



'We invoke the principle of extraterritoriality to call on the state of China to account for the impact of its investments in Latin America'

CIVICUS speaks to four leaders of a regional initiative, 'Exploring new paths for the defence of human rights in the face of Chinese investments in South America: The United Nations' Universal Periodic Review and the principle of extraterritoriality': Paulina Garzón of the China-Latin America Sustainable Investment Initiative (CLASII); María Marta Di Paola of the Environment and Natural Resources Foundation (FARN) in Argentina; Sofía Jarrín of the Centre for Economic and Social Rights (CDES) in Ecuador; and Julia Cuadros of CooperAcción, an organisation from Peru.

1. What impact are Chinese investments having in Latin America, and why is it concerning?

Despite the slowdown of the Chinese economy over the past few years, Chinese investments continue to grow in Latin America. In 2016 sovereign loans by Chinese banks reached US\$21,000 million, more than the amount lent by all multilateral banks, and direct investment reached US\$10,358 million, a 29.4 per cent growth compared to 2015. The People's Republic of China is either the first or second trading partner of all South American countries, and it is worth highlighting the fact that the vast majority of their exports to China are concentrated in the oil, mining and soybean sectors. In other words, investments by China or driven by Chinese demand have given a new impetus to the primary sector and, within this sector, to extractive industries. As a result, the economic relationship between China and Latin America poses great challenges to both the environment and the rights of the communities in which these investments are based.

The growth and the scale of Chinese financing in Latin America have taken social organisations and communities by surprise. So far, there is little that civil society has been able to do to hold Chinese banks, companies and regulatory agencies accountable, partly because of a lack of knowledge and access to these institutions' procedures, but mostly because of the secrecy that characterises them. This has been exacerbated by the fact that most of the Chinese capital that arrives in the region comes into Argentina, Bolivia, Brazil, Ecuador, Peru and Venezuela – countries that have one or more of the following characteristics: difficulties accessing financial markets, weakened environmental governance and a decrease in spaces for citizen participation. What we see in these countries is that transnational corporations have contributed to human rights violations, including systematic practices of criminalisation of environmental defenders.

Along the same lines, it should be added that China has followed the principle of non-interference when building its relationship with Latin America, which has resulted in

interactions taking place almost exclusively between governments, without including civil society. In this context, Latin American social organisations have not been able to establish substantial channels of dialogue with Chinese institutions – much less hold them accountable for the negative impacts of their actions.

2. What is civil society in Latin America currently doing to bring China to account for the environmental and social effects of its investments in the region?

A group of organisations from several countries that have seen their human rights situation deteriorate due to the penetration of these investments has decided to make use of the tools offered by the international human rights system to establish a conversation about the need to call governments to account for the effects of their investments and the actions of their companies abroad. In order to do this we will take advantage of the fact that in November 2018 the People's Republic of China will undergo its [Universal Periodic Review \(UPR\)](#) at the United Nations (UN) Human Rights Council, the human rights assessment to which every UN member state must submit every four years, without exception.

Although it does not have an enforcing authority or enforcement mechanisms, the universal human rights system, including its [UPR mechanism](#), offers civil society around the world valuable opportunities for advocacy. The UPR offers a space for communities affected in their civil, political, economic, social or cultural rights to have their claims heard. Generally speaking, responsibility for violated rights is adjudicated to the state within the territory of which these rights violations occur. Thus, when China undergoes its UPR, the bulk of the recommendations that the Chinese state receives relate to the treatment of Chinese citizens within the territory of China. However, nothing prevents communities affected in their rights in other countries, say Latin American ones, from submitting claims regarding the actions of another UN member state. In other words, nothing prevents any group that has suffered a violation of their rights from invoking the principle of extraterritoriality to demand that a foreign state comply with the human rights obligations it contracted when accepting UN instruments, as well as through any voluntary commitment that it may have ratified and taken upon.

That is precisely what we intend to do during China's UPR examination. In view of this process, Ecuador's Centre for Economic and Social Rights (CDES), Argentina's Environment and Natural Resources Foundation (FARN) and Peru's CooperAcción, along with the China-Latin America Sustainable Investment Initiative (CLASII), have created a regional alliance to collaborate to research and prepare a national shadow report for each of the South American countries included in the project, as well as a regional shadow report. In March 2018 these reports will be submitted to the Office of the United Nations High Commissioner for Human Rights as inputs to the UPR examination of China.

This initiative came to life in 2017, as we searched for a regional alliance to strengthen our advocacy work in relation to the Chinese state. For us, participation in the UPR mechanism is a window of opportunity to channel our concerns and make visible the multiple human rights violations suffered by the communities affected by projects the funding and operation of which are linked to investments of the Chinese state.

As organisations, we have an extensive and proven track record of work on international financing and human and environmental rights. We are among the few civil society organisations in the region that have carried out systematic research and advocacy work on Chinese investments in their respective countries. In addition, we enjoy the trust, credibility and recognition of grassroots organisations and other relevant actors. In fact, in several instances we have advocated towards Chinese entities to improve substantially their environmental and social behaviour and act as good global citizens. The lack of answers from these entities has led us to seek new spaces of dialogue with the People's Republic of China in international forums. We hope that China's UPR and other UN mechanisms will provide the much-needed space for a serious commitment on the part of Chinese banks and companies to internalise human rights principles in their overseas operations.

3. How is the initiative legally backed? What instruments, conventions and legislation will you appeal to in order to support your claims?

The People's Republic of China has ratified several international human rights instruments. Among them, the most important ones in building the framework of reference and argumentation for the work that we intend to do are the [International Covenant on Economic, Social and Cultural Rights](#), the [Protocol of San Salvador](#) (Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights) and the [Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights](#). The Maastricht Principles, in particular, establish that states have an obligation to respect, protect and fulfil economic, social and cultural rights both within their territory and outside it, and stipulate that state responsibility extends to acts and omissions of non-state agents acting on instructions or under the direction or control of the state.

It should be noted that although our argument is based on the principle of extraterritorial responsibilities, this does not exclude the possibility of shadow reports appealing to other international instruments that make up the UN universal system, even if they have not been ratified by the Chinese state. In that regard, it should be presumed that, by agreeing to be a UN member state, China has committed to promoting its principles and supporting the implementation of international treaties, pacts and agreements drawn up within the organisation.

It is also important to point out that according to Article 16 of the Chinese Constitution, state enterprises have decision-making power with respect to operation and management within the limits prescribed by law, provided that they submit to the unified leadership of the state, in which case they must comply with all the obligations set forth by the state plan. In other words, Chinese state-owned companies are quasi-state actors. They function as an extension of the structure of the Chinese state, since they belong to it, are sponsored by it or act in pursuit of its interests. This turns the human rights responsibilities of the state companies of the People's Republic of China into responsibilities of the Chinese state.

We interpret the facts that China occupies a position in the UN Human Rights Council and that, during a visit by the UN Secretary-General to China, the Chinese Foreign

Minister [stated](#) that “the UN is an effective platform for responses to global challenges and the central institution for international efforts to handle global affairs,” as creating a window of opportunity. The UPR of the People's Republic of China that will be held in November 2018 is the closest and most concrete opportunity that we have.

- Get in touch with [CDES](#), [CooperAcción](#), [FARN](#) and [CLASII](#) through their webpages, or follow [@CDESecuador](#), [@CooperAccionPER](#), [@farnargentina](#) and [@PaulinaGarzón](#) on Twitter.