the project within 25 calendar days of publication. According to the Office of the Ombudsman, this created the conditions for violating the exercise of citizens' right to participate with an interest in the exploration of mining extractive activities in the area, also affecting their right to receive certain, current, complete information and Need.

14. Although the Peruvian State has committed itself to guaranteeing the human right to adequate housing, in the case of the Chinese mining company Shoguan, there are serious problems for the population to exercise this right as far as basic services of drinking water and energy are concerned. The local community denounces discontinuous and limited access to such services, without the State having taken significant measures to reverse this situation.

15. The Peruvian State has a duty to protect the human rights of the population and communities that suffer these negative impacts on their human rights. But this obligation is not met.

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II. THE PEOPLE'S REPUBLIC OF CHINA HAS EXTRATERRITORIAL OBLIGATIONS (ETOS) REGARDING THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ESCR) OF PEOPLE AND COMMUNITIES NEGATIVELY IMPACTED BY CHINESE INVESTMENTS IN PERUVIAN TERRITORY.

16. In interpreting Article 2.1 of the International Covenant on Economic, Social and Cultural Rights, the Committee on Economic, Social and Cultural Rights has indicated that, in accordance with the UN Charter, international cooperation and cooperation toward the full realization of these rights is an obligation of all States Parties. According to the summary drawn from international law in the Maastricht Principles ETOs in the area of ESCR, States have an obligation to respect, protect and fulfill economic, social and cultural rights, within their territory and (within the limits given by the these Principles) extraterritorially, and that breaches of these ETOs may give rise to international responsibility for that State in breach.

17. According to these Principles, "State responsibility extends to (...) acts and omissions of non-state actors acting on instructions or under the direction or control of the State in question." Moreover States should "refrain from acts or omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially", and that they must evaluate in advance and with public participation, "the measures that ... they must adopt in order to prevent violations or ensure that they cease, as well as to guarantee effective remedies."

18. The Chinese State has a duty to adopt and effectively implement measures to protect economic, social and cultural rights through legal and other means, including diplomatic means, for example where the enterprise, or its parent or controlling company has its centre of activity, is registered or domiciled, or has its principal place of business or substantial commercial activities in China.

19. The significant harm to the enjoyment of economic, social, cultural and environmental rights due to Chinese mining companies in Peru shows that the Chinese State has not met its extraterritorial rights obligations.. In the first place, because it has failed to have a prior impact assessmenton, with public participation, of the measures that needed to be taken to prevent harm by companies, parent companies or companies that exercise control, have their center of activity, are registered or domiciled, have their principal place of business or carry out substantial commercial activities in the People's Republic of China. Or, in case of harm China has to ensure that such impairments cease, andto guarantee effective remedies to the victims. And secondly, because it was obliged to adopt and effectively implement measures to protect the rights involved through legal and other means, including diplomatic means, but it has not done so.

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III. THE PERUVIAN STATE VIOLATES ITS DUTY TO REQUIRE THE COOPERATION OF THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA TO COMPLY WITH ITS EXTRATERRITORIAL OBLIGATIONS REGARDING THE ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL RIGHTS OF CHINESE MINING COMPANIES IN PERU.

20. According to the Maastricht Principles, "All States should cooperate to ensure that non-state actors do not impair the enjoyment of the economic, social and cultural rights of any person. This obligation includes taking measures to prevent human rights abuses by non-state actors, holding them accountable for such abuses, and ensuring effective remedies for those affected." States also "have an obligation to seek international assistance and cooperation on the basis of mutually agreed terms when, despite all their efforts, they are not [able] to guarantee the economic, social and cultural rights of the persons they meet in its territory (...) ", and, in such case, "The State has an obligation to ensure that the assistance provided is used to achieve the realization of economic, social and cultural rights."

21. In this context, and given its manifest limitations [or unwillingness] to prevent harm to the enjoyment of economic, social, cultural and environmental rights described here, the Peruvian State has the duty to request the cooperation of the People's Republic China to prevent Chinese mining companies from continuing to undermine the enjoyment of the economic, social and cultural rights of the people and communities affected by these mining projects; Including taking measures to prevent further abuses, holding companies accountable and ensuring effective remedies for those affected. But he has not.

IV. REQUESTS

1. To request the Peruvian State to meet its duty to protect persons and communities whose ESCR are harmed by Chinese mining companies operating in their territory. In particular, by taking measures to prevent, investigate, punish and repair such impairment of human rights

2. To recommend that the Peruvian State request the cooperation of the People's Republic of China to take action, in compliance with its extraterritorial human rights obligations, to prevent companies, parent companies or control companies who have their center are registered or domiciled, have their principal place of business or conduct substantial commercial activities in the PRC, undermining the enjoyment of the economic, social and cultural rights of the people and communities affected by their mining projects in the PRC measures to prevent further abuses, holding companies accountable and ensuring effective remedies for those affected.

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