



SOCIETY FOR
THREATENED
PEOPLES



GRUFIDES-STP REPORT

„Crimescene Cajamarca“

**GOLD PRODUCER YANACOCHA AND
HUMAN RIGHTS VIOLATIONS IN PERU**

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The **Society of Threatened Peoples (STP)** is an international human rights organisation that supports minorities and indigenous peoples. It documents human rights abuses, informs and sensitises the public, and represents the interests of victims against authorities and decision makers. It supports local efforts to improve the human rights situation for minorities and indigenous peoples, and works together, both nationally and internationally, with organisations and people that are pursuing similar goals. The STP has advisory status both at the Economic and Social Council (ECOSOC) of the UN and at the Council of Europe.

The **Education Group for Sustainable Development** (Grupo de formación e intervención para el desarrollo sostenible, GRUFIDES) is a Peruvian non-profit NGO that works in the Cajamarca region. They intervene on a trans-regional level by dealing with topics like human rights, sustainable development, equal treatment and solidarity in economic development. This NGO stands up for a constitutional, democratic, just and intercultural society. Grufides pursues its aims by following the basic principles of appreciation, service and pluralism, as well as cultural, religious, political and ideological tolerance.

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Summary

On 18 February 2016, Gary Goldberg, CEO of the world's second largest gold producer, Newmont Mining Corporation, surprised journalists, investors and analysts by announcing that the gold reserves of the Conga project of its Peruvian Yanacocha S.R.L.¹ subsidiary were being downgraded. There are no plans for further development of the project in the foreseeable future.

The latest annual report, submitted by Newmont Mining to the US Securities & Exchange Commission in mid-August 2015, had already prepared investors for a possible exit from the Conga project due to political uncertainties and social unrest. In its first-quarter report, published on 20th April 2016, Newmont Mining reiterated the uncertainty of any continuing commitment. In doing so, the company is taking account of various legal proceedings still pending against the Yanacocha S.R.L. mining company and is promising not to further develop the Conga project without the agreement of the local population. Newmont Mining also reported that by 31st March 2016 it had invested a total of USD 1.678 billion in the project. Most analysts, as well as the Society for Threatened Peoples (STP), see this announcement as heralding the multinational gold-mining group's definitive abandonment of the Conga project.

Difficulties emerged as early as 1993, when the Yanacocha S.R.L. mining company began operations in the Cajamarca region. Because of the poor compensation offered by the company for use of the land, resistance to the mining activities grew among the affected communities. Yanacocha S.R.L. reacted by instigating intimidatory measures against the local population. A dramatic lorry accident in June 2000, in which 150 kg of mercury was released and many people were poisoned, served to increase resentment against the resources company. Further complaints, on issues such as water shortages or contamination, and the failure to consult local people, also contributed to a deteriorating situation in Cajamarca.

In 2011 and 2012, local protests escalated once more: five people were killed, allegedly shot by national security forces. Yanacocha S.R.L. thereupon suspended its expansion plans at the new Conga mine. This had been intended to replace the Yanacocha mine, which was nearing exhaustion.

Not long afterwards, non-governmental organisations learned of a secret agreement between Yanacocha S.R.L. and the Peruvian national police. By virtue of this agreement, the company can call upon the services of the national police at any time to protect its interests. This effectively puts the police in the pay of private business interests, conflicting with its fundamental duty to maintain law and order on behalf of the state and to guarantee that all citizens are able to exercise their constitutionally guaranteed rights.

Against the background of the increasing protests, Yanacocha S.R.L. behaved in an increasingly contradictory manner. In order to win the trust of the local population, Yanacocha S.R.L. financed individual social projects, such as building schools. At the same time, the local population was subjected to large-scale intimidation, in which police violence led to a continual escalation of the protests. This led to counterdemonstrations by the local population and a spiral of violence, culminating in a stand-off that compelled Newmont Mining to cancel its billion-dollar investment in the Conga project, which it had already put into action.

The resistance of small farmer Maxima Acuña de Chaupe and her family became an international symbol of the revolt of the indigenous rural population against economic projects that disrupt people's lives and environment. Maxima stood up to the reprisals, threats and assaults of Yanacocha S.R.L. and to this day has consistently refused to allow her land to be taken over by the multinational

¹ In the following report, a distinction is made between the mining company (Yanacocha S.R.L.) and the mine (Yanacocha).

mining company. On 19 April 2016, Maxima was awarded the prestigious Goldman Prize for her commitment to the environment and human rights.

The case of Yanacocha shows how important it is that in every project that impinges in any way on the lives of indigenous peoples, the people affected should be consulted beforehand, as stipulated by international standards. This is because resources companies should not be able to implement projects against the will of the local population. If these companies do not wish to put their investments at risk, they must obtain the consent of the people affected by them. This principle is enshrined in international law, both in Convention 169 of the International Labour Organization (ILO) and in the Declaration on the Rights of Indigenous Peoples. Unfortunately, in many countries these requirements are not appropriately implemented, even though they also constitute binding guidelines for companies in the natural resources sector.

The Society for Threatened Peoples calls upon Newmont Mining to formally withdraw from the Conga project, unless it fully and completely involves the local population in that project. The Society also asks Newmont Mining and the Peruvian state to elucidate all the alleged human rights violations associated with its resources projects; to investigate the accusations of the use of force against the local population; to introduce de-escalation measures for such cases; and to see to it that the persons responsible for the use of force are brought to account. Restitution must be made for damage done. To avoid conflict situations in the future, it is essential that all investments in projects that in any way impinge upon the lives of the population must only be implemented with their consent.

1. Introduction

The Peruvian Andean chain is rich in natural resources, such as gold, silver and copper. Since the 1990s, the government of Peru has promoted industrial use of these resources, which has led to unparalleled rates of economic growth. Large-scale opencast mining takes up a huge amount of space, however; it involves the excavation or pollution of large areas of agricultural land, and the use of enormous quantities of water that are needed by the local population. For generations, the Peruvian Andes have been inhabited by indigenous population groups, which are now defending themselves against infringements of their rights by the activities of natural resource companies. In order not to compromise the operation of mines, most of which have been in existence for many years, the Peruvian state often meets the protests of the population with disproportionate force.

