

Can Resource Extraction Companies Contract the Police?

Case Comment on Peru's Constitutional Tribunal Decision in *Colegio de Abogados de San Martín v Poder Ejecutivo*

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Introduction

For decades, mine affected communities, human rights defenders and their allies in Peru have expressed concern about domestic legislation that allows resource extraction companies to enter into service contracts with the Peruvian National Police (PNP). There are numerous well-documented instances of conflicts between communities and mining companies where PNP officers have harmed or killed community members while performing paid services for a company. Many see these contracts as part of a larger process of militarizing resource extraction in the context of opposition from affected communities. They argue that these contracts [elevate the risk of serious human rights violations](#) and are unconstitutional because they diminish the independence of the PNP.

This case comment summarizes the 2020 decision of Peru's Constitutional Tribunal on the issue of the constitutionality of the legislation that enables these contracts. In doing so, I focus on identifying, as clearly as possible, the constitutional requirements that the Tribunal imposes on PNP contracts with resource companies. In conclusion, I analyze the key weaknesses and strengths of the decision from a human rights perspective. I also identify in broad terms its implications for Peruvian authorizes, as well as for home states such as Canada where many resource extraction companies reside. This document's appendix summarizes the new constitutional requirements that flow from the Tribunal's decision, in general and specifically with respect to police contracts with resource extraction companies.

A. Overview: Constitutional Challenge to Police-Company Contracts

On June 23, 2020, Peru's Constitutional Tribunal issued its decision in [Colegio de Abogados de San Martín v Poder Ejecutivo](#) in response to a constitutional challenge

brought by the San Martin Law Society plaintiff¹ to the legislation that enables these contracts. At issue were provisions of Legislative Decree 1267, the *Peruvian National Police Law*, and Supreme Decree 003-2017-IN, *Supreme Decree that approves guidelines for the provision of police services in fulfillment of police functions*. The Tribunal released its decision just over a year after it had granted leave to appeal (p 3).

The impugned provisions of Legislative Decree 1267 establish that the PNP may offer “extraordinary police services” to entities in the private and/or public sector, in situations which could impact public order or citizen security. It further specifies that only officers who are on vacation, leave, or days off may provide these services. Extraordinary services are governed by agreements between the Minister of the Interior and the entity that receives and pays for these special police services. The PNP Director General approves the final agreement (contract) via Ministerial Resolution. The Legislative Decree also indicates that the fulfillment of extraordinary service agreements must not affect the continuity of ordinary police services 24 hours a day, every day of the year, and the capacity of the PNP to fulfill its constitutional purpose. Finally, private companies may not directly contract police personnel, and police officers may not work as private security officers.

Pursuant to Legislative Decree 1267, the Minister of the Interior issued Supreme Decree 0003-2017-IN. This instrument sets out the “extraordinary situations” where the PNP may “assign officers who are on vacation, leave or days off to carry out extraordinary police services”. The Supreme Decree identifies “attending to the security of strategic infrastructure connected to the exploitation and transport of natural resources” as one such “extraordinary situation” (article 11(d)).

While the plaintiff’s case alleged multiple violations of the Political Constitution of Peru, the substantive articles most relevant here are 44, 166, 169. Article 44 recognizes the fundamental duties of the State, including to guarantee the full enjoyment of human rights, to protect the population from threats to their security, and to promote general welfare based on justice and the comprehensive and balanced development of the Nation. Article 166 recognizes that the primary duty of the PNP is to guarantee internal order. It goes on to state that the PNP protects and aids individuals and the community, ensures the enforcement of laws, as well as the security of public and private property. Finally, article 169 subordinates the PNP to constitutional power.

In their submissions to the Tribunal, the plaintiff clarified that, rather than a challenge to extraordinary police services agreements in general, its constitutional challenge was specifically to the formation of such agreements with resource companies in the context of social and environmental conflicts between affected rural populations and specific extractive operations (para 37). This meant that, strictly speaking, the

¹ I use the term plaintiff to refer to the Law Society party in this case who brought the action. In Spanish the term is *demandante*.

plaintiff's claim related exclusively to Supreme Decree 0003-2017-IN, and not Legislative Decree 1267, as it is the former that establishes that extraordinary police service agreements can be used to protect natural resource extraction related activities.

