November 19, 2012

Mrs. Margaret Sekagya
Special Rapporteur on the situation of human rights defenders

Re: Situation of human rights defenders in Cajamarca, Peru

CC: Working Group on the issue of human rights and transnational corporations and other business enterprises
CC: Working Group on arbitrary detention
CC: Mr. Ivan Šimonović, Assistant Secretary-General for Human Rights

Dear Mrs. Sekagya,

We are writing to your mandate to convey the reliable information and urgent concerns that Mercy International, VIVAT International, and Franciscans International¹ have received from our members and partners regarding repressive measures and human rights abuses in the context of the Conga mining project in the region of Cajamarca, Peru.

This mining project is strongly opposed by key sectors of the local population because of the threats it poses to the rights, livelihoods, and well-being of the local communities. Because of the strength of this public resistance, the project has been formally suspended for two years. However, the company is pursuing preparatory work including the construction of two water reservoirs and its own communications refer to a “slower development approach to advancing the project.”² In defense of the environment and the civil, political, economic, social, and cultural rights of the local population, local and national human rights defenders are leading peaceful civic action to oppose and prevent the Government’s expected eventual authorization of the Conga expansion.

As we will describe briefly below, the Government’s response has been to impose impermissible limitations of fundamental rights and to restrict freedom of expression and human rights activities. These measures are in violation of binding international obligations that Peru has assumed and which are reiterated in the Declaration on human rights defenders. In our assessment, they are not proportional or necessary to achieve a legitimate purpose; instead the purpose seems to be to strengthen the Government’s own position in the conflict and discourage rights-based opposition to the mining expansion.

We will briefly summarize three main concerns here. Together with our members on the ground and local partners, we will be happy to provide you with further information or documentation that would be helpful for your mandate to follow and intervene in this urgent situation.

(1) Arbitrary use of criminal prosecution to deter and restrict human rights activities

¹ Please see attached document with background and contact information for each organization.
The Government has used a series of declarations of a state of emergency state to intervene in the situation in Cajamarca. On July 3, 2012 the Government declared a state of emergency for three provinces of Cajamarca, restricting the rights to individual liberty, privacy, freedom of assembly, and free movement. This declaration was extended for another 30 days on August 3. Despite public assertions that the state-of-emergency would be continued, at the request of the facilitators for mediating the social conflict, the state of emergency was allowed to expire on September 2.

However, the arbitrary use of criminal law and its consequences continue to unjustifiably burden community leaders. The organization “Group for Formation and Intervention for Sustainable Development” (GRUFIDES) has compiled a record of 35 criminal complaints against more than 300 community leaders filed by the Government through the attorney of the Interior Ministry and the Presidency of the Council of Ministers. The offenses alleged include riot, aggravated extortion, obstruction of transportation routes, violence, and resisting authority. The prosecutors have made a practice of making the same complaint against the same people, for the same facts, in several provinces of Cajamarca, forcing leaders to answer for the same counts in different jurisdictions.

We have also received reports of criminal complaints being filed as explicitly preventative or deterrent measures. In several cases where there have been marches, protests, or strikes planned for a given day, the State has filed “preventative complaints” against the supposed leaders for the crimes listed above. The Prosecutor’s Office accepts the complaint and opens an investigation as they would for any other criminal investigation, despite the fact that the alleged events are for a future date.

(2) Transfer of all judicial proceedings outside the region

The chilling effect of malicious prosecutions is compounded by the recent administrative resolution to transfer all judicial proceedings related to the Conga mining project conflict outside the region to Chiclayo. Following a meeting in the Palace of Justice with representatives of the Judicial and the Executive branches on May 31, 2012 the President of the Executive Council of the Judicial Branch emitted Administrative Resolution No. 096-2012-CE-PJ to deal with “criminal conduct being prosecuted in response to the social unrest taking place in the Regions of Cusco and Cajamarca.” This administrative act gives “supra-provincial competence” to geographically removed judicial districts for all crimes alleged to have been committed by or against social leaders or protesters.

The resolution asserts that it is in accordance with all fundamental rights related to due process and access to justice; however our local partners have attested that the costs associated with pursuing justice at such a distance are prohibitive and thus the resolution constitutes a near total obstruction of access to justice. The justification of this measure is the threats and disruption to the functioning of the judiciary in Cajamarca; however our partners assert that the courts have never stopped working and have never been threatened. Scrutiny of the proportionality and necessity of this drastic measure must be heightened given the grave consequences it has had on allowing human rights defenders to pursue justice in their own defense or for violations suffered.