2. The Yanacocha conflicts

2.1 Background

Yanacocha is South America's largest gold mine. The mine occupies an area of 260 km², and the total concession area comprises 2,150 km².² It is located in the Andean highlands in an altitude of about 4'000 metres, between the cities of Cajamarca and Bambamarca. Three rivers have their sources in the area around the mine: these are of great importance for the water supply of both these towns. As most of the population depends on agriculture and livestock farming, water is one of the most important resources. Gold mining severely compromises the quality and availability of water.

The heap leaching technique involves the use of cyanide to separate the gold from the ore. In the process, heavy metals are released, creating poisonous waste products which are stored in collection pools and in large spoil dumps. Measurements in the region's water courses showed excessive levels of mercury, lead, arsenic and cancer-causing chromium-6. In June 2015, examination of hair samples from a Yanacocha S.R.L. employee yielded a value of approximately 2.5 µg of mercury. This value clearly exceeds the upper limit of 2 µg set by the World Health Organization.³ The rivers in the surrounding area are generally excessively acidic, and domestic animals have died for inexplicable reasons. The region's leukaemia rate is especially high. Small farmers living near the mine, in particular, complain of skin rashes and eye diseases. It should be pointed out, however, that the cause of the increasing incidence of diseases has not been completely clarified.⁴

2.2 Yanacocha S.R.L.'s Conga extension project

In 2010, the Conga project, an extension of the Yanacocha mine, was approved after a controversial *environmental impact assessment* (EIA) by the Ministry of Mines and Energy. Industry professionals criticised the study, which ran to over 27,000 pages. Due to the scope and complexity of the report, the affected communities were unable to get a complete grasp of the technical details or to form a well-grounded opinion within a limited period of time. This also made it difficult for the local population to have any influence on the environmental impact assessment. In a number of communities, there were indeed hearings, but these were not public and were reserved for only selected

² Mining Peru Campaign 2015: Gold fact file.

³ TV documentary by ZDF (2015) "Dreckiges Gold. Die glänzenden Geschäfte mit dem edlen Metall" ["Dirty Gold. Brilliant business with the precious metal"]. <http://www.zdf.de/zdfzoom/zdfzoom-dreckiges-gold-die-glaenzenden-geschaefte-mit-dem-edlen-metall-40372772.html> (04.11.2015).

⁴ STP 2012: Gold – Die Rolle der Schweiz in einem schmutzigen Geschäft. [Switzerland's role in a dirty business. Only available in German] Download at http://assets.gfbv.ch/downloads/goldbericht_1.pdf (27.08.2015); <http://projects.huffingtonpost.com/worldbank-evicted-abandoned/how-worldbank-finances-environmental-destruction-peru> (03.09.2015); <http://servindi.org/actualidad/122036> (07.09.2015).

registered persons, mainly mine employees resident in the locality, and a few farmers. This violates international guidelines, i.e. the performance standards of the World Bank's International Finance Corporation, co-financer of the Conga project. According to these standards, Yanacocha S.R.L. is obliged to undertake a complete consultation of the local population in order to obtain its free and fully informed prior consent to the project.⁵

In a survey conducted in 2012, 78% of the inhabitants of Cajamarca province – in rural areas, as much as 83% of the population – rejected the Conga mine project.⁶

2.3 Conflicts with the local population

The Yanacocha mine, near the city of Cajamarca, was opened in 1993 by Alberto Fujimori, the then-president of Peru. Even at that time, South America's biggest gold mine was making headlines, as the small farmers in the area protesting against the mega-project had been subjected to massive intimidation. The land required for the mine was purchased from the farmers at derisory prices. If members of the indigenous population refused to part with their land, the company and the state threatened them with expropriation.⁷

Due to the foreseeable exhaustion of the Yanacocha mine's gold reserves, Yanacocha S.R.L. was seeking further gold bearing areas to develop and decided on a venture at Monte Quilish, north of the city of Cajamarca. The local population was soon protesting against this project on a massive scale, partly because the mountain is considered sacred. The project was abandoned in 2004. After that, the company embarked upon the Conga mine project, which the Peruvian government approved in 2010.⁸ The project land lies about 24 km east of the present Yanacocha mine, and occupies an area of 34,000 hectares. Operations at Conga are planned to last 19 years and were scheduled to begin in 2012.⁹

The population, however, took to the streets against this project, too. The region concerned is rich in springs, lakes and lagoons, which supply the surrounding areas and settlements with water. Four mountain lakes were to fall victim to the Conga mine: they would either be filled in or used as reservoirs. The small farmers in the region feared for their continued subsistence. They complained that the project would lead to a shortage of water for agriculture, polluted drinking water and the death of livestock.

Even after 23 years of gold mining by Yanacocha, Cajamarca is still Peru's poorest region. Over 50% of the population lives in poverty, and 20 to 24% in extreme poverty. There is increasing social inequality, as only a few are able to profit from the mining operations.¹⁰ This inequality underlies huge tensions and conflicts within the population.

⁵ "Conga No Va" report (September 2015) by a coalition of local non-governmental organisations together with the Columbia Law School Human Rights Clinic (page 15). Download at <http://www.conganova.com/> (16.10.2015).

⁶ "Conga No Va" report (September 2015) by a coalition of local non-governmental organisations together with the Columbia Law School Human Rights Clinic (page i). Download at <http://www.conganova.com/> (16.10.2015).

⁷ STP 2012: Gold – Die Rolle der Schweiz in einem schmutzigen Geschäft. [Gold. Switzerland's role in a dirty business. Only available in German] Download at http://assets.gfbv.ch/downloads/goldbericht_1.pdf (27.08.2015).