Invoking Peru's constitutional procedural rules, the Tribunal determined that the plaintiff's cause of action (*proceso de inconstitucionalidad*) enabled the Tribunal to examine Legislative Decree 1267, but not the Supreme Decree, for the reason that, as an instrument of administrative law, it may only be challenged *via* a distinct constitutional cause of action (paras 61, 97). In the circumstances, the Tribunal elected to proceed by first analyzing the constitutionality of the general concept of extraordinary police service agreements established in Legislative Decree 1267, before then identifying requirements or conditions that such contracts must adhere to in order to comply with the Constitution (paras 39-40). In doing so, the Tribunal considered conditions that apply to the specific context of social and environmental conflicts between rural communities and resource companies.

B. Company-Police Extraordinary Service Contracts: General Facts

The plaintiffs submitted that 138 agreements had been signed between natural resource extractive companies and the PNP between 1995 and 2018 and that at the time of litigation, 29 such agreements were in place. Of these, 19 had either no expiry date or an automatic renewal clause. The others had expiry dates between 2019 and 2022 (p 4).

According to a draft report (on file with the author) produced for the purposes of elaborating Peru's 2020 National Action Plan on Business and Human Rights, pursuant to the UN Guiding Principles framework, between 2017 and March 2020 there were 84 contracts in place between extractive companies and the PNP, which constituted the vast majority (nearly 80%) of all PNP service agreements with private sector actors and the majority (58%) of all agreements encompassing both private and public sector actors. *As a result, resource companies are by far the largest single sector paying for special police services via contract in Peru.*

Agreements are structured as contracts between the PNP and the extractive company and specify a number of terms and conditions, including that the company pays individual officers for their services, together with a substantial overhead amount to the PNP as an institution, calculated as a percentage of total payments to officers. Some agreements require the company to compensate officers for any injuries they suffer while providing the agreed services, and to ensure access to any necessary medical attention. Agreements may also include intelligence gathering among the various crime prevention activities that PNP officers may perform for companies.

In its decision, the Tribunal declined to refer to these and other specific aspects of the many extraordinary service agreements in place at the time of its judgment. Rather it limited its decision to an analysis of the impugned Legislative Decree that permits

agreements in principle. At present, there is [another legal action](#) moving forward in Peru that challenges the constitutionality of a specific extraordinary services agreement between the PNP and mining company Xstrata Tintaya. An amicus curiae presented in that case analyzes the international law applicable to the Xstrata Tintaya-PNP agreement in [English](#) and [Spanish](#).

C. The Tribunal's Substantive Analysis & New Constitutional Requirements

Within the framework set out above, the Constitutional Tribunal analyzed the plaintiffs' claim under several substantive categories. Three of these are relevant from a human rights perspective: (1) the alleged privatization of public police services and concomitant violation of the principle of police impartiality; (2) the alleged violation of international human rights law; and (3) the alleged violation of equality before the law on the basis of economic discrimination.

While the Tribunal rejected all three arguments and ultimately held that a PNP-resource company contract could, in principle, be constitutional, in doing so it articulated important conditions that extraordinary service agreements must comply with in practice to ensure their constitutionality. These new constitutional conditions amount to a gamechanger for resource extraction companies operating in Peru who were previously free to contract police services with few if any restrictions.

1. Alleged Privatization of Public Police Services & Violation of Principle of Police Impartiality

The first issue addressed in the Tribunal's decision related to the question of whether or not police-company contracts undermine the PNP's public purpose by privatizing police services at the expense of the common good and in violation of the principle of police neutrality.

