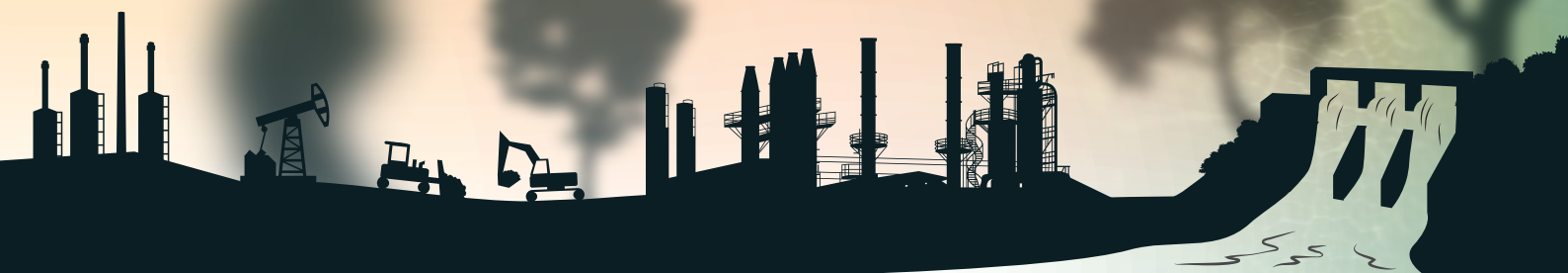




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Report 2018



Violation of human rights of indigenous population in the amazon basin by the chinese investments



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UNIVERSAL PERIODIC REVIEW REPORT 2018

VIOLATION OF HUMAN RIGHTS OF INDIGENOUS POPULATION IN THE AMAZON BASIN BY THE CHINESE INVESTMENTS

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“COORDINATOR OF THE INDIGENOUS ORGANIZATIONS OF THE AMAZON BASIN” (COICA, by its initials in spanish)

WITH THE SUPPORT OF:

Coalición Regional por la Transparencia y la Participación
Derecho, Ambiente y Recursos Naturales (DAR)
Asociación Ambiente y Sociedad (AAS)
Centro de Estudios para el Desarrollo Laboral y Agrario (CEDLA)
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VIOLATION OF HUMAN RIGHTS OF
INDIGENOUS POPULATION IN THE
AMAZON BASIN BY THE CHINESE
INVESTMENTS

Presentation

This report has been prepared by the following organizations:

COORDINATING BODY FOR THE INDIGENOUS ORGANIZATIONS OF THE AMAZON BASIN (COICA for its acronym in Spanish)

COICA is an indigenous organization of international convergence, whose goal is the promotion, protection, and security of indigenous territories in the Amazon, original ways of life, in addition to the promotion and protection of social, spiritual and cultural principles and values. It was established in 1984 and is constituted by the following organizations:

- Asociación de Pueblos Amerindios de Guyana – APA.
- Asociación Interétnica de Desarrollo de la Selva Peruana - AIDSESP.
- Confederación de Pueblos Indígenas de Bolivia - CIDOB.
- Coordinación de las Organizaciones Indígenas de la Amazonia brasileña - COIAB.
- Confederación de Nacionalidades indígenas de la Amazonía Ecuatoriana - CONFENIAE.
- Federación de Organizaciones Autóctonas de Guyana Francesa - FOAG.
- Organización Indígena de Surinam – OIS.
- Organización de los Pueblos Indígenas de la Amazonía Colombiana - OPIAC.
- Organización Regional de Pueblos Indígenas de Amazonas - ORPIA.

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- Derecho, Ambiente y Recursos Naturales - DAR.
- Asociación Ambiente y Sociedad - AAS
- Centro de Estudios para el Desarrollo Laboral y Agrario - CEDLA.
- CONECTAS Direitos Humanos.

Introductory Summary



Foto: Naciones Unidas (ONU) Archivo

This report was prepared with the participation of indigenous organizations and is based on a technical documentary analysis of five emblematic cases on the violation of human rights of indigenous populations in the Amazon Basin by Chinese companies and with management by the People's Republic of China (PRC). These violated rights are: (a) the right to life, which implies the protection of the right to a safe, healthy and ecologically-balanced environment; and (b) the right to freedom from discrimination, which is linked to the right to participate in cultural activities and life, at the same time being linked to the observance of the human rights of indigenous populations.

Content

International Obligations of the People's Republic of China (PRC) in regards to Human Rights

The PRC, as a member state of the United Nations (UN), accepted the obligation defined in the Articles 55 and 56 of the Charter of the United Nations to promote the “respect for, and observance of, human rights”, as well as employing measures collectively (with the UN) or individually, as a state, for the purposes of respect for and observance of these rights. This obligation is also found in the Universal Declaration for Human Rights (UDHR).¹

The PRC also has certain obligations as a state, as party to the international human rights treaties it has ratified, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR). This treaty presents the obligation of the PRC to guarantee the rights recognized in its contents,² this interpretation forms an integral part of the Committee of Economic, Social, and Cultural Rights (CESCR) treaty³.