⁸ http://www.newmont.com/files/doc_downloads/fact_sheets/south_america/Conga-Update-Fact-Sheet-Final.pdf (16.10.2015).

⁹ http://www.newmont.com/files/doc_news/2012/Conga_FactSheet.pdf (16.10.2015).

¹⁰ <http://elgranangular.com/2015/04/26/territorio-yanacocha-relatos-de-impunidad/> (16.10.2015); "Conga No Va" report (September 2015) by a coalition of local non-governmental organisations together with the Columbia Law School Human Rights Clinic (page 3). Download at <http://www.conganova.com/> (16.10.2015).

2.3.1 Dead and injured in the protests of 2011 and 2012

The year 2011 saw the constitution of citizens' groups, which held protests against Yanacocha S.R.L. and the government. There were regular street protests, which were repeatedly met with a massive and violent police response. Numerous arrests were made and there were several reported cases of alleged mistreatment during custody. The Peruvian government declared a two-month state of exception in the region. Subsequently, the government agreed that the Conga project should be re-examined by experts. This led to a few changes and conditions (relating to improved water management in the future Conga mine), which were accepted by Yanacocha S.R.L. These conditions, however, did not satisfy the local population.¹¹

In February 2012, there were renewed calls for protests against the Conga mine project, which were heeded by tens of thousands of *campesinos*. The government sent soldiers to the region and declared a state of emergency. Between 2011 and 2012, five people, including a 16-year-old boy, lost their lives in violent confrontations. 154 people were injured, some of them seriously. Peruvian president Ollanta Humala declared a state of emergency. The NGO Human Rights Watch alleged that the demonstrators had died as a result of the use of disproportionate force, and demanded an immediate independent enquiry.¹²

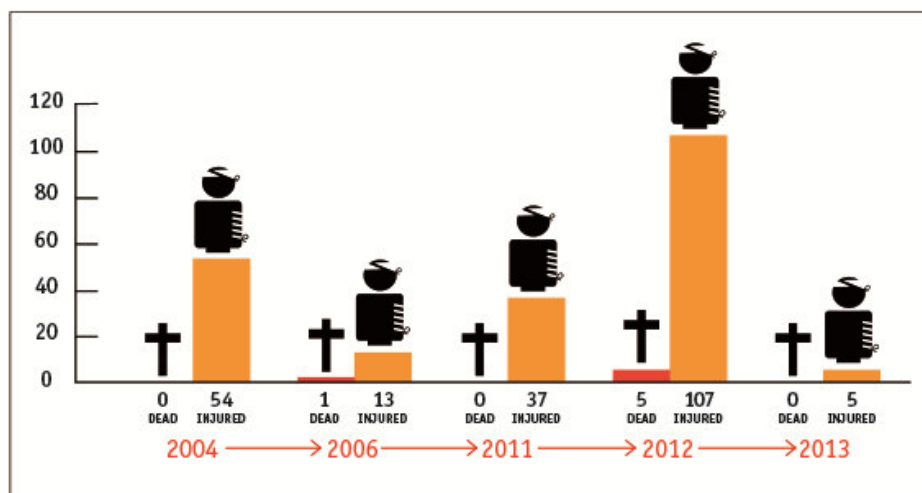
On 3rd July 2012, the following four people were shot dead in the town of Celendín, as the police and army moved against the escalating street protests:¹³

César Medina Aguilár, 16 years old, was hit by a bullet probably fired from a helicopter.

José Faustino Silva Sanchez died on the way home by a shot in the head.

Paulino Leonterio García Rojas was on the way to his sister's house when he was fatally wounded by a bullet in the lung.

José Antonio Sánchez Huamán died two days later as a result of being shot in the head while filming gun battles on his mobile phone during the protests.



¹¹ STP 2012: Gold – Die Rolle der Schweiz in einem schmutzigen Geschäft. [Gold. Switzerland's role in a dirty business. Only available in German] Download at http://assets.gfbv.ch/downloads/goldbericht_1.pdf (27.08.2015).

¹² STP 2013: Polizei im Solde der Rohstofffirmen. Die Verantwortung der Schweiz und Peru für Menschenrechtsverletzungen im Rohstoffsektor. [Police in the pay of the natural resources companies. The responsibility of Switzerland and Peru for human rights violations in the natural resources sector. Available only in German] Download at http://assets.gfbv.ch/downloads/report_deutsch_def_2_12_13.pdf (27.08.2015); NZZ of 5 July 2012: "Bloody protest against mine in Peru" (page 5).

¹³ Source: Coordinadora Nacional de Derechos Humanos, Peru. Download at <http://elgranangular.com/2015/04/26/territorio-yanacocha-relatos-de-impunidad/> (16.10.2015).

Since then, the planned and state-approved mine project has officially been on ice, as the protests in Peru against the production company hit the headlines worldwide; the parent company Newmont Mining feared for its reputation.¹⁴

An important figure during the conflict was Father Marco Antonio Arana Zegarra, who in October 2012 filed a complaint against the Ministry for Energy and Mines and Yanacocha S.R.L., demanding that the Conga project be abandoned. The complaint was rejected by the court in Cajamarca, whereupon the complainants lodged an appeal. The civil branch of Cajamarca's High Court initially confirmed the rejection of the complaint. However, in May 2015, the case was returned to the court of first instance for the complaint to be re-examined and the original procedure to be repeated. Meanwhile, Yanacocha S.R.L. submitted its plea in defence. At the time of writing of this report, the court procedure is still pending.¹⁵