In response, the Tribunal concluded that private payment for police services pursuant to "extraordinary agreements" does not necessarily prevent police from fulfilling their public function as contemplated in the Constitution (para 71). As a general point, the Tribunal argued that the preservation of citizens' security should not be understood as either private or public, as, in the Tribunal's view, there can be cooperation between public and private entities to optimize this constitutional objective (para 55). The Tribunal pointed to contexts, such as security at large public events, shopping centers and concerts, where police services may be privately contracted via extraordinary service agreements in a manner that is consistent with the PNP's public function of protecting order and security (para 52). As another example, the Tribunal suggested that when the state regulates private security companies, it does so in order to ensure that their operations are also protective of citizens' security in a way that is complementary to the police function (para 56).

a) Constitutional Requirement: PNP is the Employer, Gives Orders & (Exclusively) Incurs Liability

The Tribunal took great care to emphasize that, when the PNP contracts with a private entity to provide extraordinary services, the officers who provide the services are not in an employment relationship with the private company (para 54), in spite of the fact that the company pays the officers for their services. As such, the Tribunal reasoned that it is acceptable for officers to use PNP uniforms and equipment (paras 169, 200, 204) while being paid by the company.

Critically, the Tribunal concluded that when police officers provide “extraordinary services” to private companies, they continue to fulfill their constitutional functions (paras 54, 90). According to the Tribunal, when officers act under the terms of extraordinary service agreements, they continue to act as members of the PNP, and their services are acts of public duty and public power. The Tribunal pointed out that the private company is not permitted to issue orders to the officers, which is essential to ensure the constitutionality of the contracts in question (para 93). For the Tribunal it was also significant that individual officers must voluntarily agree to work under extraordinary service contracts, and may only do so on their days off. According to the Tribunal, this aspect of the arrangement helps to ensure that this kind of work does not diminish the PNP’s constitutional duty to protect the security of the broader community (para 79).

The Tribunal concluded that police officers remain dependant on the PNP, and are not dependant on the private company (para 89). At the same time, it recognized that extraordinary service agreements do indeed provide officers with extra income, over and above their regular salaries (para 170). In a concurring minority opinion, Justice Espinosa-Saldana Barrera expressed his *minority view that payment by extractive companies to PNP officers could generate a conflict of interest*, and that this is not remedied by the conclusion that the PNP is the true employer as a matter of law (para 7). In this context, Justice Espinosa-Saldana Barrera insisted that the public remuneration of PNP officers must increase to avoid conflicts of interest (para 8).

Notably, the Tribunal did not analyze or even acknowledge the question of the potential *institutional dependence* of the PNP on extraordinary service agreements, given that substantial overhead amounts are paid to the PNP due to the sheer number of long-term contracts that have been in place continuously over a period of decades. It also neglected to refer to any facts with respect to total amounts paid to the PNP through all contracts with resource companies in any given time period. While the Tribunal asserted that the PNP must adopt all measures necessary to avoid future partiality of the institution in favor of a private recipient of extraordinary police services (para 124), the Tribunal declined to provide any further guidance with respect to what these institutional safeguards might entail.

b) Constitutional Requirement: Agreements must Optimize Citizens' Security

The Tribunal indicated that authorities can adopt measures to ensure that extraordinary service agreements fulfill constitutional requirements in practice (paras 71, 88). In this context, the Tribunal referred to a decision of the Inter-American Court of Human Rights (IACHR) that finds a state duty to supervise the provision of public services by either public or private entities, with a view to protecting the public good in question (para 67).² Notably though, this IACHR decision does not refer to police services.

In any case, within this frame, the Tribunal advised that the decision of the PNP Director General to enter into extraordinary services agreements must respond to the constitutional objectives of optimizing citizens' security and public order, and not solely private entities' requests for the provision of these services (para 94). Stated differently, the agreements must respond to the interests of the society and the state, and they must not favor a specific company or person (para 205). As a result, the Tribunal articulated a rule that the use of police personnel to perform extraordinary services cannot generate a deficit in the protection of public security (para 80).

The Tribunal explained that a situation of inadequate public security protection could occur if police who are providing ordinary services are assigned to extraordinary services, or if a series of large extraordinary service agreements are made with the purpose of protecting a specific company (para 81). In this regard, the Tribunal concluded that the PNP Director General must take into account the number of officers assigned to a specific geographic area and ensure that areas with few officers are not prejudiced by the constant use of extraordinary police contracts (para 82). Notably, this is exactly what appears to have been occurring in practice.