The obligations of the PRC also extend to the voluntary commitments it has assumed, such as the recommendations accepted in its last Universal Periodic Review (UPR) [See Annex 1]. As such, with Recommendation 186.185, the PRC pledged to offer a comprehensive protection for the rights of the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, and, with the Recommendation 186.224, PRC pledged to respect the rights of “ethnic minorities.” This commitment to the protection of human rights of original peoples is a reinforcement of the UN Declaration of Human Rights of Indigenous Peoples (UNDRIP), which the PRC had voted for favorably. The application of these commitments and of the described international instruments is the main responsibility of governments,⁴ as much within, as beyond their borders. As such, the Maastricht Principles on the Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, whose foundation is the current international law, establish that the States have an “obligation to respect, protect, and fulfill human rights, including civil, cultural, economic, political, and social rights, as much in their territories as much as **extraterritorially**.”⁵ This means that their responsibility extends to the “[...] acts and omissions of the **non-state actors that act per instructions or under the direction or control of the state in question**”⁶. These non-state actors include companies, corporations and partnerships that are domiciled and/or registered in China, and/or those entities whose headquarters or principal commercial activity occurs in China.⁷

These non-state actors, in accordance with the structure of the PRC, include two types of entities: Chinese banks and Chinese companies, both of which operate outside of China. With respect to Chinese banks, the PRC has provided the Green Credit Directive, that currently applies to foreign investments, to determine the responsibility of banks to “identify, measure, monitor, and control the environmental and social risks associated with their credit activities” (Article 4 of the Directive) and to ensure “that the sponsors of the projects comply with the laws and regulations applicable to the protection of the environment, the land, the health, the security, etc. of the country or jurisdiction in which the project takes place” (Article 21 of the Directive). With respect to Chinese companies, the PRC foresees in the *“Administrative Regulations on Contracting Foreign Projects” (ARCFP) that companies should respect the laws of countries where they operate (Article 4 ARCFP)*.

However, these regulations do not expressly provide for or plan the respect for human rights. Nevertheless, the UN “Protect, Respect, and Remedy” Framework⁸ establishes the responsibility of companies to respect human rights. This responsibility is observed through the Guiding Principles on Business and Human rights, which establishes that to fulfill said responsibility, companies should

carry out human rights **due diligence**.⁹ This implies the responsibility to **identify and evaluate the actual or potential negative consequences related to human rights**,¹⁰ as well as **preventing and mitigating said negative consequences**,¹¹ even when the party in question has not contributed to their existence or generation.¹²

In this sense, the PRC should adopt measures to ensure that the aforementioned non-state actors do not disrupt the enjoyment of economic, social, and cultural rights (ESCR)¹³ and should abstain from acts or omissions that create a real risk of cancelling or undermining the enjoyment of said extraterritorial rights.¹⁴

For these reasons, we denounce the PRC's failure to protect the following rights: on one hand, the right to life (Article 3 of the UDHR and Recommendation 186.56) and the right to health (Article 12 of the ICESCR), which include the protection of the right to a healthy and balanced environment;¹⁵ and, on the other hand, the right to non-discrimination (Article 2.2 of the ICESCR, Articles 2 and 7 of the UDHR and Recommendations 186.76 and 186.223), a right linked to the right to participate in cultural life (Article 15.1.a of the ICESCR), closely linked to the observation of human rights of indigenous peoples.

Human Rights Violations by the PRC in the Amazon Region: specific cases.

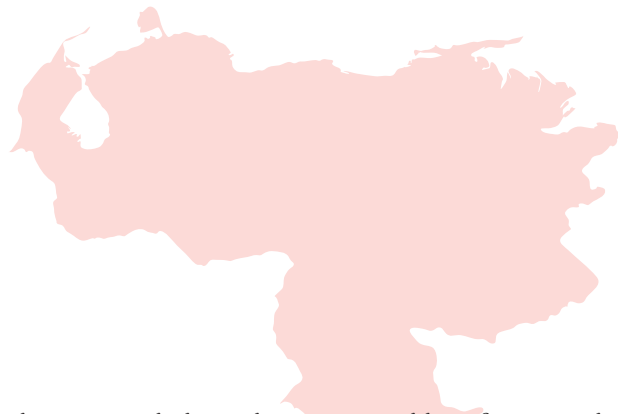
The PRC entered into commercial agreements and free-trade treaties¹⁶ with various Latin American countries¹⁷ positioning itself as the main beneficiary of the exportation of raw materials.¹⁸ This is reflected in PRC's high level of consumption, which indicates its need to obtain these resources through projects involving Chinese capital and investment located in the Amazon Basin.

Said projects are carried out without due diligence of human rights protection of indigenous peoples [See Annex 2]. This position is illustrated by the following five emblematic cases:

Venezuela

The Mining Arch of the Orinoco Case (AMO Project)

ORGANIZACIÓN REGIONAL DE PUEBLOS
INDÍGENAS DE AMAZONAS - ORPIA.



1. The diplomatic relations between the PRC and the Bolivarian Republic of Venezuela (BRV) were consolidated through the Strategic Partnership for Joint Development, which entailed the signature of countless agreements with emphasis on the energy, mining and infrastructure sectors, among others [See Annex 3]. In this context, the Chinese-Venezuelan Joint Financing Fund¹⁹ was created, with an objective of providing financing, mainly through the Chinese Development Bank (CDB), to projects in Venezuela in the areas of infrastructure, energy and mining, among others. These projects should drive the economic and social development of BRV.²⁰ It is in the framework



of this fund that the BRV creates the Zone of National Strategic Development for the “Mining Arc of the Orinoco” for the purposes of mining exploration and exploitation on a large scale. The Zone extends to 11,843.70 km,² encompassing the states Bolívar and Amazonas,²¹ the project’s area overlaps with the indigenous territories of the Inga, Mapoyo, Eñepá, Kariña, Arawak, Akawako, Baniva, Piaroa, Yekuana and Jivi peoples, as well as the ancestral territory of two uncontacted tribes: Eñepá and Jodi o Joti,²² who would be displaced because of the project.

