

# The limits of self-regulation and soft law in Business and Human Rights from a victims perspective:

Reflecting on the human rights impacts by corporations from Chile, China and Spain in Peru



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# Table of Contents

Introduction	5
Methodology	6
Table 1 – International, Regional and Domestic Human Rights and Business-related regulations for Spain and Chile	6
Table 2 – International and Domestic Human Rights and Business-related regulations for China	7
Table 3 – List of companies according to home country and BHR/CSR credentials	8
Obstructing labour rights	9
Freedom of association and collective bargaining	9
Working conditions and occupational health and safety	11
Regulations	11
Occupational health and safety practices	11
Labour inspections	12
Obstacles to tax justice	13
Self-reporting human rights and CSR accolades	13
Piercing the corporate veil	14
Indigenous Communities - Obstacles to the right to live in a clean and sustainable environment	14
Oil drilling in indigenous territories within the Amazon	15
Impacts to Andean communities by Chinese mining	16
Final Reflections	18
Recommendations	20

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## Introduction

Optimism grew for rightsholders, especially the global south after the endorsing by the United Nations (UN) Human Rights Council, states and businesses of the UN Guiding Principles for Business and Human Rights (UNGP) in 2011. The UNGP reaffirmed the state's duty to protect and businesses responsibility to respect all human rights, and for both these actors to provide access to remedy when either has caused human rights harms. Though not a binding legal instrument, the UNGP still generated further enthusiasm by governments to develop and publish National Action Plans (NAPs) on implementing the UNGP. Businesses also leaped to usher in policy commitments to a respect for human rights. In fact, according to the Business and Human Rights Resource Centre there are now at least 369 corporate promises to respect human rights.

Given this background, we were interested in bringing together and synthesize recent research conducted that examined the impacts of 14 companies from diverse sectors in Peru, with home countries in Chile (6) and China (4) and Spain (4)<sup>1</sup> prepared by the Center for Public Policy and Human Rights (Peru EQUIDAD)<sup>2</sup>. Table 1 merges the different Business and Human Rights related norms and standards at the international (mostly UN level) that the Chilean and Spanish states have committed themselves, followed by at the regional level followed by a summary of their respective NAPs. Table 2 lists the different international BHR norms and standards that China has pledged commitments to followed by the Chinese chamber of commerce's mining sector guidelines on human rights respect.

Table 3 offers a perspective on the self-reported claims by the 14 corporations from Chile, China and Spain on BHR related areas such as policy commitments, memberships of international corporate responsibility bodies such as the UN Global Compact, certifications, awards and recognitions. Next we detail our synthesis from the findings provided by the three publications on the human rights impacts by Chilean, Chinese and Spanish companies in Peru. We separate the findings into labour and indigenous community rights sub-sections, providing examples of human rights harms caused by all 14 companies, taking a victims perspective.

The findings lead us to be less optimistic with our reflections regarding the state of BHR and foreign investment by companies in Peru, most of whom, boldly claim to be committed to, and acting responsibly with regards to human rights. The findings show human rights abuses caused by companies, to differing degrees to labour and indigenous community rights. We also highlight human rights impacts caused by tax injustice and avoidance. This analysis leads us to question the potential gains or 'return on investment' offered by this voluntary approach to BHR, which places tremendous emphasis on 'promoting' and 'training' actors on the challenges ahead. The findings overall point to the hegemony of neoliberalism and profit maximization to the detriment of human rights, albeit enshrined in international

<sup>1</sup> Peru EQUIDAD (2018) Vulneraciones de los derechos humanos generados por empresas chinas que operan en el Perú available from: [https://docs.wixstatic.com/ugd/6f0244\\_ffafab914f7a4bee8aa560d2ee5f503c.pdf](https://docs.wixstatic.com/ugd/6f0244_ffafab914f7a4bee8aa560d2ee5f503c.pdf); Perú Equidad (2019) Impacto en los Derechos Humanos de empresas españolas que operan en el Perú [https://docs.wixstatic.com/ugd/6f0244\\_fb78ac7751d142b59bab8c12657318b4.pdf](https://docs.wixstatic.com/ugd/6f0244_fb78ac7751d142b59bab8c12657318b4.pdf) and; Perú EQUIDAD (2019) Informe sobre los impactos en los derechos humanos de empresas chilenas que operan en el Perú [https://docs.wixstatic.com/ugd/6f0244\\_14a2c5da670a44a58c88f9a4511da340.pdf](https://docs.wixstatic.com/ugd/6f0244_14a2c5da670a44a58c88f9a4511da340.pdf)

<sup>2</sup> The Center for Public Policies and Human Rights - Peru EQUIDAD is a peruvian non-governmental organization focused, among other aspects, on the defense and promotion of the rights of indigenous peoples and other vulnerable populations, as well as on the monitoring of the impacts of companies and trade and investment agreements in the enjoyment of human rights. Equidad is a member of the International Federation of Human Rights, IGWIA and the Consortium on Extraterritorial Obligations of States (ETO). The ETO Consortium is a global network formed by more than 140 CSOs and people from the academic world that seeks to raise awareness and advance the implementation of the Extraterritorial Obligations of States (ETO). See [www.equidad.pe](http://www.equidad.pe).

treaties, norms and standards. Consequently, we argue, and call for a genuine change in approach to tackling BHR, pointing to the zero draft treaty, where legal liability and the role of courts would play a more prominent role in working to guarantee justice to rightsholders from harms caused by business.

## Methodology

We considered 14 Multinational Enterprises (MNEs) for this study (six with their home country in Chile, four from Spain and four from China) to examine their human rights related impacts in the host country of Peru where all of them operate. We present the international regulations on Business and Human Rights (BHR) pertaining to the three countries in two separate tables (1 and 2) since China does not subscribe to an extensive array of UN or regional human rights nor does it have a National Action Plan on Business and Human Rights like Chile and Spain. Table 1 provides an overview of the companies (country, sector and CSR credentials).

We also conducted interviews with trade union and indigenous community leaders in addition to conducting extensive archival analysis for each case. We formally requested information from the Ministry of Labor and Employment Promotion (MTPE) and the Superintendency of National Labor Inspection Office (SUNAFIL) on the number and type of labor infractions applied to the companies analyzed in this report, which was sent electronically. In terms of human rights impacts we take a broad definition to include labour, environment, community and tax justice.