The Tribunal presented statistics on police service levels across the country to support its conclusion that the PNP already faces challenges in fulfilling its citizens' security and crime prevention duties, in large part because of a limited budget. Due to these limited resources, the Tribunal established that the provision of extraordinary police services must only occur where there is a demonstrated risk of crime or danger to individual or society's goods or property (paras 85, 86, 94). To this end, the PNP Director General must exercise their discretion to ensure that extraordinary police service contracts respond to serious risks and do not restrict the provision of security services to the rest of the public (para 86). The Tribunal held that if these requirements are met, contracts for extraordinary services will not create a deficit in public security protection, but will rather be reinforcing of the protection of rights and goods (para 95).

² *Alban Cornejo vs. Ecuador*, at para 199, InterAmerican Court judgment issued on November 22, 2007.

c) Constitutional Requirement: PNP Contracts with Extractive Companies are an Exception and Available only as a Last Resort

The Tribunal also asked the specific question of whether or not it is constitutionally permissible for the PNP to provide extraordinary police services to extractive companies (para 63). In this connection, the Tribunal recognized the specific situation of endemic conflicts between communities and extractive companies (paras 101-115), characterizing these as complex environmental and social conflicts (para 105). In doing so, the Tribunal also recognized once again that it was not pronouncing specifically on any particular contract, since extractive companies are only mentioned in the Supreme Decree, which was not directly under review in this case (see explanation above). As such, the Tribunal indicated that its statements on PNP extraordinary service agreements with extractive companies are meant to serve as high-level constitutional guidance for the PNP Director General when deciding whether or not to enter into such service agreements (paras 100, 104). The Tribunal did not refer to or analyze any of the specific agreements currently in place.

As a starting point, the Tribunal emphasized that it is the duty of the state to adopt all possible measures to avoid situations of social conflict where losses can be irreparable for the community and the company (para 106). However, where conflicts do happen, the state must intervene with the objective of avoiding serious altercations to public order. In this context, the Tribunal stated that the PNP's role must be oriented toward preventing the violation of constitutional rights, without taking sides in the community-company conflict (para 108).

The Tribunal then recognized that if the PNP are contracted to protect a mining company's operations in the context of an environmental conflict, this could jeopardize the perception that the PNP are performing their functions objectively (para 108). The Tribunal further recognized that perceptions of lack of objectivity can lead to further conflicts between communities and the PNP (para 109). This is due to the fact that, in the context of environmental conflicts where both sides are articulating (legal) arguments in favor of their position, the intervention of the police on behalf of one or the other can generate the apprehension of a loss of objectivity (para 109).

While the Tribunal recognized that extractive companies may need to protect their operations and personnel from criminal acts, it emphasized that Peruvian law allows them to acquire *private* security services, thereby avoiding a situation where the PNP has contractual commitments to one of the parties involved in an environmental conflict (para 110). On this basis, the Tribunal established a strong presumption that private security is the best option to meet extractive companies' security needs.

However, the Tribunal stated that there may be situations, because of remoteness or lack of availability, where it is impossible for an extractive company to acquire private security services. In the Tribunal's view, this could generate a situation of lack of protection for the company. As such, the Tribunal ruled that, the PNP may only

provide, as an exception, extraordinary police services to extractive companies when there is evidence that it is impossible for the company to obtain private security services. In these cases, the exclusive purpose of these police services would be to avoid a situation where the company lacks protection. To comply with this rule, the Tribunal required PNP authorities, before agreeing to services, to verify that the company has done all it can to obtain security services from the private sector. Companies must also prove that there is a concrete risk to their operations (see criterion above) such that extraordinary police services are warranted (para 111).

The Tribunal added an additional criteria, stating that PNP authorities must ensure, as much as possible, that the officers charged with protecting public order in situations of social conflict and protest, are not the same officers who have previously received payment for services under an extraordinary services agreement (para 125).

