CONGA NO VA

AN ASSESSMENT OF THE CONGA MINING PROJECT IN LIGHT OF WORLD BANK STANDARDS

A report of a coalition of social organizations from the Provinces of Celendín and Hualgayoc in the Region of Cajamarca, Peru

With the research and technical support of the
COLUMBIA LAW SCHOOL HUMAN RIGHTS CLINIC

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Inter-Institutional Platform of Celendín
The Unified *Rondas* of the Province of Celendín
The *Frente de Defensa* of the Jadibamba River Basin
The *Frente de Defensa* of the District of Huasmín
The *Frente de Defensa* of the Centro Poblado of Jeréz
The *Frente de Defensa* of the District of Sorochuco
The *Frente de Defensa* of the Interests of the Province of Hualgayoc - Bambamarca

With the research and technical support of the Columbia Law School Human Rights Clinic

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PREFACE

The social organizations issuing this report are a coalition of groups from the provinces of Hualgayoc and Celendín in the region of Cajamarca, Peru. We have come together to present our assessment of the social and environmental risks of the proposed Conga gold and copper mining project in light of the Performance Standards of the International Finance Corporation (IFC) of the World Bank Group.[1] We work to promote human rights and the protection of the environment, collectively representing the interests and positions of thousands of individuals and dozens of communities that would be impacted by the project.

The proposed Conga mine, a project of the IFC-funded joint venture Minera Yanacocha,[2] would be located in the highlands of Cajamarca, at the intersection of four districts in three provinces: the districts of Sorochuco and Huasmín (province of Celendín); the district of Bambamarca (province of Hualgayoc); and the district of La Encañada (province of Cajamarca). The area includes hundreds of hectares of wetlands, and an interconnected hydrologic system composed of mountain lakes and surface and ground water. We use this land for agriculture and animal husbandry, taking advantage of the great economic productivity of the fertile *jalca* ecosystem unique to this geographic location.[3] Hundreds of communities, including *campesino* communities (rural farming communities with deep ancestral and traditional heritage), live in the surrounding lands.

The Conga project would cause the loss of the Perol, Mala, Azul, and Chica mountain lakes, as well as over a hundred hectares of wetlands, to create, among other mine facilities, two massive open pits, two waste rock dumps, and an expansive mine tailings dam and storage facility, with a total footprint of thousands of hectares.[4] The lakes and wetlands that we would lose form the headwaters of five major river basins that sustain our lives. The project risks irrevocably damaging our sources of water, as well as our health, livelihoods, and cultural heritage, while threatening the ecosystem and its biodiversity.

We, and the communities we represent, have clearly expressed our strong opposition to the project. A 2012 public opinion poll about the project showed that 78% of all Cajamarcans oppose the Conga project, with opposition rising to 83% in rural areas.[5] Indeed, Minera

1 The views expressed in this report reflect the voice and positions of the organizations signing it. The Columbia Law School Human Rights Clinic provided research and technical support for the document's preparation. The document does not represent the institutional views of Columbia University or Columbia Law School.

2 Minera Yanacocha is a joint venture between Newmont Mining Corporation (51.35%), Minas Buenaventura (43.65%) and the International Finance Corporation (5%). *See* Newmont, Yanacocha-Peru: Overview, http://www.newmont.com/operations-and-projects/south-america/yanacocha-peru/overview/default.aspx.

3 The jalca is a complex natural ecosystem composed of extensive areas of wetlands and Andean lakes that capture and regulate hydrologic resources, as well as fertile soils, supporting high agricultural productivity and rich biodiversity. See Fidel Torres & Marlene Castillo, El proyecto minero Conga, Perú: Riesgo de Desastre en Una Sociedad Agraria Competitiva, GRUFIDES (2012).

4 Knight Piésold Consulting, Minera Yanaococha S.R.L. Conga Project Environmental Impact Study, Executive Summary 1-1, 5-1, 6-2, 7-4 (Feb. 2010).

5 *El 78% de cajamarquinos rechaza el proyecto minero Conga*, El Comercio, Aug. 22, 2012, http://elcomercio.pe/politica/gobierno/78-cajamarquinos-rechaza-proyecto-minero-conga-noticia-1459195; *see also Most of Peru region opposes Newmont mine-poll*, Reuters, Aug. 22, 2012, http://www.reuters.com/article/2012/08/22/peru-mining-newmont-idUSL2E8JM5Y520120822.