2.3.2 State violence remains unpunished

A decree of 2010¹⁶ allows the police to call upon Peru's armed forces for support and relief, should they find themselves overstretched in a difficult situation. On this basis, troops were deployed in 2012 to support the police during the protests in Cajamarca, Celendín and Hualgayoc. The Peruvian police are poorly trained for operations in exceptional situations, and so when these escalate, they often react disproportionately. The police threshold for using deadly force for its own protection during such operations is relatively low. In the event of mass protests, regular police units call upon the support of the DINOES (*División Nacional de Operaciones Especiales*), a special police unit created specifically to combat terrorism and drug trafficking. Cooperation between the regular police and a special unit of this kind, that is untrained for such sensitive operations, involves considerable risks of human rights violations. Instead of resolving social conflicts, or at least having a calming effect on the local population, this type of intervention usually leads to an escalation of the situation.¹⁷

Those responsible for the deadly shootings of July 2012 were never found. The competent authorities archived the court records in 2014 on the grounds of insufficient evidence. There are indications that the bullets were fired by the weapons of the security forces. On the basis of internal guidelines, the authorities refused either to publish information or to cooperate in the enquiries. Nonetheless, it was proved that the demonstrators killed had been unarmed.¹⁸

Demonstrators had also been killed before 2012 without guilt having been apportioned. On approximately 2nd August 2006, Isidro Llanos Chavarría died of wounds sustained during protests against the Yanacocha mine, after the demonstrators came under fire from police units and the company's security firm of the time, FORZA. Ten years later, it is still not clear who fired at Isidro Llanos.

According to the umbrella body of the Peruvian human rights organisations, the *Coordinadora Nacional de Derechos Humanos*, 85% of all the complaints against the police and the army for killing, injury or other violence against civilians were archived without further investigation or even assessment.¹⁹ In none of the cases of alleged disproportionate use of force by the police or the army were the culprits ever convicted.

¹⁴ http://www.newmont.com/files/doc_downloads/fact_sheets/south_america/Conga-Update-Fact-Sheet-Final.pdf (16.10.2015).

¹⁵ http://s1.q4cdn.com/259923520/files/doc_financials/quarterly/2016/Q1/d86af917-565c-4c51-adc9-4b1abb8dea36.pdf (31.03.2016).

¹⁶ [http://www2.congreso.gob.pe/sicr/cendocbib/con2_uibd.nsf/4E2FCC17050A1136052577910065602D/\\$FILE/DECR_LEGI_SLATIVO_PR_1095.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con2_uibd.nsf/4E2FCC17050A1136052577910065602D/$FILE/DECR_LEGI_SLATIVO_PR_1095.pdf) (16.10.2015).

¹⁷ <http://elgranangular.com/2015/04/26/territorio-yanacocha-relatos-de-impunidad/> (16.10.2015).

¹⁸ <http://elgranangular.com/2015/04/26/territorio-yanacocha-relatos-de-impunidad/> (16.10.2015).

¹⁹ <http://www.grufides.org/blog/nueva-ley-sobre-uso-de-la-fuerza> (16.10.2015).

The STP has information which strongly suggests that the Peruvian police systematically breached the internationally established basic principles for the application of force and the use of firearms by officials with police powers²⁰. These principles state that during protests the police must apply the proportionality principle, and may use firearms only as a last resort – the application of lethal force is allowed only in absolutely exceptional situations. According to Peruvian law²¹, improper use of force must be prosecuted. These principles apply both in states of emergency and in states of exception.

2.3.3 Criminalisation of the protests

The right to peaceful assembly and free expression of opinion is enshrined in a number of international human rights treaties. For example article 19 of the International Covenant on Civil and Political Rights (UN Covenant II)²² sets out the right of all persons to express their opinions openly and without interference. Article 21 states the right to peaceful assembly. Peru has ratified the UN Covenant II.

In Peru, popular protests, particularly those against mining projects, are systematically suppressed by the state. Currently in Cajamarca there are over 300 protest leaders who have been prosecuted; the charges range from disturbing public order and resistance to the authorities to treason, rebellion and terrorist activities.²³

According to the *Coordinadora Nacional de Derechos Humanos*, protesters in Peru are arbitrarily arrested and charged with random crimes. Protesters are either indicted several times for the same incident or are charged with crimes that have not yet been committed (preventive charges to preclude an apparently planned crime). The leaders of the protest groups are thereby demoralised, even if the trials hardly ever end in convictions. Milton Sanchez, for example, leader of one of the most important protest groups against the Conga project, has been accused of responsibility for 50 different offences.²⁴

On 25th June 2014, Gregorio Santos Guerrero was arrested and placed in preventive detention.²⁵ Santos Guerrero had been regional president of Cajamarca province since 2011 and a determined opponent of the Conga mine project.²⁶ The authorities justify his arrest with evidence that allegedly points to corrupt dealings during his period in office – in the end, he was charged with over 100 crimes.²⁷ By means of an interim court order, Santos Guerrero was placed in preventive detention in a high security prison for 14 months. The procedure was criticised by human rights organisations and legal experts. There was no basis for justifying preventive detention, as there were no reasons for believing the accused would abscond or cover up the facts.²⁸ The Inter-American Commission on Human Rights saw this as a threat to life and physical integrity and on 14th May 2015 it issued an

²⁰ <http://www.un.org/depts/german/conf/ac144-28c.pdf> (16.10.2015).

²¹ *Ley Orgánica de la Policía Nacional del Peru*, article 39. Download at http://www.oas.org/juridico/PDFs/mesicic4_per_org_pnp.pdf (23.09.2015).

²² <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf> (16.10.2015).

²³ <http://elgranangular.com/2015/04/26/territorio-yanacocha-relatos-de-impunidad/> (16.10.2015) and <http://www.conflictosmineros.org.pe/> (16.10.2015).

²⁴ <http://elgranangular.com/2015/04/26/territorio-yanacocha-relatos-de-impunidad/> (16.10.2015); "Conga No Va" report (September 2015) by a coalition of local non-governmental organisations together with the Columbia Law School Human Rights Clinic (pages 18-19). Download at <http://www.conganova.com/> (16.10.2015); Grufides internal report.

²⁵ <http://www.mining.com/main-opponent-of-newmonts-gold-project-in-peru-in-prison-40994/> (16.10.2015).