This report synthesizes, compares and contrasts the detailed findings by Perú EQUIDAD in their separate publications on Chilean, Spanish and Chinese companies’

**TABLE 1 - INTERNATIONAL, REGIONAL AND DOMESTIC HUMAN RIGHTS AND BUSINESS-RELATED REGULATIONS FOR CHILE AND SPAIN**

	CHILE	SPAIN
<b>UN - INTERNATIONAL (APPLICABLE TO BOTH COUNTRIES)</b>	The Universal Declaration of Human Rights; the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP); the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; the Optional Protocol to the International Covenant on Civil and Political Rights; the International Convention on the protection of the rights of all migrant workers and their families; the Convention on the rights of persons with disabilities; the Optional Protocol to the convention on the rights of persons with disabilities; Conventions of the International Labour Organization (ILO) on the fundamental rights of workers; ILO Convention 169 on indigenous and tribal peoples; the second optional protocol to the international civil and political rights pact, aimed at abolishing the death penalty; the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; The International Convention for the protection of all persons against enforced disappearances.	
<b>REGIONAL LEVEL</b>	<ul style="list-style-type: none"> <li>• The American Convention on Human Rights “Pact of San José de Costa Rica;”</li> <li>• The Inter-American Convention for the Elimination of All Forms of Discrimination against Persons with Disabilities;</li> <li>• The Protocol of the American Convention on human rights regarding the abolition of the death penalty.</li> <li>• The Inter-American Convention to prevent, punish and eradicate violence against women (“Convention of Belém do Pará”).</li> <li>• The American Declaration of the Rights and Duties of Man; the International Convention on the Elimination of All Forms of Racial Discrimination;</li> <li>• The Convention against torture and other cruel, inhuman or degrading treatment; the Inter-American Convention to prevent and punish torture</li> </ul>	<ul style="list-style-type: none"> <li>• Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms that recognizes certain rights and freedoms of those already contained in the Convention and in the Additional Protocol to the Convention (Council Agreement No. 46 of Europe);</li> <li>• Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Council Agreement No. 117 of Europe);</li> <li>• Protocol 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the general prohibition of discrimination;</li> <li>• Protocol No. 14 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control mechanism of the Convention;</li> <li>• Convention for the Protection of the Rights of Man and the dignity of the Human Being with respect to the applications of Biology and Medicine: Convention on Human Rights and Biomedicine;</li> </ul>

	CHILE	SPAIN
		<ul style="list-style-type: none"> <li>• Framework Agreement for the Protection of National Minorities;</li> <li>• European Social Charter. Spain is currently in the process of ratifying the Revised European Social Charter;</li> <li>• Council of Europe Convention on the Fight against Trafficking in Human Beings;</li> <li>• Council of Europe Convention for the Protection of Children from Exploitation and Sexual Abuse;</li> <li>• Convention of the Council of Europe for Action against Trafficking in Human Beings;</li> <li>• Convention on Prevention and Fight against Violence against Women and Domestic Violence;</li> </ul>
<b>NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS 2017 – KEY ACTIONS AND MEASURES COMMITTED BY THE STATE</b>	<ul style="list-style-type: none"> <li>• The state will sensitize and provide training on the UNGPs and related toolkits to relevant state functionaries including embassies.</li> <li>• The Ministry of Labour and the National Institute for Human Rights will also provide UNGPs related trainings and observations on state policies.</li> <li>• The International Affairs Unit of the Ministry of Labour supports the inclusion of the UNGPs in trade agreements signed by Chile.</li> <li>• Business members of the Social Responsibility Council for Sustainable Development of Chile should adopt Memorandums of Understanding, and the adoption of guides, manuals and best practice guidelines aligned with human rights standards that focus on: Labour practices, impacts on communities, supply chain management.</li> <li>• The National Contact Point for the OECD Guidelines for MNEs should disseminate periodic reports to Chilean embassies and diplomats.</li> <li>• The Social Responsibility Council for Sustainable Development of Chile, is tasked with established a Working Group on human rights and business to analyze strategies for integrating human rights standards into business activity, share good practices and analyze documents and tools to be promoted by the Council on this subject.</li> </ul>	<ul style="list-style-type: none"> <li>• Convention No. 29 on forced or compulsory labour.</li> <li>• To sensitize and provide training to companies on the UNGPs and other human rights norms together with other key organizations such as the OECD Guidelines for MNEs National Contact point and UN Global Compact business association, UNICEF.</li> <li>• Promote sectoral codes of self-regulation.</li> <li>• Capacity build foreign relations government staff.</li> <li>• Collect voluntary CSR reports by Spanish companies.</li> <li>• National Contact Point for OECD Guidelines for MNEs will act as main contact point for information about UNGPs.</li> <li>• Will create a Working Group in charge of developing an Action Plan to align Spanish economic internationalization with the UNGPs.</li> <li>• Will promote inclusion of references to human rights in investment and trade agreements.</li> <li>• The Monitoring Commission will develop a report to state the judicial mechanisms for the civil responsibilities of Spanish firms who cause human rights harms and have not conducted their due diligence as per Pillar II of the UNGPs.</li> <li>• Together with civil society will promote and communicate available remedy mechanisms for victims of human rights abuses caused by companies.</li> <li>• To create a report on extrajudicial grievance mechanisms as well as mechanisms for mediation.</li> </ul>

**TABLE 2 – INTERNATIONAL AND DOMESTIC HUMAN RIGHTS AND BUSINESS-RELATED REGULATIONS FOR CHINA**

<b>INTERNATIONAL</b>	<p>International Covenant on Economic, Social and Cultural Rights - The responsibility of the state extends to (...) acts and omissions of non-state actors acting on instructions or under the direction or control of the State in question.” And, as a consequence, states not only “must refrain from acts or omissions that create a real risk of nullifying or impairing the enjoyment of extraterritorially economic, social and cultural rights,” but must also evaluate in advance and with public participation of “the measures that (...) must be taken to prevent violations or ensure that they cease, as well as to guarantee effective remedies”.</p> <p>The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)</p>
<b>NATIONAL</b>	<p>China Chamber of Commerce of Metals, Minerals &amp; Chemicals Importers &amp; Exporters (CCCIMC) - Guidelines for Social Responsibility in Outbound Mining Investments<sup>4</sup> – “The social responsibility of Chinese outbound mining investment is that companies should proactively consider legal, ethical, social, and environmental factors in their decision-making processes and operations. They must thoroughly respect the rights and interests of stakeholders by practicing ethical and transparent behavior and effectively managing the social and environmental impact from mineral exploration, extraction, processing, investment, and related activities and to strive for harmonious mineral development operations” (CCCIMC, 2014 p.28).</p> <p>2.4.1 Ask for the implementation of the UNGPs (policy commitment, due diligence and cooperate with the local community remedy human rights impacts).</p> <p>2.4.3 Minimize involuntary resettlements of people residing in the mining area and compensate fairly where inevitable.</p> <p>2.4.4 Respect the culture and protect the heritage of local communities and indigenous peoples, minimize the cultural impact, and do not harm traditional cultures of local peoples by the mining operation.</p> <p>2.4.5 Protect the rights for free, prior and informed consent of local communities including indigenous peoples.</p> <p>2.5 Providing job opportunities and paying wages and other remunerations to employees is an important economic and social responsibility of companies. Responsible labor practices are essential for social justice, societal stability, and a harmonious society. The labor practices of companies include respecting employees’ rights to freely select their jobs and have fair and appropriate working conditions.</p> <p>2.5.8 Establish a collective bargaining mechanism between employers and employees according to local laws and customs, if applicable, and encourage employees to engage in company management.</p>

human rights impacts in Peru. For further details please refer to these publications.<sup>3</sup>