2. The AMO Project is divided into four areas. As established through agreements of understanding,²³ the Chinese company CAMC Engineering Co. Ltd. (CAMCE) will explore and exploit Area 1, where coltan predominates, while the company Yankuang Group Co. Ltd. (Yankuang) will explore and exploit Area 4, where gold, bauxite, copper, kaolin and dolomite predominate, which covers the Mountain Forest Reserve of Imataca.²⁴
3. CAMCE, who carried out “turn-key” projects,²⁵ is a subsidiary of the China National Machinery Industry Corporation (SINOMACH), a state company directly managed by the central government of the PRC,²⁶ whose central headquarters are in the Silicon Valley of China, Zhong Guan Cun in Haidan District, Beijing. Similarly, Yankuang is a company owned by the PRC.²⁷ Both companies received financing from the CDB for said project. The CDB, in turn, is a bank manager of policies within the Chinese government.²⁸ This demonstrates that the CDB, like the state companies, is under the control and direction of the PRC, in addition to complying with the legal domicile in China, as noted in the Maastricht Principles.
4. Additionally, the companies are not only managed by the PRC, but also their participation in the selection processes of foreign projects are organized by the commercial authorities of the state council of the Chinese government, as established in Article 5 of the ARCFP. Moreover, in order to be contracting companies owned by the state, they should be previously certified by the referred authorities, as established in Article 8.1 of the same law, which entails a duty to supervise. All the elements above show the high level of control of the PRC for their state companies that execute foreign projects.
5. The AMO Project has generated opposition from a variety of indigenous groups, for altering their traditional way of life and failing to comply with the participation, consultation and consent of the indigenous communities that will be affected, as well as for the lack of existence of an Environmental Impact Assessment (EIA). These issues were recognized internationally by the BRV during the 159th Session of the Inter-American Commission on Human Rights (IACHR) in 2016.²⁹
6. The right to participation and prior consultation of peoples rights is recognized by the BRV Constitution, Articles 120 and 121, and by the Articles 6 and 7 of the Convention 169 of the International Labor Organization (ILO), ratified by BRV. Consequently, Chinese companies, in accordance with the ARCFP regulation, have the obligation to respect the laws of the BRV, where they operate.
7. Furthermore, the protection of the right to participation and prior consultation springs forth from the right to participate in cultural life (Article 15.1 ICESCR), as the latter right “is closely linked to the enjoyment of other rights recognized in the international instruments of human rights.”³⁰ The right to participate in cultural life consists of “the right of all persons (or communities) to act freely; to choose their own identity [...] to exercise their own cultural practices and to express themselves in the language of their choosing.”³¹ Additionally, in the specific case of indigenous peoples, cultural life has a collective dimension that “is indispensable for their existence [...] and consists of the right to [...] territories and resources that, traditionally, they have owned.”³²
8. These rights, specifically the right to participate in cultural life, are linked to the right to non-discrimination (Article 2.2 of the ICESCR), as “no one can be discriminated against for the act of wanting to belong to (or not belong to) a given community or cultural group, or for the act of exercising (or not exercising) a cultural activity.”³³ Said rights were backed up by the commitments of the PRC to “fully protect the legitimate rights and interests of ethnic minorities”

(Recommendation 186.84 of UPC), cultural rights (Recommendations 186.220 and 186.221), cultural identity and participation in decision-making (Recommendation 186.222).

9. The failure to produce an EIA on the other hand, prevents the identification of the serious environmental impacts of the AMO Project. It is known that this project, in its planning phase of roads and highways entails massive deforestation, while in its closing phase, the project would result in major damage to the environment due to toxic waste remaining in the exploited zones.
10. Said non-compliance violates the rights to life and health linked to the right to a safe, healthy and balanced environment, given that human existence can only fully develop with a safe and healthy environment, as “the environmental degradation affects the effective enjoyment of human rights.”³⁴ In this sense, and as recognized by the IACHR in their Advisory Opinion OC-23/17, the protection of the right to life emerges from the obligation of states to “prevent significant environmental damages, within or outside their territories, which entails [...] carrying out environmental impact assessments or studies [...]”³⁵
11. The non-compliance of these obligations generated the mobilization of the indigenous defenders of human rights,³⁶ during which the indigenous leader Freedy Menare, founder of the Indigenous Organization Pueblo Uwottuja del Sipapo of the state of Amazonas, who opposed the AMO Project, was assassinated by a gunshot in the back. Indigenous organizations, as well as academics, reported that he was the victim of hired assassins at the same time demanding the clarification of this fact, as well as the immediate halt to the harassment of other indigenous leaders.³⁷
12. The AMO Project not only affected the right to life of this leader, but additionally put the life of the indigenous peoples Eñepá y Joti in grave risk. In particular, the execution of this project by Chinese companies that are managed directly by the state company SINOMACH and thus, by the PRC, would necessarily entail the contact with the above-mentioned peoples in initial contact, whose immunologic system is highly vulnerable,³⁸ putting them in grave risk of extinction.
13. While these rights are the responsibility of the BRV, said responsibility is shared with the PRC as its companies, as well as the CDB, should have acted with due diligence since they had knowledge, following the public audience of the IACHR, that said rights were being violated. As such, they should have identified and evaluated these risks, as well as prevented and mitigated the negative effects described.
14. Furthermore, while the project in question takes place in Venezuela, the PRC has the obligation to protect these rights in an extraterritorial fashion. The IACHR, for the protection of the right to a safe, healthy, and balanced environment, notes that the protection goes beyond the borders of the PRC in accordance with the OC-23/17. In spite of everything, the project is still in active status and continues to count on the participation of these Chinese companies and on the financing of the CDB.
15. Finally, through the Recommendation 186.222, the PRC commits to “adopt new measures [...] so that ethnic minorities preserve their cultural identity and freely exercise their human rights and to guarantee their participation in decision making, with accordance to the constitution of China”. The PRC should assume this obligation not only within its jurisdiction, but extraterritorially as well, as any alternative interpretation would imply a violation of the right to non-discrimination and a double standard when it comes to the application of human rights.