Yanacocha acknowledges that it lacks a social license to proceed with the project.[6] We have repeatedly demonstrated our rejection of the project in letters, petitions, marches, strikes, and protests.[7] In the final months of 2011, these protests swelled into a series of general strikes in the region of Cajamarca, punctuated by massive demonstrations in town squares, local highways, and at the site of the Conga project.[8] In February 2012, thousands of us marched from Cajamarca to Lima in a Grand National March for Water, to voice our opposition to the Conga project and to petition the government of Peru to protect our sources of water.[9]

We demonstrate to protect our water, our environment, our livelihoods, and our lives. To us, the proposed Conga project represents a threat to our existence. Five of us have already died in the defense of our future, killed in July 2012 in the towns of Celendín and Bambamarca while demonstrating against the project: Paulino García Rojas, Faustino Silva Sánchez, Antonio Sánchez Huamán, Joselito Vásquez Jambo, and César Medina Aguilar, a sixteen-year-old child.[10] Many others have been seriously injured.[11]

This project must not move forward. It has caused enough harm already. It is for these reasons that we have prepared this document, to present our concerns and our voice before the World Bank. *Conga no va*.

6 *See* Ben Hallman & Roxana Olivera, *Gold Rush: How the World Bank is Financing Environmental Destruction*, Huffington Post (Apr. 16, 2015), http://projects.huffingtonpost.com/worldbank-evicted-abandoned/how-worldbank-finances-environmental-destruction-peru (describing how Yanacocha "won't move forward with the mine until it has the 'social license' of the local people"); Newmont, News Details, Listening Study Helps Rebuild Relationships in Peru, (Mar. 18, 2013), http://www.newmont.com/newsroom/newsroom-details/2015/Listening-Study-Helps-Rebuild-Relationships-in-Peru/default.aspx (recognizing the need "to earn the social license to operate").

7 *See, e.g.*, Request for declaration of inviability of project of Minas Conga, presented by Base Organizations of Cajamarca and Celendín to General Director of Environmental and Mining Issues of the Ministry of Energy and Mines, Registration No. 1527384 (Apr. 15, 2005); International petition against the Conga Project signed by 11,521 individuals online and hundreds more in Peru, Nov. 12, 2012, *available at:* https://secure.avaaz.org/en/petition/Stop_the_Conga_mining_project_2/?pv=102.

8 Jimena Rojas Denegri, *Los últimos meses: Una cronología del caso Conga*, La Mula, Apr. 18, 2012, https://lamula.pe/2012/04/18/los-ultimos-meses-una-cronologia-del-caso-conga/jimenard/

9 *See Comienza en Perú la gran marcha nacional del agua*, La Razon, Feb. 4, 2012, http://www.larazon.es/historico/7757-comienza-en-peru-la-gran-marcha-nacional-del-agia-QLLA_RAZON_431626; *Regiones se preparan para multitudinaria marcha nacional por el agua y la vida*, Servindi, Jan. 31, 2012, http://servindi.org/actualidad/58319; Coordinadora Nacional de Derechos Humanos, Informe sobre la Gran Marcha Nacional por el Derecho al Agua en Peru, http://derechoshumanos.pe/wp-content/uploads/2014/02/Informe-Final-Marcha-Per%C3%BA-1.pdf.

10 *See* Human Rights Watch, Peru: Investigate Killings at Mining Protests, Cajamarca Response Requires Restraint, Respect for Rule of Law (Jul. 6, 2012), http://www.hrw.org/news/2012/07/06/peru-investigate-killings-mining-protests; Alan Ele, *Declaraciones y pruebas sobre la muerte César Medina (16 años) en Celendín*, La Mula, Jul. 7, 2012, https://lamula.pe/2012/07/07/declaraciones-y-pruebas-sobre-la-muerte-cesar-medina-16-anos-en-celendin/AlanEle/.

11 *See* Human Rights Watch, Peru: Investigate Killings at Mining Protests, Cajamarca Response Requires Restraint, Respect for Rule of Law (Jul. 6, 2012), http://www.hrw.org/news/2012/07/06/peru-investigate-killings-mining-protests; Frontline Defenders, Environmental Rights Defenders at Risk in Peru 4, (2014).

I. EXECUTIVE SUMMARY

The proposed Conga mining project is not a viable way for the World Bank and the International Finance Corporation (IFC) to meet their goals of promoting sustainable development in the Cajamarca region of Peru. The project poses a grave threat to fundamental human rights and the environment.

The IFC, as the private sector investment arm of the World Bank Group, aims to fight poverty through strategic investment in the sustainable development initiatives of private companies. To ensure that its investments lead to sustainable and positive development outcomes, the IFC has adopted a Sustainability Framework,[12] which includes social and environmental Performance Standards that both guide the behavior of the companies in which the IFC invests, and set the normative baseline for the IFC's monitoring and supervision of its investments.[13] The Performance Standards include protections for water access and quality, safeguards for ecosystems and biodiversity, respect for indigenous populations and cultural heritage, restrictions on forced displacement of affected communities and individuals, and limitations on the use of force by security personnel.

This report applies these standards to the design and development of the proposed Conga gold and copper mine of Minera Yanacocha. In light of that analysis, the report concludes that the Conga project is not a viable way to achieve the sustainable development sought by the IFC, and its continued advancement would risk violating numerous aspects of the Performance Standards and fundamental human rights.