If all of these criteria are satisfied and the PNP Director General decides to enter into an extraordinary police services agreement with an extractive company, the Director General must also ensure that the agreed upon services do not restrict ordinary police services provided to the community, that police officers are not subordinate to the company, and that all human rights are respected as recognized in law, in the Constitution and in applicable international treaties (para 112).

The Tribunal took pains to emphasize that PNP agreements with extractive companies must be an exception (para 112) and that, if the PNP fails to comply with the conditions set out by the Tribunal, legal action is available before administrative or judicial authorities (para 113), those responsible will be sanctioned (para 114), and the agreement in question will be deemed unconstitutional (para 115).

2. Alleged Violation of International Human Rights Law Standards

The Tribunal addressed a second substantive question, namely whether or not police-company contracts violate the standards of international human rights law. The Tribunal dealt with this issue in a perfunctory way. It stated that while the plaintiffs pointed to several general principles of the rule of law that they connect to the United Nations,³ in the Tribunal's view the plaintiffs failed to explain how the extraordinary services agreements in question violate international principles. In this section, the Tribunal also referred to by name, but does not analyze in any way, the UN *Basic Principles on the use of force and firearms by law enforcement officials*.

In dealing with this issue, the Tribunal appeared to articulate a presumption that since the Legislative Degree under review (the Peruvian National Police Law) conforms to the Constitution (see analysis above), it also conforms to international law. On this basis, the Tribunal appeared to conclude that it had therefore already dealt with all relevant international law considerations in its constitutional analysis

³ La interdicción de la arbitrariedad, la razonabilidad ética, la desobediencia constitucional necesaria, la capacitación y asesoramiento de los funcionarios encargados de hacer cumplir la ley (para 119).

of the issue of privatization and police neutrality (para 126) and that no further analysis on this point was necessary.

3. Alleged Economic Discrimination & Violation of Equality before the Law

The Tribunal examined a third area, namely the issue of whether or not extraordinary services contracts discriminate against populations who live in the area of influence of extractive projects by providing extractive companies with enhanced police security on the basis of their ability to pay (para 133). This issue required the Tribunal to consider the constitutional right to equality before the law. In this regard, *the Tribunal recognized that mine-affected populations are groups who have historically been disadvantaged compared to the rest of Peruvian society* (para 129).

In response to this issue, the Tribunal took the position that extraordinary service agreements do not in principle preclude or impair police protection of the rights of mine-affected communities. In coming to this conclusion, the Tribunal emphasized that the Legislative Degree explicitly states that the provision of extraordinary police services cannot affect the capacity of the PNP to continue to provide ordinary police services (para 137). The Tribunal then referred back to the criteria it set out previously to conclude that such services can (in principle) be provided to private companies without hindering the capacity of the PNP to protect the public generally (para 138).

The Tribunal also concluded that it is coherent that, in accordance with the principle of protecting citizens' security, greater levels of police protection are afforded to places that attract a greater risk of criminal activity. In this respect, the Tribunal concluded that greater levels of protection for mining operations must not be a function of the ability of the company to pay for these services, but rather would be a result of the greater security risk that such operations may face (para 142). Here the Tribunal reiterated the criteria established previously that the company must demonstrate serious risk as one of the conditions precedent for obtaining an extraordinary service agreement with the PNP (para 143). The Tribunal further clarified that the objective of preventing criminal acts against mining operations does not encompass curtailing the constitutional right to "legitimate protest" (para 153), which the Tribunal recognized in [another case early this year](#). In other words, police officers working pursuant to extraordinary service agreements with resource companies must focus on crime prevention and their services should not include policing legitimate protests.

D. Strengths and Weaknesses of the Tribunal's Decision and Implications for Home and Host State Governments

From the perspective of mining affected communities, human rights defenders and their lawyers, this decision offers a mixed result. The plaintiffs will be disappointed that the Constitutional Tribunal refused to declare the legislation allowing service contracts between the PNP and resource extraction companies unconstitutional.

From a human right perspective, there are at least three main problems with the Tribunal's decision.