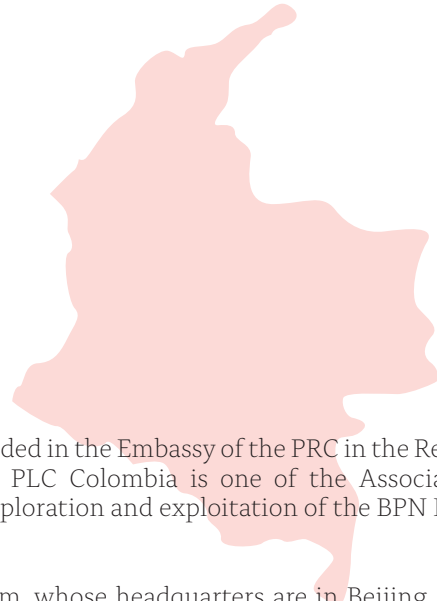


Photo: laboratoriosdepaz.org

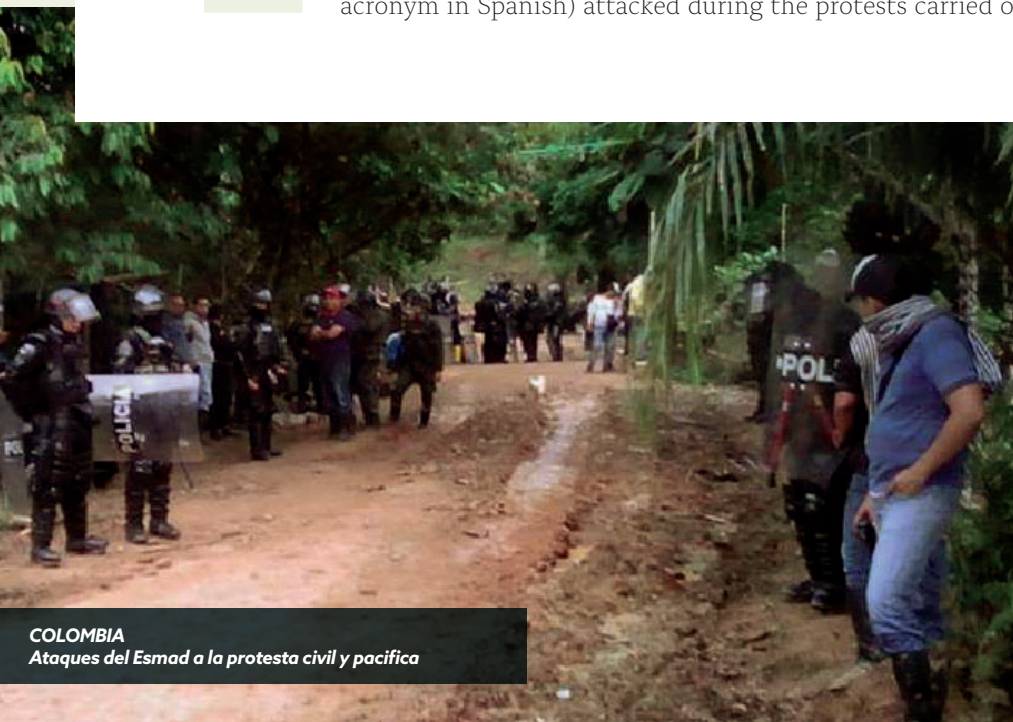
Colombia

The Oil Block of El Nogal (BPN Project for its acronym in Spanish)

ORGANIZACIÓN DE LOS PUEBLOS INDÍGENAS
DE LA AMAZONÍA COLOMBIANA - OPIAC.



16. The Colombia-China Business Association was founded in the Embassy of the PRC in the Republic of Colombia (RC). The company Emerald Energy PLC Colombia is one of the Association's members and is the contracting company for the exploration and exploitation of the BPN Project [See Annex 4.1 and 4.2].
17. Currently, said company is a subsidiary of Sinochem, whose headquarters are in Beijing, China. Sinochem is "a key state company under the supervision of the State-owned Assets Supervision and Administration Commission of the State Council (SASAC)."³⁹ Therefore, and in accordance to Article 5 of the ARCFP, the direct participation of the PRC is evident.
18. The BPN Project suffers from irregularities that involve human rights violations. The contracting company acquired El Nogal block through an E&P contract on 22 October 2012. According to the contract, the company commits to explore an area of 239,415 hectares located in the municipality of Albania, Belén de los Andaquíes, el Paujil, Florencia, Milán, Montañita, Morelia and Valparaíso in the Department of Caquetá. One of these more visible irregularities is the inconsistency between the certifications of the indigenous communities. At first, the company requested certification from the Office of Prior Consultation for the total area of the block, with certification No. 1274 (dated 31 July 2013), which declared the presence of the indigenous community Juan Tama and Cabildo la Pradera and the indigenous reservations Witack Kiwe, Gorgonia, and Getucha. However, in a certificate presented after the expiration of the terms of contract, Certificate No. 1758 (dated 9 December 2013) declares that there were no ethnic communities in the area. This is due to the reduction of the project area that was initially presented.
19. This demonstrates bad faith of the Chinese state company in the process of procurement and obtaining certificates to evade the responsibility of the application of rights of the peoples initially identified.
20. There also exist reports of human rights violations by the National Army, which intervened in support of the activities developed by the company. In 2015, the Mobile Riot Squad (ESMAD for the acronym in Spanish) attacked during the protests carried out by rural communities, and it went



on until 2016, during which settlers that carried out actions of environmental monitoring were attacked on more than one occasion by the so-called Energy Mining Battalion. Said repression put the life and integrity of rural defenders in grave risk,⁴⁰ a situation wherein the PRC is an accomplice, given that its companies are directly managed by the SASAC of its State Council and these companies are the direct beneficiaries of these abuses.

