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Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

Joint written statement* submitted by Centre Europe - Tiers Monde - Europe-Third World Centre, World Federation of Democratic Youth (WFDY), non-governmental organizations in general consultative status; France Libertés : Fondation Danielle Mitterrand, International Association of Peace Messenger Cities, Women's Human Rights International Association, non-governmental organizations in special consultative status; Indian Council of South America (CISA), International Educational Development, Inc., Mouvement contre le racisme et pour l'amitié entre les peuples, non-governmental organizations on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[20 August 2013]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

The right to water in Peru lacks effectiveness when faced with mining projects*

At the 20th, 21st, 22nd and 23rd Human Rights Council sessions, we emphasized that although resolution A/RES/64/292 adopted by the UN General Assembly recognizes the right to water and sanitation for all as a fundamental right and despite concerns expressed by the Committee on Economic, Social and Cultural Rights (§ 63-A/HRC/WG.6/14/PER/2) on the effects of mining on health and water quality in particular, the right to water is far from being a reality for everyone in Peru. Water sources are particularly threatened by the mining industry.

Open pit mining pollutes water courses and aquifers with toxic products and heavy metals from acid drainage. It degrades groundwater recharge zones, which in the long term leads to serious environmental deterioration.

The mining company YANACocha, owns America's largest gold mine in Cajamarca, Peru and aims to develop the Conga mining project here. Its project is to extract gold and copper from an area of watersheds which has a complex ecosystem of nearly 40 lakes, wetlands and marshlands which are southern Cajamarca's main source of water.

This project, in its initial stage, provides for the destruction of 4 mountain lakes: gold and copper will be extracted from two of them and the other two will become dump sites for mining waste. They plan to deposit, in the mountains and headwaters of the rivers, an average of 85 000 tons of toxic tailings daily during the 17 years of mining activity. Hundreds of acres of wetlands would be destroyed and millions of cubic meters of water would be contaminated.

Although the population of Cajamarca has always rejected this mining exploitation project, the President Ollanta Humala's current government continues to support it.

In September 2011, the current government approved the Prior Consultation Law. However, on March 3rd, 2012 Supreme Decree 001-2012-MC stated that implementation of the law only applied to projects dating from after the publication of the law. This thus excludes the Conga mining project. Despite the protests, the government imposes its will. Moreover, the regulation indicates that projects considered to be of national interest will be carried out.

Subsequently, the Ministry of Culture refused to make public the database gathering all communities considered as whose consultation is obligatory in order for a project to be approved. This represents a significant difficulty as communities or populations that could be affected by a project are required to undertake administrative procedures without even knowing whether or not they are recognized as an indigenous community.

This contradicts ILO Convention 169, ratified by Peru in 1993 and the United Nations Declaration on the Rights of Indigenous Peoples.

* Alliance Sud, Amazon Watch, Association of International Lawyers, Commission Internationale pour les Droits des Peuples Indigènes (ICRA), Grufides, El Frente de Defensa de los Intereses de la Provincia Hualgayoc-Bambamarca, Indigenous Peoples and Nations Coalition (IPNC), International Rivers, Plataforma Interinstitucional de Celendin, Spanish Society for International Human Rights, Unrepresented Nations and Peoples Organization (UNPO), War on Want, NGOs without consultative status, also share the views expressed in this statement.

On the contrary, the Peruvian government has recently taken a number of measures to facilitate investment in the mining project, declaring it of national interest at the expense of the protection of cultural and environmental heritage.

Cajamarca populations began protesting in October 2011. Since then, there have been regional strikes, protest marches and occupations of the Conga area. In some cases, protesters were violently repressed by government forces and suffered serious injuries, such as those of Elmer Campos, left paralyzed for life from the waist down. The government has declared a state of emergency a number of times.