<sup>3</sup> Ibid

<sup>4</sup> China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (2014) Guidelines for Social Responsibility in Outbound Mining Investments [https://www.emm-network.org/wp-content/uploads/2015/03/Guidelines\\_for\\_Social\\_Responsibility\\_in\\_Outbound\\_Mining\\_Investments.pdf](https://www.emm-network.org/wp-content/uploads/2015/03/Guidelines_for_Social_Responsibility_in_Outbound_Mining_Investments.pdf)

**TABLE 3 – LIST OF COMPANIES ACCORDING TO HOME COUNTRY AND BHR/CSR CREDENTIALS**

Chilean	Human rights and CSR credentials	Spanish	CSR credentials	Chinese	CSR credentials
<b>Geopark (extractives)</b>	Colombian government granted GeoPark in 2018 the “Best Social Practices in the Energy Industry.” ISO 14001; Greenhouse gas emissions 40% lower than oil industry average according to the Colombian Institute of Technical Standards and Certification ICONTEC; Certified by the Ministry of Health in Magallanes, Chile for having a Healthy Work Environment.	<b>Repsol – (Extractives)</b>	UN Global Compact member. Global Reporting Initiative compliant. Policies on human rights, communities, environment and others. For the seventh consecutive year was awarded “Socially Responsible Company” of the year in 2018 by Peru 2021. The Sociedad Nacional de Minería, Petróleo y Energía awarded Repsol Peru the Sustainable Development Award for 2018 for its “Sustainable management of the Machiguenga Communal Reserve.”	<b>Las Bambas (Extractives)</b>	Operate in accordance with UNGPs, Voluntary Principles on Security and Human Rights (VPSHR) and International Council for Mining and Metals (ICMM); and Free Prior Informed Consent of Indigenous Peoples. “We integrate human rights considerations into our Code of Conduct, employment processes, risk-analysis activities and formal grievance processes. We ensure our stakeholders are confident to report instances of unacceptable conduct without fear of intimidation or reprisal <sup>5</sup> ”
<b>Grupo Cencosud (Retail)</b>	UN Global Compact member. Global Reporting Initiative compliant. Human Rights Respect policy. Wong Supermarket won the Labour Social Responsibility award in the Ethics and Integrity category of the Good Employers Association (ABE in Peru) in 2017. Wong also won four different CSR related prizes for its La Ponchila campaign in 2017. Cencosud Peru was also recognized by the Peruvian Ministry of Work and Employment for its immediate assistance to victims of the El Niño phenomenon in 2017. Cencosud Peru was also recognized by the Peruvian Ministry of Work and Employment for its immediate assistance to victims of the El Niño phenomenon in 2017.	<b>Telefónica (Telecoms)</b>	UN Global Compact member. Global Reporting Initiative compliant. Commitment to Human and Labour Rights (references to ILO).	<b>Chinalco (Extractives)</b>	No information available.
<b>Ripley (Retail)</b>	No information available.	<b>BBVA (Banking)</b>	UN Global Compact member. Global Reporting Initiative compliant. Top 15 best place to work awarded by Great Place to Work in 2014.	<b>Shoudang Hierro Perú (Extractives)</b>	No information available.
<b>Saga Falabella (Retail)</b>	UN Global Compact member. Global Reporting Initiative compliant. Human rights policy; Commitment to gender equality.	<b>Prosegur (Security)</b>	UN Global Compact member. Global Reporting Initiative compliant. Corporate level human rights policy. Adhere to OECD guidelines for Responsible Tax.	<b>Río Blanco (Extractives)</b>	Commitment to Community Development and Stakeholder Engagement.
<b>Protisa (Paper)</b>	No information available. However, parent company CMPC in Chile is member of UN Global Compact, reports under the Global Reporting Initiative and is certified by the Forestry Stewardship Council (FSC) which includes a core component of respect to labour, human and indigenous rights.				
<b>Abastible (Liquid gas)</b>	No information available.				

<sup>5</sup> MMG website <http://www.mmg.com/en/Sustainability/Human-Rights.aspx>





Obstructing labour rights

### Freedom of association and collective bargaining<sup>6</sup>

In an effort to remain as objective as possible we highlight complaints made by unions against the companies considered within this report. Unions have denounced anti-union or union-busting tactics from all but one of companies (Repsol) considered within this study. The main difference between the Chilean and Spanish domiciled companies was the severity of union-busting; Chilean firms were found to be far more explicit in their abusive practices against union workers than Spanish ones. In fact, the Spanish companies enjoy higher than average levels of unionization compared to the national average in Peru (Telefónica and Repsol with 29% and 31% in 2019 respectively). Nonetheless, these three companies have been denounced by trade unions for their hostile behaviours towards unionized workers. The Unitary Union of Workers of Telefonica of Peru (SUTTP) denounced that when an employee vacates the position of union leader and returns to perform his/her usual duties, the company makes it difficult to reinstate him/her, arguing they no longer have an available position for the worker; or forces the worker to go through irrelevant mental and physical exams. Such measures operate as a disincentive for workers who are affiliated with SUTTP.