²⁶ <http://servindi.org/actualidad/107558> (16.10.2015).

²⁷ <http://servindi.org/actualidad/139386> (16.10.2015).

²⁸ <http://servindi.org/actualidad/107558> (16.10.2015).

interim ruling requiring that Santos Guerrero's custodial conditions be changed. The Peruvian government, however, is still refusing to implement the decisions of the Commission.²⁹

Human rights activists see in this a method used by the central government to silence critics in the province, even those who have been democratically elected.



Figure 1: Popular protests are often violently suppressed (source: STP).

Journalists reporting on the demonstrations are often obstructed in their work by the police or become victims of violence themselves. If they criticise state action, they are sometimes threatened and charged with supporting "anti-mine terrorism"³⁰ and of being enemies of the motherland. About 80% of the Peruvian media are closely associated with big business interest groups.

Defamation campaigns are currently being conducted against human rights organisations that stand for the people's rights and provide legal assistance. In this way, the *Coordinadora Nacional de Derechos Humanos* was accused at high ministerial level of maintaining contacts with terrorist groupings.³¹ Even the Grufides human rights organisation in Cajamarca is accused of being an instrument of hostile foreign forces and Peruvian criminal networks. For instance, the Peru 21 newspaper associated Grufides with terrorists and drug dealers.³² For years, Grufides has taken on the legal representation of key figures in the protests against the Yanacocha mine and the Conga project. For that reason, Grufides has become the target of an espionage campaign by the authorities and the private security forces of the Yanacocha mining company.³³ Members of the organisation as well as its offices have been attacked on several occasions and are always under surveillance.

Individuals such as human rights lawyer Mirtha Vásquez of Grufides have frequently been the target of attacks. As a result, Vásquez needs protection by bodyguards.

²⁹ <http://servindi.org/actualidad/130679> (16.10.2015); <https://alertanetiids.lamula.pe/2015/05/21/estado-peruano-desconoce-sus-obligaciones-internacionales-al-expresar-que-no-ejecutara-la-medida-cautelar-de-la-cidh-otorgada-a-gregorio-santos/alertanet/> (16.10.2015).

³⁰ *terrorismo antiminero*

³¹ *Coordinadora Nacional de Derechos Humanos* 2015: Informe 2014-2015. Download at <http://derechoshumanos.pe/2015/08/informe-anual-2014-2015/> (16.10.2015).

³² <http://www.conflictosmineros.net/noticias/19-peru/5620-grufides-se-pronuncia-frente-a-difamacion> (16.10.2015).

³³ STP 2013: Polizei im Solde der Rohstofffirmen. Die Verantwortung der Schweiz und Peru für Menschenrechtsverletzungen im Rohstoffsektor. [Police in the pay of the natural resources companies. The responsibility of Switzerland and Peru for human rights violations in the natural resources sector. Available only in German] Download at http://assets.gfbv.ch/downloads/report_deutsch_def_2_12_13.pdf (27.08.2015); for "Operación Diablo" film, see <http://www.acsur.org/Premio-a-un-documental-sobre-el> (16.10.2015).

3. The case of *Máxima Acuña de Chaupe*

3.1 Background

Indigenous small farmer *Máxima Acuña de Chaupe* lives with her husband, Jaime Chaupe, and her children in the Andean highlands near the city of Cajamarca. The approximately 22 hectares of land that the family lives on are located in an area known as *Tragadero Grande*.³⁴ The family farms and raises cattle there. *Máxima Acuña's* land lies within the concession area of Yanacocha S.R.L., where the Conga project plans to expand the existing Yanacocha mine.

In this land ownership conflict, both *Máxima Acuña* and Yanacocha S.R.L. claim to be legal owners of the land in *Tragadero Grande*.

3.2 Legal measures

In 2011, Yanacocha S.R.L. filed suits against several members of *Máxima Acuña de Chaupe's* family on the grounds that they had forcibly occupied the land they live on.³⁵ In August 2014, *Máxima* and other members of the family were sentenced to over two years' imprisonment and ordered to pay fines by a court in Celendín for illegal appropriation of land. By means of this procedure, Yanacocha S.R.L. sought to drive the family from the land on the basis of a criminal court decision.³⁶ The Chaupe family's appeal against the sentence was successful – the High Court of Cajamarca quashed it on 17th December 2014 and banned the Yanacocha company from carrying out any action intended to drive the family from the land.³⁷ This sentence from a domestic court was backed up by a ruling of the Inter-American Commission on Human Rights of May 2014, which ordered that *Máxima Acuña de Chaupe* be protected from any attack or damage brought about by the Peruvian state or private interests.³⁸ The Peruvian government, however, is still refusing to implement these supranational rulings.³⁹

Nonetheless, Yanacocha S.R.L. is continuing with its action against the family and has filed a civil lawsuit to clarify the ownership of the land concerned.⁴⁰ In July 2015, Yanacocha S.R.L. obtained from a court in Celendín (*Juzgado Mixto de Celendín*) a temporary order (*medida cautelar*) banning the Chaupe family from carrying on activities on the land, i.e. including agricultural use. Grufides called the order unfounded and in violation of the family's human rights and is contesting it.⁴¹ In late July 2015, the criminal court in Celendín dismissed a complaint by the Chaupe family against Yanacocha S.R.L. The court did not recognise any of the damage done by Yanacocha S.R.L. to the family.⁴² Nor, according to the Grufides human rights organisation, do the investigations into the attacks on the Chaupe family between 2011 and 2015 meet the expectations.⁴³ In November 2015, the state prosecutor of Celendín announced that he wished to investigate all the criminal acts allegedly committed by Yanacocha S.R.L. against the Chaupe family.⁴⁴ At the beginning of April 2016, the Chaupe family's lawyer, Mirtha Vasquez, reported on the latest developments: the Cajamarca regional government

³⁴ http://www.conflictosmineros.net/contenidos/19/17555?pk_campaign=boletin&pk_kwd=noticias (16.10.2015).