Hundreds of soldiers were sent to the Cajamarca area, militarized for 8 months. Three provinces of Cajamarca (Celendín, Hualgayoc and Cajamarca) were repeatedly declared in a state of emergency. Five people have been killed by security forces during peaceful demonstrations. On 4th July, Marco Arana, renowned environmentalist, was brutally assaulted by police. They also assaulted two lawyers who went to see him at the police station. He was released thanks to a national and international solidarity movement. Twenty-five people were taken with him to jail in Chiclayo, and only released days later.

These facts directly violate the right of assembly, Article 20 of the Universal Declaration of Human Rights.

Hundreds of community leaders and environmentalists have been victim of legal charges made against them by the government. Other forms of intimidation include having their homes searched, being kept under surveillance and the prosecution services charging them being located far from their places of residence (many of the accused do not have the financial means to pay for travel and accommodation in other towns).

Yanacocha mining firm has been using libel and insult as methods to intimidate leaders of the peaceful resistance. These acts violate the rights of every person to defend themselves in a dignified and fair manner, (articles 10 and 11 of the Universal Declaration of Human Rights and article 14.3 of the International Covenant on Civil and Political Rights, ratified and signed by Peru).

Even journalists' work is threatened. On 28th July 2013 an independent reporter from Celendin, Cesar Estrada, was beaten for reporting on the situation at the Conga lagoons. This violates articles 28 to 45 of the International Covenant on Civil and Political Rights, articles 18 and 19 of the Universal Declaration of Human Rights and article 2, paragraph 4 of the Constitution of Peru.

In addition, Yanacocha is suing landowners of land where it aims to mine. Such is the case of the Chaupe family, legitimate owners of their land. 9 members of this family have been beaten up and are subject to constant intimidation by police working in the mining firm's service.

Currently, there two requests made to the Interamerican Commission on Human Rights (IACHR) the CIDDDH, one concerning the criminalization of social protest and the agreements between the mining companies and the police and the other specifically about the Conga case.

Parallel to these actions, the inhabitants of the province of Celendín denounce the mega project Chadin 2, a hydroelectric dam on the Marañón River – a project of the company AC Energia SA, with capital from the Brazilian company Odebrecht, which would cover 32km² of the Amazon (both mountainous areas and farmland), and would aim to bring power to Minas Conga. During the last public hearing in Cortegana (Cajamarca) on 5th July, police violently charged at peaceful opponents of the project, injuring nine people, two of them seriously.

Both Minas Conga and Chadin 2 constitute projects that inevitably threaten the ecosystem and the right to water and are costing human lives, many injuries, legal charges, imprisonments and the criminalization of peaceful protesting.

We call on the Human Rights Council to demand that the Peruvian State:

- respect the economic, social and cultural rights of indigenous peoples, including their environmental rights;
- respect and apply Article 99 of Law 28611 General Environmental Law on the possibility for local authorities to protect fragile ecosystems;
- respect and implement the constitutional right to water recognized in 2007 by the Constitutional Court in sentences 06546-2006-PA and 06534-2006-PA;
- request that the Peruvian National Water Authority (ANA) come to a decision on the inviolability of watersheds, in order to protect the ecosystem and protect water, in application of Article 127 of Law 29338 on water resources;
- end the Conga mining project and the Chadin 2 hydroelectric project;
- reject all mining operations at the head of watersheds;
- respect the civil and political rights of indigenous peoples;
- respect the right of assembly, freedom of opinion and expression;
- bring to an end to criminalization of protests and military intervention;
- annul the agreement between the police and the mine by which the mining companies can employ the police for their private ends;
- limit the use of force against peaceful demonstrations;
- compensate families of those killed and those injured during the protests and provide medical monitoring;
- ensure the Chaupes family receive a fair trial, sole and legitimate proprietors of their land which Yanacocha wants to acquire, and ensure proper compensation

Our organizations appeal:

- to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples,
- to the independent expert on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment
- to the Special Rapporteur on the human right to safe drinking water and sanitation,
- to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,
- to the Special Rapporteur on the rights to freedom of peaceful assembly and of association,
- to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

- and to the Special Rapporteur on the situation of human rights defenders,
 - to direct your attention to the serious and persistent violations suffered by indigenous communities in Peru.
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