The situation at some of the Chilean firms is more alarming. The union at Cencosud, SUTRAGRUCEP denounces that the union leaders are exposed to acts of harassment and pressure by their employer, which include suspensions and reprimands addressed to their secretary general. CENCOSUD, for example, has filed a legal complaint against SUTRAGRUCEP, accusing it of “aggravated defamation” in a digital video communication and a flyer disseminated through the union’s social

<sup>6</sup> The right to freedom of association and freedom of association, proclaimed in the Universal Declaration of Human Rights (1948), constitutes an enabling right that allows the effective participation of non-state actors in economic and social policy, and constitutes the core of democracy and the rule of law. Therefore, guaranteeing the participation and representation of workers is essential to ensure the effective functioning, not only of labor markets, but also of general governance structures at national level. Collective bargaining - closely linked to freedom of association - is a fundamental right enshrined in the ILO Constitution and reaffirmed as such in the ILO Declaration on Fundamental Principles and Rights at Work, 1998. It also constitutes, a key means by which employers and unions can establish fair wages and working conditions, and ensure equal opportunities between women and men. Also lay the basis for building good working relationships around issues such as, among others, wages, hours of work, training, safety and health at work, and equal treatment.

networks and by means of a public flyer. SUTRAGRUCEP, for its part, filed a complaint with SUNAFIL, reporting the hostility of the Head of Human Resources against the union's Secretary of Defense. According to SUTRAGRUCEP, the company offers "incentives" to workers to disenroll from the union. Thus, during in the course of 2018 there were 20 disaffiliations. Similar complaints were filed and rules in favour of the SUTRAGRUCEP union against Protisa.

Cencosud was also accused of coercing unionized workers to sign for voluntary redundancies "Threatening them that, if they did not accept, they would have problems at work since that area would be outsourced, which is illegal."<sup>7</sup> Collective labour relations, likewise, were not conducted properly. For example, during 2017 the collective bargaining process could only conclude after a 23-day strike that was declared appropriate and legal.

At Abastible, in another union-busting case, the union SINTRASOLGAS filed a complaint against the corporation for paying better salaries and benefits to non-unionized members. A similar complaint was filed and won by the SUTRAGRUCEP union against Protisa. Whilst the unionized workers received S/ 1,587 soles the unaffiliated worker received a salary of S/ 1,730.10 soles.

Meanwhile at Spanish bank BBVA, there were two complaints filed by the union about the unlawful termination of employment contracts of two female employees after they gave birth, one in 2012 and the other in 2015. In both instances the legal courts ordered the company to reinstate these workers into the bank. Chilean companies have also been fined by regulators SUNAFIL for their union-busting natured practices against workers who have publicly spoken out against company for its anti-human rights conduct. SUNAFIL ruled in favour of union representatives at Ripley in 2013 who had been reprimanded, harassed and gave verbal and written warnings (including suspension letters) to unionized staff.

Also, in 2013 Ripley was sanctioned by SUNAFIL for the dismissal of the union's secretary general also a member of the Occupational Health and Safety Committee, for posting comments that questioned his employer on facebook. SUNAFIL stated "It was proved that Mr. Cornejo's dismissal was an excessive measure of the management power and the sanctioning power of the company, because his publications on Facebook have not broken good faith working relations (...) and which were made as a union leader who had been successively harassed by the employer, having been constantly suspended (...)".<sup>8</sup> Again, that same year Ripley Trujillo stores criminally denounced another union leader for a comment posted on the union's Facebook page, criticizing the Human Relations head for having fired a worker. Again, SUNAFIL ruled in favor of the worker and the union.

Furthermore, at Ripley union leaders reported being subjected to other acts of hostility and anti-union discrimination, expressed in unjustified or disproportionate reprimands. The company sanctioned workers for distributing union material in the staff canteen, during snack time, claiming that such an act was prohibited. SUNAFIL once again found the company guilty of obstructing the freedom of association, which harmed the right to representation of 577 unionized workers.

Shougang's poor relationship with its workers and employees has a long history of complaints of bad anti-union practices, irregular outsourcing, fraudulent

<sup>7</sup> Complaint at SUNAFIL for harassment by the Head of Human Relations. Dated 04.05.18.

<sup>8</sup> Acta de infracción N° 2708-2013-MTPE/1/20.4. Resolución Sub directoral N° 37-2018-MTPE/1/20.45.

<sup>9</sup> Peru EQUIDAD (2018) Vulneraciones de los derechos humanos generados por empresas chinas que operan en el Perú available from: [https://docs.wixstatic.com/ugd/6f0244\\_ffafab914f7a4bee8aa560d2ee5f503c.pdf](https://docs.wixstatic.com/ugd/6f0244_ffafab914f7a4bee8aa560d2ee5f503c.pdf)



modal hiring, wage discrimination, non-compliance with health and safety at work standards (between 2000 and 2011 they recorded 11 fatal accidents). In terms of Chinese companies, the Shougang Workers' Union during the 2016-17 collective bargaining agreement requested a salary increase of S/. 8.40 soles per day (US \$ 2.50). The company, meanwhile, offered - as Shougang general manager Mr. Raul Vera stated an increase of just S / 0. 85 soles or just US \$ 0.25 cents per day, far less than other Peruvian mining companies with fewer comparative advantages<sup>9</sup>.

### Working conditions and occupational health and safety<sup>10</sup>

#### Regulations

The work, according to Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), must be decent work; that is to say, a work that respects the fundamental rights of the human person, as well as the rights of the workers in relation to conditions of labor security and remuneration. These fundamental rights also include respect for the physical and mental integrity of the worker in the exercise of his employment and, therefore, the prevention of accidents and occupational diseases is a fundamental component of the right to just and favorable conditions of work, and keeps close relationship with other rights recognized in the covenant, in particular with the right to the highest possible level of physical and mental health.

To guarantee the right of workers to enjoy safe and healthy working conditions, Article 29 of the Peruvian Occupational Health and Safety Act (Law No. 29783), provides that in each company with more than 20 Workers must establish a Joint Committee responsible for overseeing occupational health and safety issues.

Workers' representatives are elected by secret ballot organized by the union and with material support from the company. However, companies do not always comply with the provisions of the standard.

<sup>10</sup> The right of every person to enjoy equitable and satisfactory working conditions is recognized in the International Covenant on Economic, Social and Cultural Rights and in other international and regional human rights treaties, as well as in various related international legal instruments, such as conventions and the recommendations of the International Labour Organization (ILO). That right is an important component of other labour rights enshrined in the Covenant and the corollary of the right to a freely chosen and accepted job.

## Occupational health and safety practices

Occupational health and safety committees are required by law (with the participation of unionized employees where applicable). Once more we find the most questionable infractions to labour rights in this section committed by the Chilean firms. However, union members at four of the Chilean companies (Cencosud, Abastible, Ripley and Protisa) and at Spanish BBVA bemoaned of irregularities by their employers. Perhaps most serious of all were the practices by Cencosud, Protisa and Abastible who enforce more non-unionized employees into the committee therefore vote in favour of corporate proposals, and against the union voice. At Cencosud and Abastible workers complained about the lack of participation in designing these committees (which is stipulated by ILO conventions).