³⁵ Grufides internal report.

³⁶ <http://www.conflictosmineros.net/contenidos/3/17462> (16.10.2015).

³⁷ Grufides internal report.

³⁸ <https://www.oas.org/es/cidh/decisiones/pdf/2014/MC452-11-ES.pdf> (16.10.2015).

³⁹ <https://www.mixcloud.com/grufides/dra-mirtha-v%C3%A1squez-explica-las-agresiones-que-viene-sufriendo-m%C3%A1xima-chaupe-por-minera-yanacocha/> (16.10.2015).

⁴⁰ (16.10.2015); the procedure is pending (early 2016).

⁴¹ http://www.conflictosmineros.net/contenidos/128/18011?pk_campaign=boletin&pk_kwd=noticias (16.10.2015); the appeal against this order is pending (early 2016).

⁴² http://www.conflictosmineros.net/contenidos/128/18011?pk_campaign=boletin&pk_kwd=noticias (16.10.2015).

⁴³ Confidential Grufides communication.

⁴⁴ <http://www.servindi.org/actualidad/144040> (20.11.2015).

and the Peruvian Ministry of the Interior had announced that they were guaranteeing the safety of the Chaupe family with police protection, with immediate effect. These measures, the authorities declared, were being taken in order to remove the tension from the conflict with Yanacocha S.R.L. This would, moreover, accord with the complaint filed by the Chaupe family with the Inter-American Commission on Human Rights and the provisional order for the family's protection. The measure means that twice a month police officers go on patrol round the Chaupe family's land. The family has also been given mobile telephones, so that they can contact the police in case of emergency. In addition, an official must guarantee that the police have unhindered access to the Chaupe family's land, as company land must be crossed in order to do so.⁴⁵ In late April 2016, the criminal court also struck down the interim injunction of summer 2015 prohibiting the Chaupe family from working the land.⁴⁶

3.3 Máxima Acuña de Chaupe wins the Goldman Prize

On 18 April 2016, Máxima Acuña de Chaupe won the Goldman prize for her action against Yanacocha S.R.L.'s Conga extension project. What triggered the award of the prize to Máxima Acuña to Chaupe was the announcement of the withdrawal from the planned Conga project on 18th April 2016 in the annual report of the US Securities and Exchange Commission (SEC) and in the corresponding report of the Newmont Mining Corporation. Since winning the prize, Máxima has become internationally known as a human rights activist. In addition, the award has drawn attention to the worldwide fight by indigenous communities against the activities of multinational resource companies. Contrary to international standards and the Convention on the Rights of Indigenous Peoples, the companies are still failing to consult the local population in advance in order to obtain their consent for natural resource projects.⁴⁷

⁴⁵ <http://rpp.pe/peru/cajamarca/familia-chaupe-ya-recibe-proteccion-policia-noticia-953336> (12.04.2016);

<http://rpp.pe/peru/cajamarca/onagi-dispone-otorgar-seguridad-a-familia-chaupe-noticia-951621> (06.04.2016).

⁴⁶ <http://www.servindi.org/actualidad-noticias/26/04/2016/revocan-medida-cautelar-que-impedia-maxima-trabajar-su-predio> (26.04.2016).

⁴⁷ https://www.earthworksaction.org/media/detail/peruvian_farmer_wins_2016_goldman_environmental_prize_for_fighting_worlds_2#.VylpHPmLRD8 (18.04.2016).

4. The responsibility of Newmont Mining

4.1 Commitment to respect human rights

As main shareholder, Newmont Mining bears the responsibility for the activities of Yanacocha S.R.L. Newmont Mining itself has committed to adhering both to the UN Guiding Principles on Business and Human Rights and to the Voluntary Principles on Security and Human Rights.⁴⁸ In its 2014 annual report, Newmont Mining recognises the right of co-decision, which commits the company to obtaining the free, informed and prior consent of indigenous peoples to all operations undertaken in their homeland.

"Newmont commits to work to obtain the consent of indigenous peoples for new projects (and changes to existing projects) on lands traditionally owned, or customarily used, by indigenous peoples. Through the principles of FPIC, indigenous peoples are able to freely make decisions [...]. [W]e also aim to create benefits for indigenous peoples who reside on or near our operations."⁴⁹

In the same statement, however, Newmont Mining indicates that the company would not have to undertake a consultation process with the indigenous population in the area of the Conga site, as this does not belong to the indigenous population. According to international law, however, it is not up to corporations to decide which community is to be categorised as indigenous and which is not.

On the Newmont Mining website, it is stated that one of the company's primary aims is to avoid relocating settlements. If compulsory displacement of the locally resident population is nonetheless necessary, Newmont Mining wishes to conduct a consultation process with the population affected, in order to jointly establish accommodation and living conditions that are as good as or even better than those existing previously.⁵⁰

On 18th February, the CEO of Newmont Mining, Gary Goldberg, took the company in a surprising direction. In front of media representatives, investors and shareholders, he announced that the Conga project was being scaled back, due to the uncertainty of future developments. The 2015 annual report presented by Newmont Mining to the US Securities & Exchange Commission in mid-August had already prepared investors for an exit from the Conga project due to the political uncertainties and social unrest. Newmont Mining also referred to the unpredictability of any further commitment in its first-quarter report, published on 20 April 2016, and removed the project from its list of active mines. The company reaffirms that it will not continue to develop the project without the consent of the local population and specifically mentions the pending legal proceedings against Yanacocha S.R.L.⁵¹ The company also reports that until 31st March 2016, it had invested a total of USD 1.678 billion in the project.⁵²

At the site itself, there are no signs yet that the Conga project has been closed down. Industry experts and the STP interpret Newmont Mining's April 2016 statement as being the means whereby the company's officers can quietly prepare investors and shareholders for a definitive withdrawal from the Conga project.

⁴⁸ <http://www.newmont.com/sustainability/accountability/default.aspx> (16.10.2015).