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(3) Intimidation through impunity and militarization

In stark contrast to the active mobilization of the criminal justice system against human rights defenders, attacks against these leaders have not been investigated institutionally or by the judiciary. In addition to the widely denounced killing of four civilians in Celdzin in July, other aggressions also continue in impunity. Cases followed by our partners include:

- June 5: José Rojas, journalist, was assaulted by police officers during a protest in the Plaza Bolognesi in the city of Cajamarca.

- June 21: police physically assaulted two lawyers (Dr. Genoveva Gomez of the Ombudsman of Cajamarca (Defensoría del Pueblo) and Dr. Amparo Abanto of the National Human Rights Coordination) for their attempt to prevent violence against detainees.

- July 4: Marco Arana, well-known human rights defender, was brutally assaulted by police and arbitrarily detained.

- July 4: two lawyers (Mirtha Vasquez of GRUFIDES and Amparo Abanto of the National Human Rights Coordination) were attacked again by the National Police in their attempt to identify the (police) perpetrators of the attack against Marco Arana, and to provide for Arana’s defense.

- July 28: reporter Jorge Chavez, who supports the work of dissemination of information for the National Human Rights Coordination, was arbitrarily detained and beaten by police.

For each of these cases there has been no response from the judiciary and no internal investigation. Allegations were filed by the victims and they have been remitted to Chiclayo under the administrative rule of supra-provincial competence. The victims have been unable to pursue justice as they lack the means to defend themselves in another jurisdiction.

The intimidation caused by cases of violence against human rights defenders and impunity for perpetrators is intensified by the heightened presence of military and police in the region. This increased militarization has raised serious suspicions that the mining companies are financing the military and police presence. Local partners are concerned about agreements between the companies and the government on this matter and are requesting international support for transparency as to the type of support being given to the Government by the companies for purposes of social control.

As can be seen from these three dimensions, the protests and repressive measures have several parallels to situations that have been frequently highlighted by your mandate. The social protests in Cajamarca emerge out of a democratic deficit—namely the lack of a legitimate consultation with the local communities as to the expansion and operation of extractive industries in their

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region. As with many cases of defenders of land rights and environmental concerns, the activists and protesters are by-and-large representing the interests of historically marginalized sectors such as the rural poor, peasants, and indigenous peoples. Despite the important role of the Cajamarca region in the nation’s economy, the people are among the socially and economically excluded in the country.

We very much appreciate the work you have done with individual cases in Peru, as well as the important profile you gave to the particular challenges of defenders working on land and environmental issues in connection with extractive industries and development projects in your most recent report, where Peru was cited several times.

With our members and local partners in Cajamarca we seek to promote the effective implementation of the international obligations restated in the Declaration on human rights defenders. We ask you to urge the Government of Peru to:

- Take all appropriate action to investigate and address the events of violence against human rights defenders in July 2012 and pursue criminal prosecutions of those responsible;
- Ensure that emergency law and the criminal justice system are not used inappropriately to persecute or silence human-rights defenders;
- Guarantee access to justice for all issues emerging out of the conflict over the Conga mining project by taking all measures to ensure they are addressed by the most convenient competent jurisdiction;
- Provide transparency as to what support or contribution is being accepted from companies for military and police operations in the area.

Additionally:
- Continue the moratorium on any further mining activities until appropriate procedures are in place to ensure respect for the human rights of the local communities;
- Guarantee an independent study that offers a genuine assessment of the human-rights and environmental impact of the project expansion;
- Fully commit to a meaningful dialogue process with the local communities that would prevent future conflicts;
- Take all measures to ensure that mining companies acting in Peru carry out their activities in a manner that strictly respects the human rights—economic, cultural, social, civil, and political—of the affected populations.

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6 The Government’s failure to conduct adequate and legitimate prior consultations with the community is the subject matter of the request for precautionary measures before the Inter-American Commission for Human Rights.


8 Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekagya, UN doc. A/HRC/19/55 (Dec. 21, 2011) (on selected groups of defenders at risk, including defenders working on land and environment issues). Peru was specifically mentioned in reference to violations that resulted from activities connected to different extractive industries, construction and development projects, including the operation of mines (para. 67) and women defenders campaigning against mining projects (para. 82).
Please find attached copies of previous communications by our organizations to the Permanent Mission of Peru to the United Nations, to the Peruvian embassy in Washington D.C., and to OHCHR. We would very much appreciate the opportunity to provide any further information, documentation, or collaboration that would be helpful for you and your team members to follow-up on this situation.

Thank you for your consideration of this important matter.

Sincerely,

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