Another issue with occupational health and safety is that of ergonomics. Ripley was sanctioned by SUNAFIL for failing to prove compliance with ergonomics standards: (a) by not providing training in posture and positioning techniques, and (b) for failing to implement measures to alternate standing and sitting postures for workers who perform their work.

In 2014, Ripley was sanctioned again by a labour inspection for non-compliance with ergonomics standards. It is stated in the infraction record that workers do not have work tables that meet the minimum safety and comfort requirements, that are suitable for work in a sitting position. In 2016, Ripley was again sanctioned by SUNAFIL for: (1) not having carried out the Occupational Medical Exams of the 2013 period, (2) for not keeping the 2013 occupational diseases registry updated; (3) for not accrediting the consultation and participation of workers in the change of operations. According to the Union, several cases of fibromyalgia have been reported at Ripley, with women workers reporting the most incidents. However, according to the Union, the company has refused to recognize this problem as an occupational risk factor.

At Protisa there were problems around the high temperatures recorded in the boiler environment, which according to the leaders reached 36 ° -37 °. Labour regulators SUNAFIL demanded Protisa to adopt corrective measures. The union SUTRAPROTISA also referred to the recurrence of ergonomic problems to a group of workers exposed to excessive weights, particularly the coils. This weight exceeded the technical parameter recommended by the ILO, equivalent to 30 kilos. Unionized workers were most affected by being “forced to load coils of 80 to 90 kilos in a usual way, threatening their health. Evidence of can be seen by the fact that series of workers with spinal and cardiovascular problems due to the excessive weights they are subjected”. This situation led to the fact that “every month there are accidents that affect workers, with loss of fingers, electrocuted, phalange losses, labor pressures in intensive days that lead to accidents at work and patience of the management of human management.<sup>11”</sup>

## Labour inspections<sup>12</sup>

According to the data we received from SUNAFIL Saga Falabella (from Chile) and Telefónica from Spain were the two most reported companies by workers who called for labour inspections (209 and 178 complaints respectively). Unions from Cencosud and Abastible manifested their lack of trust in the work inspector regulator SUNAFIL

11 Manco Zaconetti. “Invasión de capitales chilenos”. Diario Uno. Available from: <http://diariouno.pe/columna/invasion-de-capitales-chilenos/>  
12 In accordance with ILO Convention 81 (1947) every ILO member - and Peru is - must maintain a labour inspection system responsible for ensuring compliance with legal provisions relating to working conditions and protection of workers in the exercise of their profession, such as provisions on hours of work, wages, safety, hygiene and welfare, employment of minors and other related provisions; provide technical information and advise employers and workers on the most effective way to comply with legal provisions; and inform the competent authority of deficiencies or abuses that are not specifically covered by existing legal provisions.

arguing, the authority tends to favour the side firms. Furthermore, according to both unions SUNAFIL often allows companies to undergo corrective actions without fining, or giving them a reduced infraction. These union representatives summed up their suspicions of collusion between SUNAFIL and the company, which can be observed since company representatives appear to be expecting the ‘unannounced’ labour inspections by the authority. The company which received the lowest proportion of fines is Saga Falabella with only 10% of its complaints resulting in fines whilst only 17% at Spanish BBVA Continental. At the other end of the spectrum Ripley and Falabella reported the highest rates of fines from labour inspections (44% and 31% respectively).

At Ripley a rather different red flag was raised when former official from the Ministry of Work and Employment Promotion (MPTE), Carlo Magno Ronceros was hired as Head of Labour Relations at Ripley Peru, in what constitutes a clear conflict of interest. According to his LinkedIn online profile, Ronceros holds this position since November 2012 to the present. Before joining Ripley, Ronceros had served as an MPTE advisor/conciliator between April 2010 and October 2012. This thus fails to comply with the provisions of Law No. 27588, Law on Incompatibilities and Responsibilities of Public Employment Personnel, which establishes that public officials are unable to work with private companies or institutions within the specific scope of their function or commissioned, at least up to one year after having ceased or completed its services in the public sector. In a more positive light, as a result of mediation between SUNAFIL, SUTRAPROTISA union and Protisa from labour inspections the arrangements and relations have improved between staff and company. As SUTRAPROTISA states, “now the company is consulting the workers”. Both parties have even incorporated into the collective bargaining agreements some financial compensation or the granting of free days in case of family needs. According to the union, periodic meetings with the company deal with addressing aspects related to human resources management, security treatment and accounting aspects.

## Obstacles to tax justice<sup>13</sup>

This section of the report will review the tax policies of the Chilean and Spanish companies. The approach used is that of fiscal justice and is based on the analysis of the following criteria: CSR and transparency policies; access to benefits; tax privileges and practices; and its relationship with the state.

## Self-reporting human rights and CSR accolades

It is striking to see from Table 2 that most of the companies have some sort of CSR and even human rights related commitments and actions and accreditations to international standards. All four Spanish companies analyzed in the report are members of the largest and best-known global CSR standard the UN Global Compact, which has ten principles, six of which are directly linked to labour and human rights. Secondly, all four Spanish firms have reported in line with the Global Reporting Initiative (GRI), the most comprehensive and used sustainability reporting framework in the world (which includes core sections on human and labour rights). In Spain Telefónica, Prosegur and Repsol have dedicated policy commitments to human rights citing the ILO (Telefónica) and the OECD guidelines for Responsible Tax (Prosegur). In terms of Chilean companies, Cencosud and Saga Falabella seem to stand out (if we do not consider Protisa’s parent company of CMPC in Chile). Both Cencosud and Saga Falabella are Global Compact members and GRI compliant as well

<sup>13</sup> Taxes are important because with them states obtain resources to provide, education, health, safety, justice, public works, fight against poverty and boost economic sectors that are fundamental to the growth of the country’s economy. When companies hide information in this regard or avoid paying their taxes, they prevent governments from allocating sufficient resources to meet the needs of society.

as stating explicit commitments to the respect of human rights. Even the relatively small Chilean oil explorer GeoPark flaunts its CSR accolade in “Best Social Practices in the Energy Industry” awarded by the Colombian government. The company is also ISO 14.001 certified for its environmental performance. All companies besides Abastible and Protisa display their awards and recognition for CSR and human rights related performance. Most notable were the awards of best labour practices to Wong supermarket (Cencosud) by the Peruvian government and to Repsol for its “Sustainable management of the Machiguenga Communal Reserve” also by the Peruvian authorities. Nonetheless, despite these self-proclaimed accomplishments in CSR and human rights we present data in the following which questions the overall impact of these companies towards rightsholders and society at large.