First, the Tribunal did not acknowledge the very real concern that the sheer number of contracts between the PNP and resource companies, in place continuously over a period of decades, may have created a situation of *institutional conflict of interest, or in other words, corporate capture of the police*. Rather, the Tribunal's analysis of impartiality focuses exclusively on how individual police officers provide services. As an aside, it is worth mentioning here that in his minority opinion cited above, Justice Espinosa-Saldana Barrera disagreed with the majority on this point and effectively concluded that the contracts *do* generate a conflict of interest for underpaid police officers. On this basis the Justice recommended that the government should increase officers' salaries to address the incentive they have to seek better paid work under contracts with extractive companies.

However, all of this ignores the likelihood that the PNP *as an institution* may actually be financially dependant and therefore incentivized to accept service agreements with resource companies. While the Tribunal referred to various data sets on citizens' security and the like through out its decision, it neglected to refer to *any data at all* that responds to key questions of fact: *how much compensation has the PNP as an institution received annually from contracts with resource companies over the last two decades? And what has the PNP spent these funds on?* This unanswered question flows necessarily from the well documented fact that PNP contracts with resource companies have always included substantial overhead payments to the PNP as an institution, over and above the payments made to individual officers, and that these funds may be spent on equipment, building maintenance, among other uses (see research published in [English](#) and [Spanish](#)).

In the Constitutional Tribunal's consideration of the Xstrata-Tintaya case in the near future, it is incumbent on it to analyze the impact of these overhead payments for the independence and impartiality of the PNP as an institution. Moreover, the Tribunal must analyze this issue on the basis of data that documents overall payments made to the PNP annually by each company, and in total from all resource companies combined. An analysis of impartiality without this data cannot be meaningful.

Second, another major deficiency in the Tribunal's decision is its refusal to engage in any meaningful way with international human rights law. This is especially glaring given the importance of international law for constitutional interpretation in Peru. There are important and applicable principles of international law that the Tribunal should consider and apply. I have written about these elsewhere in an *amicus curiae* submitted in the Xstrata-Tintaya case proceedings, available in [English](#) and [Spanish](#). In the future Xstrata-Tintaya case, the Tribunal should take the opportunity to engage in a serious way with international law and principles. This is especially pertinent given the international consensus that all transnational companies are expected to respect international human rights law.

A third and significant concern are the implications of the Tribunal's decision for company liability. The Tribunal explicitly places all liability for police services rendered to extractive companies under the contracts on the PNP, rather than the company. The Tribunal reasons that if the PNP is to retain its independence and impartiality, then they must be exclusively responsible in law for the actions of officers. However, the perverse result of this reasoning is that it allows companies to pay for, and obtain the benefit of, police services *without* any legal responsibility for harm connected to those services. This is exactly what occurred in a [recent decision of the Peruvian Supreme Court](#) where a number of Campesino human rights defenders were seriously harmed by the PNP while contracted by Yanacocha Mine in northern Peru. This situation where companies benefit from contracted police services without any legal responsibility for the consequences is institutively problematic and counter to justice. *A strict liability model would be the minimum required for the protection of human rights defenders* if these contracts are to continue: if the resource company contracts police services and harm ensues, the company is presumed liable.

To the extent that police service contracts now serve to immunize companies from liability (at least in Peru), this strengthens the argument that such contracts should be avoided. A company should not be granted blanket immunity when there is harm in connection with the services being rendered to the company. This state of affairs strengthens the argument that home state countries such as Canada should explicitly advise their resource companies not to meet their security needs through the use of police contracts.

In spite of these limitations, the Tribunal's decision represents a major step forward from the status quo of past decades. It develops strict criteria which are designed to significantly scale back and limit the use of service contracts between police and resource extraction companies. This is a remarkable change in the law which is designed to make these contracts the exception, rather than the rule.

There is now much work to do, in Peru and in home state countries, to ensure that the decision is implemented. In Peru, this should trigger an immediate review of all police service contracts with extractive companies to ensure that they comply with the many constitutional criteria laid down by the Tribunal. Any contract that does not comply should be declared unconstitutional and revoked. Any contracts that do comply must be monitored to ensure that the applicable constitutional criteria continue to be met. In home state countries like Canada, this means that the Canadian government should take steps to ensure that Canadian companies are complying with the letter and spirit of the law in this area. Canada has already acknowledged that it has tools to pressure companies to comply, such as withdrawing political and economic supports.

