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**James Anaya**



**United Nations Special Rapporteur  
on the Rights of Indigenous Peoples**

**Study on Extractive and Energy Industries**

We, VIVAT International and Sisters of Mercy, Mercy International Association at the UN, would like to thank you for both your current interest in conflicts arising from the extractive industry in Peru and your longstanding commitment to indigenous issues. As organizations with strong membership in the affected Cajamarca region of Peru, we believe that we can contribute to the present discussion regarding the extractive industry's footprint in the area. Specifically, we have identified three issues that we believe merit additional attention from the Special Rapporteur:

1. The extra-judicial restriction of fundamental rights that impedes Peruvian anti-mining protesters and advocates:

As mentioned by Organización indígena, questions of excessive force have been raised in regards to actions of police officers against local anti-mining protesters. From the reports of our sources on the ground, we are led to believe that this tension has in great part resulted from a growing *privatization* of government security forces on the ground, who often receive support from companies in the mining industry (1). However, in addition to this direct threat of police violence anti-mining advocates also face discrimination in the legal sphere. As reported by our partners on the ground, the Peruvian Government through the Interior Ministry and the Presidency of the Council of Ministers has charged over 300 community advocates with questionable or fictitious charges (2). Oftentimes, these charges are unrelated to an advocate's protest actions and will be filed in faraway or even multiple districts simultaneously. At the present date, these charges remain in legal limbo with many cases suspended and others pending trial. To legalize this filing policy the Judicial Branch recently emitted Administrative Resolution number 09-2012-CE-PJ, which grants "supra-provincial competence" to geographically removed judicial districts for all crimes alleged to have been committed by social leaders or protesters (3). This strategy of prosecuting in numerous, far-flung districts obstructs justice as it forces the accused to organize prohibitively expensive travel arrangements and possibly forgo important protest events to make court appearances. More fundamentally, this further impediment thrown in front of social

advocates ultimately works to criminalize fundamental democratic rights such as peaceful protest and opposition.

2. The continuing tendency for the extractive industry and the Peruvian government to ignore indigenous communities' right to self-determination and Free Prior Informed Consent:

The right of the Cajamarca indigenous communities to FPIC and genuine participation in decision-making is a central component of the tension surrounding the Conga Mine. In recent years, the Peruvian government has made a commitment to upholding this right to participation. The Peruvian government is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples, which clearly states that:

*States shall consult and cooperate in good faith with the indigenous peoples concerned through 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 addition, the Peruvian government in 2011 unanimously approved the Consultation with Indigenous Peoples Law, which requires that involved parties engage with Indigenous Peoples before developing projects on their territories (4). Moreover in Sep. 2012, the Peruvian Constitutional Tribunal ruled that indigenous communities have the right to limit access to their territorial possession (5). However, despite this often-stated commitment to the right of self-determination for indigenous communities, the actions of the Peruvian government and international corporations continue to indicate the Congo mine project will be completed regardless of indigenous input. Illustrating their confidence that development will occur in the long-term, Newmont Mining Corporation has stated that it is following a "slower development approach" meant to foster a more suitable local environment (6). Revealing a similar unwillingness to leave the mine's fate completely in the local community's hands, the Peruvian government has also decreed that community consultations scheduled for 2013 are not binding and may be overruled (7). This continued reluctance to grant the Cajamarca region's indigenous groups their full right to self-determination is another key factor contributing to Conga mine-related conflict and undermining the sustainable development of the Cajamarca region.

3. The failure of the Peruvian Government to learn from past experience:

As we examine the conflict surrounding the Conga Mine, it is important to note that the Peruvian government has faced similar civil discontent inspired by an extractive industry in the past. As chronicled by this special rapporteur, the neighboring region of Bagua, Peru has also witnessed violent protests against a development project conducted without the FPIC of the local indigenous community (8). The Bagua case contains multiple similarities with that of Cajamarca

including wide-spread civil disobedience and violence, a lack of recompense for the local community affected by an extractive industry, and also questionable legal proceedings targeting anti-mining advocates (9). Indeed, the aftermath of the conflict in Bagua motivated the Peruvian government to pass the 2011 Consultation with Indigenous Peoples Law. However, despite this previous negative experience with unconstrained development, Peru has not applied these lessons to the current situation of the Conga Mine. In addition, recent news reports suggest that government repression similar to that experienced in relation to the Conga mine has resurfaced in the country. On January 20<sup>th</sup> in the Northern Province of Lambayeque a regional strike against the copper company Minera Candente Copper corporation-Cañariaco left 25 police and 24 farmers injured (10). Ultimately, this continued reluctance to create a democratic space for the participation of affected local communities evidences that the Peruvian government has yet to fully integrate the decrees of the United Nations Declaration on the Rights of Indigenous Peoples. In the future, Peru must seek to find a more just medium between the needs of its citizens and wishes of the extractive industry.

We Sisters of Mercy, Mercy International Association at the UN, and VIVAT International thank you in advance for your time and we welcome any and all further contributions to the dialogue. We hope that this comment will help to realize a sustainable development track for the extractive industries, ensuring they interact peacefully with indigenous communities while remaining fully cognizant of their responsibility to safeguard the resources of the earth for future generations.

Submitted by

**VIVAT International**

**Sisters of Mercy, Mercy International at the UN**

## Sources:

1. Information gathered from a series of interviews with our sources on the ground on July 25, 2012 and October 29<sup>th</sup> 2012
2. Ibid
3. Executive Council of the Judicial Branch, Administrative Resolution No. 09-2012-CE-PJ
4. Salazar, Milagros. "Native Peoples Say: No Consultations, No Concessions ." Journalism and Communication for Global Change. [http://www.ipsnews.net/2013/02/native-peoples-say-no-consultations-no-concessions/?utm\\_source=dlvr.it&utm\\_medium=twitter](http://www.ipsnews.net/2013/02/native-peoples-say-no-consultations-no-concessions/?utm_source=dlvr.it&utm_medium=twitter) (accessed March 31, 2013).
5. Fraser, Barbara. "Peru's Constitutional Tribunal Rules in Favor of Indigenous Community - ICTMN.com." Native & American Indian News, Culture, Music, Art . <http://indiancountrytodaymedianetwork.com/article/peru%E2%80%99s-constitutional-tribunal-rules-in-favor-of-indigenous-community-137120> (accessed March 31, 2013).
6. Bamrud, Joachim. "Conga delay undermines Peru perception." MiningWeekly.com. <http://www.miningweekly.com/article/conga-delay-undermines-peru-perception-2012-10-27> (accessed March 31, 2013).
7. "Mining for potential in Peru." Spyghana.com. [www.spyghana.com/mining-for-potential-in-peru/](http://www.spyghana.com/mining-for-potential-in-peru/) (accessed March 31, 2013).
8. Observaciones sobre la situación de los pueblos Indígenas de la Amazonía y los sucesos del 5 de junio y días posteriores en las provincias de Bagua y Utcubamba, Perú, 2009
9. Ibid  
It is also important to note here, that it is currently disputed whether the local communities have obtained legal recognition as indigenous communities. However, according to our sources on the ground, local leaders in this area have been pushing for legal recognition as indigenous peoples in recent years, but have faced a slow response from the government.
10. Zibechi, Raul. "Adital - Resistencia en los Andes a la minería." Adital. <http://www.adital.com.br/site/noticia.asp?idioma=ES&cod=74174> (accessed March 31, 2013).