### Piercing the corporate veil<sup>14</sup>

When investigating each firm, we found complex legal and governance arrangements for most of them. It was not simple and straightforward to identify who owned the companies under scrutiny here. Some of the companies were subsidiaries of different holdings located in other countries such as Protisa, who belong partly to a company based in the tax paradise of the Cayman Islands and Guernsey. We found a similar story with Repsol and BBVA with links to the Cayman Islands. Saga Falabella, on the other hand has corporate ties to Panama as do BBVA bank, and Ripley who were both revealed to be benefiting from the offshore paradise scheme in the infamous Panama Papers<sup>15</sup> investigation from 2016.

One significant perturbing trend we observed amongst some of the companies was that of reporting higher sales year on end despite declaring lower profits. This phenomenon that we noticed in the financial reporting by Abastible, Saga Falabella, Telefónica and Repsol alludes to tax avoidance or evasion strategies. See the original reports of Chilean and Spanish firm impacts for the precise details of these cases.

Both Abastible<sup>16</sup> and the Chilean holding of Protisa, CMPC were fined for price-fixing in December 2017 and between 2004 – 2014 respectively. Peruvian found Abastible guilty of participating in a price-fixing cartel along with other gas companies and fined them for S/ 74 million. Telefónica Perú, in particular has struggled with legal court cases and litigation against its fiscal conduct, which the company even acknowledged in its 2018 financial reporting statement. The Peruvian telecoms regulator OPSITEL fined Telefónica S/ 591,000 soles in 2014 for reporting incorrect data about its operations.

### Indigenous Communities-Obstacles to the right to live in a clean and sustainable environment

Article 4 of UNFRIP states that “Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.” This means, as per Article 28 that “States shall consult and cooperate in good faith with the indigenous peoples concerned through

<sup>14</sup> The concept of corporate social responsibility (CSR) demands that companies demonstrate a certain degree of openness and transparency in relation to the activities they carry out and, in particular, regarding the taxes they pay. Its fiscal responsibility is a capital aspect in the social commitment that CSR implies. However, many companies create corporate structures aimed at minimizing or canceling the payment of taxes using complex corporate networks established in tax havens. And, although the creation of these structures is carried out within the framework of legality, taking advantage of applications or interpretations of the law taken to the limit, it is clear that in the eyes of society they are unethical or even openly immoral.

<sup>15</sup> Ciper. “The Panama Papers”: Los secretos de chilenos en paraísos fiscales salen a la luz”. Available from: <https://goo.gl/GoJV7n>

<sup>16</sup> For further details see <https://goo.gl/RQeXmE>

their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources". In short, if indigenous communities are opposed to an extractives project being sited on or around their territory due to its negative impacts, states and businesses must respect their wish.

International environmental law has also been the main source for the normative recognition of the human right to live in a healthy environment. Within the scope of the United Nations, the Stockholm Declaration on Human Environment of 1972 introduced the following basic premise: "Man has the fundamental right to freedom, equality and the enjoyment of adequate living conditions in such a quality environment that allows him to lead a dignified life and enjoy well-being, and has a solemn obligation to protect and improve the environment for present and future generations."

The right to live in a healthy environment is also recognized in the Additional Protocol to the American Convention on Human Rights in matters of economic, social and cultural rights ("Protocol of San Salvador") of 1988 that has been formally ratified for Peru, whose Constitution in its article 123 ° proclaims that "Everyone has the right to live in a healthy, ecologically balanced and adequate environment for the development of life and the preservation of the landscape and nature. Everyone has the duty to preserve this environment. It is the obligation of the State to prevent and control environmental pollution."

An adequate environment is considered a precondition for the realization of other human rights, including the rights to life, food, health and an adequate standard of living. States must take concrete and progressive measures, individually and in cooperation with others, to develop, implement and maintain adequate frameworks to enable all the necessary components for a healthy and sustainable environment, which includes the regulation and supervision of companies and other private actors in their national and offshore operations.

### Oil drilling in indigenous territories within the Amazon

In this section we learn of the contradictory side of the environmental claims made by the companies. This paradox, which manifests itself in cases of environmental pollution or ecological harm also negatively impacts on the human



rights of communities in Peru. First for example, we can observe that Repsol was found guilty by Peruvian environmental authorities of contravening air pollution laws at its different operations 15 times between 2000–2014. Most of these infractions took place in the territories of indigenous communities including the Asháninka and Machiguenga. It is worth remembering that Repsol was awarded by the Peruvian Society for Mining and Petroleum for its sustainable management at the Machiguenga community, which now makes for curious reading. Protisa was also found guilty by Peruvian authorities for committing two environmental hazards in its operations in 2015 and 2018.

Between the years 2000 – 2018 Repsol received 44 infractions and 12 fines for incompliance with instruments of environmental management. This resulted in the company owing a total of S/ 1,187,819 in fines to the Peruvian state up until 2018. The most recent of these examples relates to a spill of 1,058 barrels of Liquid Natural Gas in June 2014, which impacted 1,450m<sup>3</sup> of soil<sup>17</sup>.

Lot (oil) 64, pertaining to Chilean oil explorer and producer GeoPark located in the northwest of the Peruvian department of Loreto, impacts the sacred territory and the collective rights of Wampis people. The Wampis' people self-declared their own nation in November, 2015 with their own constitution based on their ancestral cosmology, knowledge and practices. One key declaration from this constitution is that the Wampis nation will not accept extractives operations in their territory due to its incompatibility with their chosen life plan and cosmology. Lot 64 borders the Santiago Comainas reserve, an area considered within the National System of Protected Natural Areas which is located entirely within the traditional territory of the Wampis people. The Chilean company Geopark has owned 75% of Lot 64 since the end of 2014 together with the state-owned company Petro Peru, who own the remaining 25%. Both the Achuar del Pastaza Nation (FENAP) and the Autonomous Territorial Government of the Wampis Nation have expressed their rejection of the project since the first exploitation license was granted in 1995-98. Both indigenous organization have also rejected GeoPark on the grounds that it has intervened in their territories in a colonialist manner promoting organizations that do not have legitimate ancestral representation.

FENAP has stressed that the Environmental Impact Assessment (EIA) does not record existing environmental liabilities in its baseline and alleges that GeoPark has been constructing the route of its future pipeline and road by cutting down trees, without any control or supervision. The EIA also fails to specify details about the transit and frequency of vessels with dry cargo during the construction, operation and abandonment of the lot, which will undoubtedly affect the daily lives and rights of the indigenous communities.