⁴⁹ http://sustainabilityreport.newmont.com/2014/_docs/newmont-beyond-the-mine-sustainability-report-2014.pdf (16.10.2015).

⁵⁰ Ibid.

⁵¹ "Newmont Mining will not proceed with the full development of Conga without social acceptance, solid project economics and potentially another partner to help defray costs and risks; it is currently difficult to predict when or whether such events may occur." (Page 6). Download at <http://derechoshumanos.pe/2015/08/informe-anual-2014-2015/> (16.10.2015).

⁵² <http://d1lge852tjjqow.cloudfront.net/CIK-0001164727/d86af917-565c-4c51-adc9-4b1abb8dea36.pdf?noexit=true> (28.04.2016).

5. Human rights and company responsibility

5.1 Underlying principles of international law

5.1.1 International treaty law

There is no international treaty yet that obliges corporations to respect human rights. On the other hand, international law includes a range of instruments that provide a certain amount of protection to persons who live in areas rich in natural resources and whose environment and way of life are threatened by mining. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (both dating from 1966) both cleave to the principle that peoples must freely dispose of their natural wealth and resources and that no people may be deprived of its own means of existence (article 1 in common).⁵³

Moreover, there are further instruments in international law concerning indigenous peoples. The International Labour Organisation's Convention 169 (ILO 169) requires signatory states to respect the rights of the indigenous population, particularly as regards the extraction of natural resources. All state-approved projects which in any way impinge upon the lives of indigenous peoples must be previously discussed with the communities concerned, and their consent obtained (article 6).⁵⁴ To date, 22 states have ratified ILO Convention 169, including Peru.⁵⁵

Another key regulatory document for indigenous peoples is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted in 2007. It describes extensive rights which indigenous peoples may claim, but is not legally binding on states. Of particular importance for the local population is the regulation contained within the Declaration requiring the prior and voluntary consent of indigenous communities with regard to projects and processes which could affect their way of life. It contains the right to accept or reject a project and to negotiate until a solution has been found that is acceptable to both sides. The UNDRIP also regulates co-determination in project implementation (articles 10, 11, 27 and 28).⁵⁶

The right of co-decision is increasingly being implemented in the natural resources sector. Courts are increasingly interpreting this as customary law. Non-observance of this right can have severe and costly consequences for companies, as recently proved by the withdrawal of Newmont Mining [from the Conga project] in April 2016.

5.1.2 Guidelines in respect of business and human rights

In 2011, the UN Human Rights Council adopted the guiding principles for business and human rights. These rest on three pillars:

- 1) States have the primary duty to protect human rights;
- 2) Corporations are under a duty to respect human rights;
- 3) Persons affected have access to mechanisms for making complaints and achieving remedies⁵⁷.

⁵³ <https://www.admin.ch/opc/de/classified-compilation/19660259/index.html> (15.10.2015) and <https://www.admin.ch/opc/de/classified-compilation/19660262/> (15.10.2015).

⁵⁴ http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/publication/wcms_100900.pdf (15.10.2015).

⁵⁵ http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312314 (15.10.2015).

⁵⁶ <http://www.un.org/Depts/german/gv-61/band3/ar61295.pdf> (15.10.2015).

⁵⁷ In summary: State Duty to Protect, Corporate Responsibility to Respect, Access to Remedy.

These guidelines are indeed not legally binding, yet according to the Swiss Centre of Expertise in Human Rights, they have "[...] through their broad acceptance great practical significance for Swiss companies investing abroad. Moreover, states are required to implement the guidelines in national law."⁵⁸ The right of co-decision for indigenous peoples is not explicitly mentioned in the guiding principles. In terms of the duty of care, however, it is particularly expected of natural resource companies, whose activities have a massive impact on local communities and the environment, that they implement a conscientious consultation process to achieve the consent of the affected population.

In 2000, in reaction to attacks on civilians by private and state security forces, the United States, Britain, the Netherlands and Norway adopted the Voluntary Principles on Security and Human Rights.⁵⁹ These are binding on signatory companies and their subsidiaries. The regulations define principles, giving companies guidance on how their security needs can be guaranteed while respecting human rights. They also set out how public and private security forces are to be employed. Companies are required to carry out a detailed risk analysis before recruiting security forces. In addition, they must consult governments and the local communities regarding their plans and explain their ethical principles and human rights standards to the private security forces they engage. Companies are also required to make their security policy clear and accessible to the public. According to the Voluntary Principles, both state and private security forces must take protective measures to maintain human rights and avoid activities that endanger the staff or the facilities of the companies. If security forces have to be used, these must be appropriate and proportional to the threat situation.⁶⁰

5.2 Peru and the rights of indigenous peoples

Peru has adopted the United Nations Declaration on the Rights of Indigenous Peoples and ratified ILO Convention 169, as well. In implementation of these commitments, the Peruvian state has adopted a law on the right to prior consultation (*Ley N° 29785*).⁶¹ A related regulation requires that a publicly accessible database is created, listing all the peoples of Peru officially recognised as indigenous. However, the database is controversial, as hitherto there has existed only an official list of 52 indigenous peoples, of whom only four live in the Andes.⁶² These 52 peoples constitute only approximately 1% of the possible total of peoples to be officially recognised as "indigenous". Many indigenous Andean communities are not recorded in this database, but are demanding recognition as indigenous peoples. The Peruvian government designates these people only as small farmers (*campesinos*), thereby denying them the rights granted to the indigenous peoples.⁶³ This has the consequence, for example, that the affected communities cannot have, according to Peruvian law, recourse to the guidelines of the above-mentioned consultation (FIVE). This denial of justice is legally controversial, as ILO Convention 169 (article 1)⁶⁴ states that:

'Indigenous peoples' are groups of people, "[...] who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state

⁵⁸ <http://www.skmr.ch/de/themenbereiche/wirtschaft/artikel/meilensteine.html?zur=94> (15.10.2015).