This preliminary assessment of the strengths and limitations of the Tribunal's decision indicates that there is much work to be done following this partial win for human rights defenders and mine affected communities. A legal decision like this

comes at the end of a long struggle, but it also heralds a new struggle to defend the principles it establishes and to push for improvement in those areas where it is weak. Human rights lawyers, their allies and communities in Peru should be proud of what they have accomplished even as they must remain vigilant in their quest to demilitarize resource extraction. Certainly, other Latin American jurisdictions will be taking notice of this decision and its aftermath. Home state governments like Canada and Canadian companies alike should act in accordance with their human rights obligations and take steps to ensure compliance with both the letter and spirit of this decision.

Appendix: Summary of General and Specific Rules for PNP Contracts

General Rules for all Peruvian National Police (PNP) Extraordinary Service Agreements, including with Resource Companies:

1. PNP officers who provide extraordinary services are *not* in an employment relationship with the private company (para 54). The company is not permitted to issue orders to the officers (para 93).
2. Participation in the provision of extraordinary services must be voluntary for individual officers and may only be done on their days off.
3. The PNP must adopt all measures necessary to avoid future partiality of the institution in favor of a private recipient of extraordinary police services (para 124).
4. The decision of the PNP Director General to enter into extraordinary services agreements must respond to the constitutional objectives of optimizing citizens' security and public order, and not solely to a private entity's requests for the provision of these services (para 94).
5. The use of police personnel to perform extraordinary services cannot generate a deficit in the protection of public security (para 80).
 - a. Inadequate public security protection could occur if police who are providing ordinary services are assigned to extraordinary services, or if a series of large extraordinary service agreements are made with the purpose of protecting a specific company (para 81).
 - b. The PNP Director General must take into account the number of officers assigned to a specific geographic area and ensure that areas with few officers are not prejudiced by the constant use of extraordinary police contracts (para 82).
6. The provision of extraordinary police services must only occur where there is a demonstrated risk of crime or danger to individual or public goods or property (paras 85, 94).

Specific Rules for Peruvian Police Agreements with Resource Companies:

1. There is a strong presumption that private security is the best option to meet extractive companies' security needs.
 - a. PNP should try to avoid a situation where it has contractual commitments to one of the parties involved in an environmental conflict (para 110).
 - b. If the PNP are contracted to protect a mining company's operations in the context of an environmental conflict, this could jeopardize the perception that the PNP are performing their functions objectively and could lead to greater conflict (paras 108, 109).
2. The PNP may only provide extraordinary police services to extractive companies as an exception and when there is evidence that it is impossible for the company to obtain private security services. In these cases, the exclusive purpose of these police services would be to avoid a situation where the company lacks protection (paras 111, 112).
3. Before agreeing to extraordinary services, the PNP authorities must verify that the company has done all it can to obtain security services from the private sector. Companies must also prove that there is a concrete risk to their operations (see criterion above) such that extraordinary police services are warranted (para 111).
4. The PNP's role must at all times be oriented toward preventing the violation of constitutional rights, without taking sides in the conflict (para 108).
5. PNP authorities must ensure, as much as possible, that the officers charged with protecting public order in situations of social conflict and protest, are not the same officers who have previously received payment for services under an extraordinary services agreement (para 125). Police officers working pursuant to extraordinary service agreements must focus on crime prevention, their services should not include policing legitimate protests (para 153).
6. The Director General must also ensure that all of the general rules (see above) are followed: that the agreed upon services do not restrict ordinary police services provided to the community, that police officers are not subordinate to the company, and that all human rights are respected as recognized in law, in the constitution and in applicable international treaties (para 112).
7. If the PNP fails to comply with the conditions set out by the Tribunal, legal action is available before administrative or judicial authorities (para 113), those responsible will be sanctioned (para 114), and the agreement in question will be deemed unconstitutional (para 115).