The EIA is also very imprecise in relation to the deforestation that the project will generate in the construction process. Asked on the subject, Mr. José Serra, a specialist in analysis of environmental impact studies of large projects in the Amazon, points out that the EIA omits the real expected deforestation since it has not taken into consideration the constructing of camps, deposits, warehouses and other facilities necessary for building roads.

The EIA notes that there is a risk of altering the surface water without delving into greater details. The authorities themselves affirm that the main source of pollution from the oil industry in the Amazon has not originated from the oil spills but instead from the discharges, over decades, of production waters into the ravines and rivers of

17 For further details see <http://www.prtr-es.es/CH4-metano,15588,11,2007.html>



Loreto<sup>18</sup>. Since 2009, these waters are reinjected into the subsoil, but little is known about the disposal standards used. Inexplicably, the EIA refers to some areas of the project as 'industrial land', for which Peruvian EIA authority ECAS is less demanding. In short, despite the technical misgivings of GeoPark's Lot 64, it is overwhelmingly perplexing that in today's current climate crisis scenario a Chilean company would wish to drill for oil in the world's most biodiverse region, moreover where the local indigenous authorities are outrightly opposed to any oil or mineral extraction. Nevertheless, GeoPark are supported by the necessary legal licences from the Peruvian authorities, who also have much to answer given their duty to protect human rights.

## Impacts to Andean communities by Chinese mining

All four Chinese mining companies were denounced by Andean communities for their environmental impacts which abused their human rights. Communities also complained about the lack of transparency and participation surrounding key modifications to the different EIAs. These alterations enabled the Chinese mining companies to make significant impacts to the rights of the Andean communities. These conflicts led to community protests, which in some cases led to the unfortunate deaths of indigenous community members at the hands of Peruvian security forces. Other grievances relate to the anti-democratic collusion between the mining companies and Peruvian state police, whereby the companies made extra payments for special protection by the state police against community mobilizations.

At Chinalco in March 2014, the Archbishop of Huancayo, Pedro Ricardo Barreto Jimeno, sent a public communiqué to the President of the Republic Ollanta Humala, denouncing that the new homes for resettlement built in New Morococha did not meet minimum conditions of respect for the dignity of people and families. He also called for the guarantee of adequate housing for the non-resettled families of Morococha Antigua, as well as the provision of electricity service necessary to access adequate housing.

In local media, residents of Morococha denounced various abuses by Chinalco. On April 2, 2014, citizen Lucy Alderete Córdor, a resident of Vieja Morococha, denounced that personnel from the mining company Chinalco had proceeded with the demolition of her home without prior notice and without a court order, being inhabited. The affected citizen pointed out that the eviction was carried out by police officers hired by Chinalco, who prevented her from entering her home. In March 2014, the company was ordered by the Environmental Assessment and Inspection Agency (OEFA) to stop the activities of Toromocho, after it was found that this mining company poured acidic waters into the Huacrococha and Huascacocha lagoons, which implied a high degree of risk of environmental damage. Through its Resolution N ° 003-2014-OEFA / DS, the OEFA issued a preventive measure ordering to stop the activities in Toromocho until the OEFA itself controls the situation.

At Las Bambas community mobilization and conflict has been rife. Protests about the impacts of heavy duty mining traffic on a public road (about 400 trucks travel daily on these roads, generating high levels of dust that cause the death

18 "Eliminación del mayor impacto ambiental de los campos petroleros", Organismo Supervisor de la Inversión en Energía y Minería OSINERGMIN, 2009. Ver: [http://www.osinergmin.gob.pe/seccion/centro\\_documental/hidrocarburos/Publicaciones/Eliminacion\\_del\\_mayor\\_impacto\\_ambiental\\_de\\_la\\_Selva\\_Peruana.pdf](http://www.osinergmin.gob.pe/seccion/centro_documental/hidrocarburos/Publicaciones/Eliminacion_del_mayor_impacto_ambiental_de_la_Selva_Peruana.pdf)

19 Reuters News (2019) Indigenous community ends blockade of Peru's Las Bambas copper mine <https://www.reuters.com/article/us-peru-copper-mmg-ltd/indigenous-community-ends-blockade-of-perus-las-bambas-copper-mine-idUSKCN1RP0F5>

of smaller animals) led to death of a community member at the hands of public national police forces in October 2016. The indigenous community held a roadblock for two months until April 2019 in protest at the impacts from the intense daily heavy duty mining traffic had on their lives<sup>19</sup> This heavy transport route was approved, again by a modification to the EIA by the state in 2011. For the Deputy on issues of Environment, Public Services and Indigenous Peoples of the Ombudsman’s Office, Alicia Abanto Cabanillas, the changes in the EIA of Las Bambas were not carried out with transparency or participation.

Las Bambas pays between S /.100 and S /.110 soles (US \$ 30-33) daily, to police officers to provide security to their facilities. These services were endorsed by an inter-institutional agreement signed with the National Police, through the Police Region of Cusco (Office No. 088-2016-REGPOL CUSCO-EM / OID), in the form of “provision of complementary services”.

In December, 2016, a peaceful mobilization was carried out in front of the municipal headquarters of Huancabamba, which brought together about 5,000 farmers who rejected the central government’s attempt to “promote” the Río Blanco Mining project. The community’s position is not to allow mining at the head of the water basin (97% of the community voted against this project in a local referendum). The Front for the Sustainable Development of the Northern Border of Peru (FDSFNP) proposed that the state respects the constitution and Convention No. 169 of the ILO that recognizes their communal autonomy and the right to prior consultation, which must be applied before making any decision that may affect them.



## Final Reflections

In this publication we described the human rights impacts in Peru from 14 diverse corporations with home countries in Chile, China and Spain. The gap between rhetoric and reality in terms of corporate and state performance on BHR remains colossal and from a Peruvian rightsholder perspective disheartening and shocking too. All three states have committed themselves to extensive amounts of BHR relevant norms from the international to the national levels, which, if adhered to would most likely all but diminish the excessive number of human rights grievances narrated earlier in the findings section.

While it is encouraging to see all three states invest heavily into well-intended commitments for businesses to respect human rights, we found the return on ‘investment’ to be inadequately low. More specifically, the Chinese state and its mining companies appear to have the most severe impacts to indigenous and human rights in general compared to the Chilean and Spanish firms considered within this study. This is quite alarming since China has ratified the UNDRIP. We do not find this particularly surprising given that China has traditionally shied away from international human rights discussions and treaties, and the four Chinese companies were all operating mega-mining projects unlike the Chilean and Spanish ones. Nonetheless, it is promising to see the bold BHR language used by the China Chamber of Commerce (CCCMM) making specific references to implementing the UNGPs and respecting indigenous rights. However, unfortunately, we were only able to find one Chinese company that made specific commitments to the UNGPs and related BHR standards, Las Bambas. Unfortunately, the Las Bambas project has been plagued with indigenous community conflict, the latest of which manifested in a two-month road blockade in 2019. Nonetheless, the other three Chinese mining companies, largely silent on their approach and practices on BHR also experienced grave problems with their impacts to rights of workers and to communities.