⁵⁹ Voluntary Principles on Security and Human Rights. Download at: www.voluntaryprinciples.org (15.10.2015).

⁶⁰ <http://www.voluntaryprinciples.org/what-are-the-voluntary-principles/> (15.10.2015).

⁶¹ <http://www.minem.gob.pe/minem/archivos/Ley%2029785%20Consulta%20Previa%20pdf.pdf> (16.10.2015).

⁶² <http://bdpi.cultura.gob.pe/lista-de-pueblos-indigenas> (16.10.2015).

⁶³ STP 2013: Polizei im Solde der Rohstofffirmen. Die Verantwortung der Schweiz und Peru für Menschenrechtsverletzungen im Rohstoffsektor. [Police in the pay of the natural resources companies. The responsibility of Switzerland and Peru for human rights violations in the natural resources sector. Available only in German] Download at http://assets.gfbv.ch/downloads/report_deutsch_def_2_12_13.pdf (27.08.2015).

⁶⁴ http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/publication/wcms_100900.pdf (16.10.2015).

boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. [...] Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply. (STP emphasis)

Great controversy was generated by the database and the question of who was recognised as "indigenous". Investigative journalists found out that there exists another much more comprehensive list, but this is kept secret by the government. The explosive issue is that, of the 5,571 indigenous peoples included on the list, 63% live in the Andes, i.e. precisely in those areas where large natural resource mining projects are planned or already in operation. Human rights organisations accuse the government of deliberately denying the existence of the indigenous peoples in order to deny them their rights. In this way, they can implement large-scale mining projects in the areas concerned, without any particular consultations with the local population.⁶⁵

Many of these indigenous communities of Peru's Andean highlands are represented by the *Rondas Campesinas*, that is to say, by traditional, non-state associations. The law on the competences of the *Rondas Campesinas* (*Ley N°27908/Ley de Rondas Campesinas*)⁶⁶ states that, with few exceptions, the *Rondas Campesinas* have the same rights as those granted to the indigenous peoples. According to these standards, the population living in the planned mining area of the Conga project is under the protection not only of individual civil and human rights, but also of the collective rights applying to indigenous peoples.

Yanacocha S.R.L. (in its *declaración de compromiso*)⁶⁷ is denying the local population the right to consent, and is committing itself only to involving the local community in its activities and to respecting their culture. This contradicts the terms governing the previous consultation of the *Rondas Campesinas*, concerning the opening up and development of mineral, water and other resources.

⁶⁵ <http://www.ojo-publico.com/77/los-secretos-detras-de-la-lista-de-comunidades-indigenas-del-peru> (16.10.2015).

⁶⁶ http://www.onagi.gob.pe/portal/Uploads/normatividad/17_normativa.pdf (16.10.2015).

⁶⁷ http://www.yanacocha.com/wp-content/uploads/2015/07/Declaraci%C3%B3n-de-compromiso-2015_A4.pdf (16.10.2015).

6. Demands and recommendations

Recommendations to the Peruvian authorities

- Compliance with the international human rights obligations, especially the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, the Indigenous and Tribal Peoples Convention ILO 169, the UN Declaration on the Rights of Indigenous Peoples and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Implementation of immediate measures against impunity of human rights violations.
- Implementation of the international standards of the UN Guiding Principles on Business and Human Rights, especially the „state duty to protect“. Elaboration of an adequately enlarged list of indigenous peoples that are officially recognized by the Peruvian state, taking especially into account the indigenous population in the Andes Mountains and their self-identification as indigenous peoples. Full and effective implementation of the right to consultation, participation and free, prior and informed consent (FPIC) of indigenous peoples and other parts of the population affected by mining activity. The FPIC must be applied in all steps of the negotiation processes.
- Implementation of due diligence procedures for all the multinational enterprises being active in Peru. This due diligence should be aligned to the standards on corporate social responsibility laid down in the OECD Guidelines for Multinational Enterprises.
- Provide accountability mechanisms and access to effective remedies for all kind of human rights violations.
- Immediate and effective implementation of the precautionary measures of the Inter-American Commission of Human Rights of the Organization of American States (OAS) dated 5th of May 2014, with the aim to seek public protection for threatened persons (Ronderos, peasants (campesinos), the Chaupe family and two journalists, among others).
- To stop immediately the criminalisation of peaceful social protests of the civil society in Peru.

Recommendations to industrial mining companies (especially to Yanacocha S.R.L.)

- Execution of due diligence procedures about human rights, including risk analysis and risk management in order to identify, avoid or mitigate the real, as well as the potential negative impact of economic activities in terms of human rights and the environment.
- Putting an immediate end to the use of the services of the National Police to protect the safety of the company, as long as compliance with the Voluntary Principles on Security and Human Rights is not guaranteed, especially regarding the provisions on the prevention of violence.
- Execution of a fair, discrimination-free and independent process of consultation and decision making with all segments of the affected population about planned and existing mining projects, basing this process on the free, prior and informed consent and respecting the decision of the local population.
- Initiation and support of the clarification, investigation and rehabilitation of past and current incidents of human rights violations and environmental damages which relate to mining issues, holding perpetrators accountable for their deeds and prosecute them.
- Remedy of the negative impacts; providing compensations that are beneficial and accepted by the local population.
- Establishment of a complaint and appeal procedure before an independent body accessible for all potentially affected parts of the population, and the publication of the body's decisions and judgments.

Recommendations to the US authorities

- Binding implementation of the UN Guiding Principles on Business and Human Rights and its three pillars.
- Use of the diplomatic means to encourage the Government of Peru to respect human rights.
- Support and expansion of gold production in conditions of particular respect for human rights and environmental matters.
- Enact legislation that prohibits the acquisition and trade of illegal gold or gold from a production that does not respect human rights and the environment.
- Disclosure of detailed data on the basis of the consignment notes that provides information on the exact origin, as well as on the import and export of goods like precious metals.