21. In addition to the previously mentioned human rights issues, the company has demonstrated serious flaws in the environmental information presented in the procedure of environmental licensing for the achievement of the seismic line. These flaws were demonstrated by the geo-environmental corporation Terrae in the Environmental Public Hearing requested by the communities that had been opposing the project since 2013. The main identified shortcomings were related to the lack of knowledge on wetlands, watersheds, as well as absence of seismological, groundwater and surface water studies, among other issues.⁴¹

Ecuador

Cóndor Mirador Project

CONFEDERACIÓN DE NACIONALIDADES INDÍGENAS DE LA AMAZONÍA ECUATORIANA - CONFENIAE.



22. In 2012, the Republic of Ecuador (RE) awarded the first contract of large-scale mining exploitation to the company Ecuacorriente SA (ECSA) for the exploitation and extraction of copper in the Mountain Range of Córcondor [See Annex 5]. This Mountain Range overlaps with the ancestral territory of the indigenous nation Shuar and is declared a “protective forest and vegetation area” by the Ministerial Agreement No. 137.

23. ECSA is a subsidiary of the Chinese consortium CRCC-Tongguan, which, in turn, is made up of the Chinese state-owned companies Tongling Non-Ferrous Metals and China Railways Construction Corporation.⁴² The former has its headquarters in the city of Tongling, in the province of Anhu in China and claims to be “one of the 300 companies that receive special support from the nation and one of the large-scale companies that receives preferential support from the provincial government of Anhu”⁴³. On its website, the company presents the prizes it has earned: the 12th Prize of Quality of China, Prize for Quality from the Government of Anhu, among others.⁴⁴ This corroborates the control of the company by PRC (Article 8 ARCFP).

24. Because of the Córcondor Mirador project, the first forced evictions were carried out in 2014 wherein “the company ECSA, with the participation of the State and public forces (National Police and Military) destroyed, in an illegitimate manner, the church and the school of the community of San Marcos, parish of Tundayme, district of El Pangui, province of Morona Santiago, which were goods that brought together and gave life to the community.”⁴⁵ In 2015, there was a second violent eviction of 16 families by “hundreds of corps members of the National Police, members of the Mining Regulation and Control Agency (ARCOM, by its initials in Spanish), personnel of the security company of the ECSA mining company, and other members of the State.”⁴⁶ This action was repeated in December of the same year targeting 10 families that lived along the route of El Condor.⁴⁷ In 2016, an eviction repeated again, against the Wari family.⁴⁸ The eviction was imposed on a total of more than 30 families of the Shuar indigenous peoples, without prior, free, and informed consent.

25. Similarly, the indigenous leader Shuar Domingo Ankuash noted that the leader José Tendetza was assassinated due to his opposition to this project.⁴⁹ On 3 December 2014, his corpse was found “with hands and feet tied with a blue rope, his body floating in the Chuchumbletza River, which is a tributary of the large river Zamora. This was in the district of El Pangui, in the mining zone.”⁵⁰ Similarly, Ankuash asserted that Tendetza received death threats as a result of the complaints against the company TNMG before the CDB, who had awarded loans to the said company. The

Photo: Ecuador CONAIE



complaints against the company were presented by a letter dated 27 January 2014 to CDB and during a public hearing of the IACHR.⁵¹ The Shuar peoples revealed that in reality, Tendetza's body had been found previously by two ECSA employees who buried the body without an autopsy procedure. The death of this indigenous leader had not been the only one, as Bosco Wisum (2009)⁵² and Fredy Taish (2013)⁵³ had also been assassinated previously. Consequently, there is a clear lack of due diligence that could have avoided the violation of the right to life of this Shuar leader, as well as the right to prior consultation and consent in the cases of eviction.

26.

The PRC is responsible for directing the final administration of the project for ECSA.⁵⁴ Furthermore, the PRC exercises influence through the CDB, whose financial support finally determines that ECSA is under the influence of the government.⁵⁵ Additionally, the state-owned companies of the PRC had knowledge of the high level of conflict surrounding the Cóndor Mirador project that is present "since early 2000's due to the presence of transnational mining companies [...]. [A]n example of this was the strike of December 2006, during which there were clashes between opposing groups to the project on one side, and employees of the company and police on the other."⁵⁶ In spite of the presence of this conflict, the Chinese consortium CRCC-Tongguan bought Mirador in 2010 from the Canadian company Corriente Resources. In 2012, ECSA, signed the contract with the Ecuadorian government. Similarly, the CDB also had knowledge of the situation of the human rights violations due to the aforementioned letter of the Shuar indigenous leader, so that this serious situation should have been known by the PRC, which, in the end, resulted in the human rights violations because of the execution of said project. Given that these violations benefited Chinese companies, these companies are consequently responsible for the human rights violations as they did not perform human rights due diligence in order to prevent violations from occurring.

27.

Similarly, the organizational integrity of the indigenous Shuar peoples has been compromised as a result of the assassination of the indigenous leader Tendetza, while occurring in the framework of the Cóndor Mirador project which lacked the necessary human rights due diligence. The leader's authority had an important weight in the organization of said peoples. The assassination denotes a violation of the right to autonomy in terms of internal organization of the people as part of their right to participate in cultural life. Finally, the PRC, through its companies, has violated the right to a safe, healthy and balanced environment, as the ECSA submitted an EIA that did not reach the basic scientific level necessary for a project of the size of the Mirador.⁵⁷

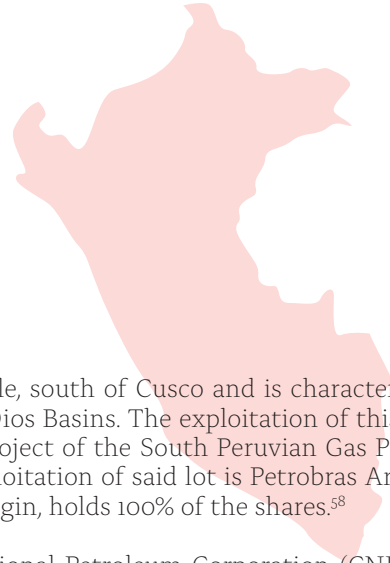


Photo: Luis Astudillo C./ Cancillería Ecuador

Peru

Lot 58

ASOCIACIÓN INTERÉTNICA DE DESARROLLO DE LA SELVA PERUANA - AIDSESP.