The Chilean and Spanish companies also showed signs of ‘blue and greenwashing’ when one compares the contents of Table 3 with the realities told in the findings section. Overall the impacts from Chilean and Spanish companies appears to be less severe compared to the Chinese ones, though that can be explained by the fact the Chinese companies are operating mega-mining projects. Nevertheless, the Chilean and Spanish states are obliged to be accountable to far more international, regional and even national standards on BHR. Chilean and Spanish companies also communicate their BHR and CSR commitments and credentials more so than the Chinese mining companies. Three of the Chilean companies (Saga Falabella, Cencosud and GeoPark) along with all four Spanish companies publicize their CSR/BHR commitments and performance and in the case of Saga Falabella, Cencosud and all four Spanish companies are also members of international BHR and CSR related standards like the UN Global Company and the Global Reporting Initiative. We reported on human rights impacts caused by all the companies, however, it would be fair to state that the Spanish companies reviewed appear to have less severe impacts than the Spanish ones.

It is important to highlight that the companies who communicate the least on BHR are also the ones who reported the most serious levels of human rights abuses to their workers (Ripley, Abastible and Protisa). In this sense there is credence to the argument of ‘aspirational talk’ where organizations who publicly set themselves ethical goals will over time improve as they strive to close the gap between rhetoric and practice.

What do our findings tell us about the NAPs from Chile and Spain? Only two years have lapsed since their respective NAPs were officially endorsed by their governments. Yet when we observe the language used in the NAPs the reliance on soft nudges towards human rights respect by businesses is overwhelming. The most frequent key action terms used by both Spanish and Chilean NAPs is that of 'sensitize,' 'train/capacity-build,' 'promote' amongst others. Based on the previous few decades of 'sensitizing' and 'capacity-building' for corporate responsibility we are not of the view that business respect for human rights can be achieved soon enough. We also acknowledge we are better placed having the NAPs than the contrary, and these plans have received great plaudits for their potential. However, the present scenario indicates that they will continue to remain as just unfilled potential, or mirages<sup>20</sup> should they not be enacted upon by states and businesses. From our analysis, they fall far short left on their own as standalone policy guides to be able to address the substantial and major challenges rightsholders in countries like Peru face, where states are limited in their capacity to govern and regulate effectively in every location, at all times.

In effect, our findings, allude to and affirm theories around the stark realities of the triumph outmuscling of neoliberal political economics over human rights protection by states and businesses. In the quest for insatiable economic growth that brings jobs, states such as Peru continue to compete with others to attract foreign investment. Given the primacy businesses attach to profit-maximization, respect for human rights continues to suffer, despite the exhaustive list of international, regional, national and even corporate standards that outlaw such a neglect. Optimists insist that neoliberalism, rent-seeking and a voluntary approach to enforcing BHR is compatible. Our study, along with a plethora of others demonstrates that sobering limits of such approaches. It is not our wish to end this report on such a pessimistic note, especially considering the great optimism that exists within the BHR sphere. However, we write this report, from the perspective of rightsholders in Peru, affected by companies from Chile, China and Spain, all major investors in the Andean nation.

In conclusion, we see yet again, the troubling limits of 'voluntary commitments' by states and firms to BHR in present contexts such as that of Peru where it is possible to continue abusing human rights, with sparse legal repercussions. The regulatory power of the social licence to operate concept or the court of public opinion (as promoted by John Ruggie and colleagues who devised the UNGPs) would appear to have been well overestimated, as testified by the findings of this report.

20 See RIVERA, H. C. (2019). National Action Plans on Business and Human Rights: Progress or Mirage?. *Business and Human Rights Journal*, 1-25.

## Recommendations

Here, we outline some general recommendations for the respect of human rights based on our analysis of the impacts of 14 companies from Chile, China and Spain. For a detailed list of recommendations please refer to the respective reports on impacts by Chilean, Chinese and Spanish firms in Peru. Beyond complying seriously with, and institutionalizing the multitude of commitments made to BHR by states and companies we suggest:

- In terms of the NAPs governments should create multi-stakeholder working groups and committees that include representatives from trade unions, indigenous peoples, civil society, human rights advocates/experts to meet regularly and discuss progress on the implementation of their government's plans. Doing so would allow governments to undertake similar exercises to our report on a continued basis, and hopefully hold authorities and companies to account where necessary.

- We urge China, Chile and Spain to assume their extraterritorial obligations, in order to effectively incorporate human rights principles, conventions and treaties into their investment strategies, policies, plans and projects in Latin America and the Caribbean, and in Peru in particular. For this, they must adopt appropriate legislative and administrative measures to ensure the legal responsibility of companies and their subsidiaries that are based in their territory or that are headquartered in it, in relation to violations of economic, social and cultural rights in their projects abroad.

- We urge States and international actors to promote a binding Treaty on BHR. The draft currently under discussion focuses on victims of human rights abuses by companies and, consequently, addresses many of our urgent concerns highlighted in this report. Including the need to ensure access to legal justice in court for victims; define the legal responsibility of companies for the offenses they perpetuate; or their obligation to implement effective due diligence protocols in human rights. Measures that, at present, are not required by the numerous human rights standards identified in Table 1.

- In other aspects, the new treaty must explicitly affirm that States have a duty to protect against human rights abuses by third parties, including commercial companies, within their territory and/or jurisdiction; ensure the implementation and respect of international law, which covers all its sources, including international human rights law and international humanitarian law; and the right of victims to precautionary measures, guarantees of non-repetition and effective restitution measures.

- With respect to indigenous communities, it is imperative for companies and states to clearly grasp that 'No means No,' (see articles 4 and 28 from the UNDRIP) meaning when communities in their vast majority oppose the siting of a natural resource/extractives project that would affect their territory then this should be respected by all actors (including state and business). This essentially acknowledges the veto power of (indigenous) communities as stated throughout via the FPIC concept within articles 4 and 28 of the UNDRIP. Chile, China and Spain are all signatories of the UNDRIP, and should do their utmost to abide by its spirit. When business and states insist on pushing their projects through via offering 'benefits' to these vulnerable communities as is common practice, communities often become divided, and conflict and tensions flare putting at risk the lives of human rights defenders.



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