28. The Lot 58 is a petroleum lot located in the jungle, south of Cusco and is characterized by the great gas potential of the Ucayali and Madre de Dios Basins. The exploitation of this Lot would form part of the implementation of the macro-project of the South Peruvian Gas Pipeline. The contracting company for the exploration and exploitation of said lot is Petrobras Argentina SA, in which CNPC Peru SA, a company of Chinese origin, holds 100% of the shares.⁵⁸

29. CNPC Peru SA is a local subsidiary of China National Petroleum Corporation (CNPC).⁵⁹ CNPC was established in 1988 to manage the resources and goods of the Ministry of the Petroleum Industry. In 1998, CNPC was reorganized to become an integral corporation whose operations would include petroleum and engineering services.⁶⁰ Currently, it is the major producer and provider of petroleum and gas in PRC.⁶¹ This company has signed a number of Memoranda of Understanding (MoU) with the government of the Republic of Peru (RP). [See annexes 6.1 and 6.2]. On 27 January 2005, CNPC signed a MoU with the Ministry of Energy and Mines (MEM) on the implementation of cooperation in the exploration and development of hydrocarbons, as well as cooperation in the chemical industry of petroleum refinery. According to this MoU, the Peruvian government would put in place policies for the development of existing cooperation projects, while CNPC would encourage its subsidiaries to increase the production of hydrocarbons of said projects. Additionally, the MoU establishes that the Peruvian government should provide adequate conditions of cooperation for the development of CNPC's operations in new projects.

30. Similarly, on 12 November 2014 CNPC and the MEM signed a MoU in Beijing between PRC and RP on cooperation in the scope of hydrocarbons, whereby the Peruvian government committed to promote CNPC's investments, particularly in petroleum and gas sectors. In 2016, this cooperation was deepened with the signing of a new memorandum that established that the two parties would strengthen the cooperation in the areas of: prospection and production; refining; construction and development of transportation/distribution infrastructure; transportation of liquefied natural gas (LNG) and synthetic use in down-stream; and in research and development of oil and gas technology.⁶² Furthermore, CNPC would invest more than 500 million dollars as part of the Initial Development Plan and 2000 million dollars for the 2017-2023 total plan.⁶³

31. CNPC bought 100% of the shares of Petrobras Argentina SA in 2013, whereby it controlled fully the contractor's activities in Lot 58.⁶⁴ On 6 November 2014, the licensing contract exploration and exploitation of hydrocarbons in Lot 58 was modified to include CNPC as a guarantor of



Photo: Congreso de la República, Perú

Petrobras Argentina SA.⁶⁵ Six days later, CNPC and MEM signed the above-mentioned MoU of 2014. Consequently, it is clear that the PRC, though its state company CNPC, which is controlled and supervised by PRC in accordance to the ARCFP regulation, would have directed the signing of these agreements to ensure the execution of the project in Lot 58.

32.

In the Lot 58 project, CNPC already reprocessed 2D seismic lines and drilled four exploratory wells in Urubamba, Picha, Taini and Paratori, which brings the company on the verge of starting the exploitation phase. This despite the fact of there being no prior consultation process of the communities present in the area of Lot 58 (Tangoshiari, Carpintero, Kochid, Camisea, Puerto Huallana, Mayapo, Ticumpina, Camana, Timpia, Chirumbia, Cashiarí, Segakiato, Shivankoreni and Poyentimari) in addition to Lot 58 overlapping with the Machiguenga Communal Reserve. The aforementioned four exploratory wells overlap with the territory of the Camana, Mayapo, Tangoshiari and Kochid communities, respectively.⁶⁶ In addition, the drilling of the Picha well also affected the native community of Puerto Huallana, whose territory is adjacent to said well.

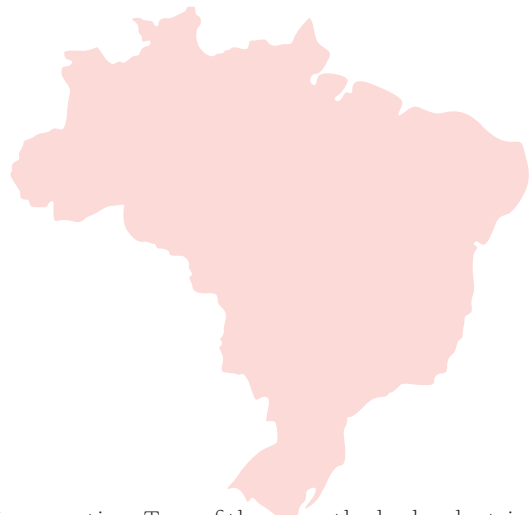
33.

In this case, again, the right to prior consultation was violated, which was known to CNPC before the purchase of Petrobras Argentina SA.⁶⁷ This violation is in breach of the international legal framework as described above, as well as of Article 6 of the ILO Convention 169 ratified by Peru, which form part of Peruvian national law (Article 55 and Fourth Final and Transitory Provision of the Peruvian Political Constitution). The violation is hence also in breach of the internal laws of the country wherein PRC state-owned companies operate.

Brazil

Teles Pires and São Manoel Dam on the Teles Pires River

COORDINACIÓN DE LAS ORGANIZACIONES INDÍGENAS
DE LA AMAZONIA BRASILEÑA - COIAB

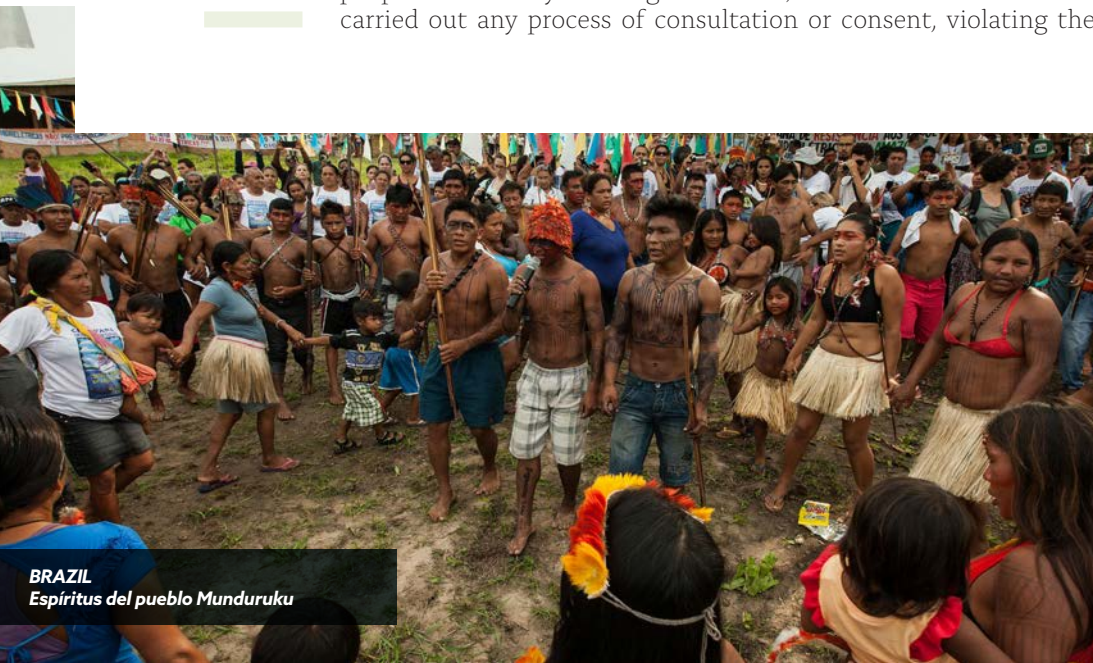


34.

On the Teles Pires River, there are four dams in operation. Two of these are the hydroelectric dams Teles Pires and São Manoel [See Annex 7]. The Chinese company State Grid holds the award of the transmission line Teles Pires, while, the Chinese state company China Three Gorges Corporation (CTGC) holds the award for São Manoel.

35.

Said companies affect the conditions of life of the indigenous Kayabi, Apiaká and Munduruku peoples of the Kayabi indigenous land, located downstream. However, these projects have not carried out any process of consultation or consent, violating the legislation of Brazil and ILO



BRAZIL
Espiritus del pueblo Munduruku

Convention 169 as ratified by it.⁶⁸ This breach is exacerbated by the fact that the Teles Pires dam flooded the sacred site “Siete caídas”, which is of extreme cultural and religious importance for the Munduruku peoples, for the peoples believe that the Mother of the Pisces, a musician named Karupi, the spirit of Karubixexé, and the spirits of their ancestors live there⁶⁹ This was recognized in the Expert Opinion No. 14/2010 (COLIC / CCGAM / DPDS / FUNAI). Similarly, the hydroelectric dam São Manoel would affect el Morro de los Monos, which is the place where the animal spirits live, according to the Kayabi and Munduruku people.⁷⁰ All of the above circumstances lead to the violation of the right of identity for these peoples and with that, the violation of the right to participate in cultural life, which consists of the right to choose one’s own identity and exercise one’s own cultural practices.⁷¹ The violations were reported in 2014 and 2015 before the Human Rights Council of the UN, when the project was still in its construction phase.⁷²

36.

The EIA of both hydroelectric dams are incomplete studies that do not consider “socioenvironmental [and/or] accumulative impacts related to the indigenous peoples and their territories, in which the indigenous component was treated in a manner disjointed from the rest of the EIA and without participation of the affected peoples.”⁷³ In spite of this, the Brazilian Institute of Environment and Renewable Natural Resources (IBAMA for its acronym in Portuguese) granted the concession of licenses to both companies. That is why more than a dozen Public Civil Actions were filed by the Federal Public Ministry in relation to said irregularities, which were favorable but not suspended by the use of the legal instrument “Suspensão de Segurança”, which allows the government to ask the president of a tribunal for the suspension of judicial sentences due to threats to social and economic order.⁷⁴ This illustrates the pattern of Chinese state companies violating their obligation to carry out an EIA can again be seen, an act which affects the right to a safe and healthy environment, and with it, the right to life and health detailed in the previous cases.



Suggested questions for the PRC

- What measures, collectively or individually, have you taken for the effective protection of human rights of indigenous peoples in the countries of the Amazon region where companies and/or banks are operating under your direction, within the framework of the recommendations of the Committee on Economic, Social and Cultural Rights (CESCR)?
- What effective mechanisms have you implemented so that the financing of your public financial institutions does not back projects that put the human rights of indigenous peoples in the Amazon region at great risk?
- What effective measures have you implemented so that your companies carry out better environmental practices in the management of natural resources, with the objective of not violating the right to a safe and healthy environment?
- What measures and/or mechanisms have you implemented against the finding of a human rights violation of indigenous peoples, perpetrated by non-state actors (companies and/or banks) under your direction, even when you have not contributed to the performance of such a violation?
- What measures shall be taken with companies that have a track record of human rights and environmental violations related to natural resources?
- What measures have you adopted to implement or promote mechanisms of transparency, fight against corruption and access to information in the projects/banks and companies under your jurisdiction?
- What measures have you adopted to promote and implement, within your legislature, processes of citizen participation, monitoring and vigilance, such that companies/banks and projects can adopt these as well?
- What effective measures will you take so that the Green Credit Guidelines will be legally binding for companies and/or banks under your jurisdiction?

Recommendations

It is recommended to:

- Modify and/or add addenda to the subscribed MoU and the free trade agreements, to include a compliance clause of the human rights of affected populations, as well as a clause prohibiting the weakening or modification of socio-environmental regulations of the country in which the projects of Chinese corporations and/or financing will take place.
- Include an anticorruption and transparency clause with specific mechanisms regarding audits, accountability and public monitoring, which should be included in future agreements, treaties or MoU.
- Promote and guarantee policies and processes of citizen and indigenous participation, monitoring and vigilance at every stage of the project.
- Apply the principle of extra-territoriality in the identification of the responsibilities of companies based in China who have committed human rights violations.
- Establish alliances and cooperation with international entities and organizations in the area of human rights, such as the UNHCR, IACHR and others.
- Improve policies regarding access to information and transparency of companies and the RPC in projects related to socio-environmental and economic issues, from the design phase until project implementation.
- Develop and carry out monitoring and inspection protocols towards companies financed by the RPC.
- Translate internal policies of Chinese banks to the local languages of the areas where beneficiaries of the loans will operate, incorporating principles of maximum disclosure, maximum publicity, good faith, inter-culturalism, and participation.
- Ratify Convention 169 of the ILO.

End Notes

1. Universal Declaration of Human Rights, sixth review.
2. International Pact of Economic, Social, and Cultural Rights, article 2.
3. General Observation N° 3, “The nature of the obligations of the member states”, paragraph 14.
4. This was affirmed by the PRC when it rejected recommendation 186.17.
5. Maastricht Principles on the Extraterritorial Obligations of States in the area of Economic, Social, and Cultural Rights, General principle 3.
6. Ibid., Principle 12.a
7. Ibid. Principle 25.c.
8. Ruggie, John (2008). Report of the Special Representative to the Secretary General on the question of human rights and transnational and other commercial companies. “Proteger, respetar y remediar: un marco para las actividades empresariales y los derechos humanos”. Link: https://observatoriosc.org/wp-content/uploads/2013/11/Proteger_respetar_remediar_abril2008.pdf
9. Guiding Principles on Companies and Human Rights. Principles 15 and 17.
10. Ibid. Principle 18.
11. Ibid. Principle 19.
12. Ibid. Principle 13. b.
13. Maastricht Principles on the Extraterritorial Obligations of States in the area of Economic, Social, and Cultural Rights, Principles 24 and 25.
14. Ibid. Principle 20.
15. Advisory Opinion OC-23/17 on ‘Environment and Human Rights’.
16. Ibid., pp. 13 and 17. As such, of all the exports of natural resources and their manufactures in Peru, 100% go to the PRC and the principal exported product are metallic minerals and copper; in the case of Colombia, 96% go to the PRC, with the principal exported product being petroleum; in the case of Ecuador, 98% go to the PRC and the principal export is food; and, in the case of Brazil, 94% go to the PRC and their principal exported products are soy and iron (primary agricultural products). Information from the COMTRADE database of the United Nations.
17. Ibid., p. 12.
18. Ibid., pp. 13 and 17. As such, of all the exports of natural resources and their manufactures in Peru, 100% go to the PRC and the principal exported product are metallic minerals and copper; in the case of Colombia, 96% go to the PRC, with the principal exported product being petroleum; in the case of Ecuador, 98% go to the PRC and the principal export is food; and, in the case of Brazil, 94% go to the PRC and their principal exported products are soy and iron (primary agricultural products). Information from the COMTRADE database of the United Nations.
19. Official Gazette No 39.019, the approving law of the convention between China and Venezuela on the Joint Financing Fund (2008). The consolidated version with the last modifications was published via the Official Gazette N° 40.516 (2014).
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21. Zone created by Presidential Decree N° 2.248 (2016).
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31. Ibid. paragraph 15. a.
32. Ibid., paragraph 36.
33. Ibid., paragraph 22.

34. Kawas Fernández Vs. Honduras. Background, Reparations, and Costs. Sentence from April 3, 2009. Series C No. 196. paragraph 148. Cited in Advisory Opinion OC-23/17 on "Environment and Human Rights", paragraph 47.
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47. Ibid., p. 17. See video: <https://www.youtube.com/watch?v=vhDyngTDL3o&feature=youtu.be>
48. <https://www.youtube.com/watch?v=vhDyngTDL3o&feature=youtu.be>
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73. Ibid., p. 4.
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Annexes

Annexed 1	Recommendations accepted by the People's Republic of China in the framework of the UPR of the year 2013.	https://goo.gl/LJDhMb
Annexed 2	Violations of the human rights of the PRC in the Amazon Basin: specific cases.	https://goo.gl/zJojix
Annexed 3	Information sheet on relations of the PRCH and Venezuela.	https://goo.gl/FfDBPR
Annexed 4.1	Information sheet on relations of the PRC and Colombia.	https://goo.gl/o4jUDR
Annexed 4.2	Information on the case of the el Nogal Petrol Block (BPN).	https://goo.gl/S9YPeY
Annexed 5	Information sheet on relations of the PRC and Ecuador.	https://goo.gl/mC2GhY
Annexed 6.1	Information sheet on relations of the PRC and Peru.	https://goo.gl/8LuzNu
Annexed 6.2	Report memorandum of understanding between Peru and the People's Republic of China (PRC).	https://goo.gl/8rknQz
Annexed 7	Information sheet on the relations of the RPCH and Brazil.	https://goo.gl/PNY2jy

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