Since 1993, the IFC has owned a 5% equity stake in the joint venture Minera Yanacocha, which has operated the Yanacocha gold mine in Cajamarca for over twenty years and is currently seeking to develop the Conga gold and copper mine in the same region.[14] One of the difficult lessons from the IFC's over 20-year investment in the Yanacocha mine is that mining alone is not a viable vehicle for sustainable development in Cajamarca. Mining has not lifted the region out of poverty, and instead has produced social and environmental conflict for our communities.

Nonetheless, Minera Yanacocha continues to push forward with its plans to develop the Conga project. The push comes despite massive opposition to the proposed mine from local residents and communities, and despite great social and environmental risks that do not accord with the IFC's Performance Standards. The project would require the loss of four mountain lakes and water from over a hundred hectares of wetlands for the purposes of open pit mineral

12 *See* IFC, IFC Sustainability Framework, http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/our+approach/risk+management/sustainability+framework.

13 *See* IFC, International Finance Corporation's Policy on Environmental and Social Sustainability, Jan 1, 2012, ¶¶ 2, 7 http://www.ifc.org/wps/wcm/connect/7540778049a792dcb87efaa8c6a8312a/SP_English_2012.pdf?MOD=AJPERES [hereinafter 2012 Sustainability Policy] (Performance Standards provide normative baseline for the IFC's "due diligence, monitoring, and supervision efforts"); IFC, Performance Standards on Environmental and Social Sustainability, Jan 1, 2012, ¶1, http://www.ifc.org/wps/wcm/connect/115482804a0255db96fbffd1a5d13d27/PS_English_2012_Full-Document.pdf?MOD=AJPERES [hereinafter 2012 Performance Standards] (the IFC "requires its clients to apply the Performance Standards").

14 *See,* Newmont, Yanacocha-Peru: Overview, http://www.newmont.com/operations-and-projects/south-america/yanacocha-peru/overview/default.aspx; Newmont, Conga-Peru: Overview, http://www.newmont.com/operations-and-projects/south-america/conga-peru/overview/default.aspx.

extraction and waste disposal.[15] These lakes and wetlands form the headwaters of five river basins fueling between 600 and 700 springs upon which communities in the immediate vicinity depend, and their loss threatens to significantly reduce water resources and biodiversity. The risk of surface and groundwater contamination posed by the project would additionally threaten the quality of the natural sources of water that are not destroyed by the project, entailing risks to human health and environmental sustainability in the region. The lakes and the entire ecosystem are a source of survival and cultural heritage for the dozens of communities living nearby, and the company's promise to create artificial reservoirs to supplement the loss of water does not provide a sufficient substitute, nor a sufficient guarantee of access to clean water. Instead, the reservoirs would require continuous water treatment long into the future and likely impose a burden on future generations.

In spite of these concerns, and the discord with the IFC's Sustainability Framework, the IFC has yet to take a public position with respect to the project. This silence is of particular concern given that the preliminary project activity undertaken to date has already led to serious conflict and harm to local communities. The Peruvian security forces' violent repression of public demonstrations against the project led to five deaths in 2012 and many injuries. Those providing security services to Minera Yanacocha have also used force to repress local protests, causing serious injury to unarmed demonstrators, and have harassed, intimidated, and damaged property of those refusing to leave their home near the project site, raising serious concerns about potential forced eviction. Hundreds of individuals participating in protests have faced, or are currently facing, criminal proceedings for their opposition to the project. These actions strongly suggest violations of the IFC's Performance Standards and undermine the IFC's mission of supporting sustainable development, which is only achievable with full respect for human rights.

The proposed Conga project is the wrong path for development in Cajamarca. Local governments and communities have articulated an alternative vision of sustainable development based on agriculture, animal husbandry, artisanry, and tourism. These are the types of projects that should be supported, as they better take advantage of, and protect, the unique ecosystem and local culture of the area.

The IFC is well positioned to use its influence as an equity investor in Minera Yanacocha to stand with the affected communities, declare the Conga project unviable, and defend the right of the communities to express and demonstrate opposition to the project.

This report recommends that the IFC, in the exercise of its responsibility to monitor its investments, make public its internal assessments of the Conga project, issue a public statement recognizing that the project is not viable, and use its influence as an investor in the company to stop this project from moving forward. If the IFC is incapable of using its influence to ensure that Minera Yanacocha's projects comply with the Performance Standards, then it can best meet its goal of pursuing sustainable development and defending human rights and the environment by withdrawing its investment in the company.

15 Knight Piésold Consulting, Minera Yanaococha S.R.L. Conga Project Environmental Impact Study, Executive Summary 1-1, 5-1, 6-2, 7-4 (Feb. 2010).

II. HISTORICAL CONTEXT: INDUSTRIAL MINING IN CAJAMARCA HAS NOT LED TO SUSTAINABLE DEVELOPMENT IN THE REGION

The Conga mine is proposed against a backdrop of mining activity in the region that has had limited success in lifting Cajamarca out of poverty, and which has been marked by environmental and social conflicts. These experiences provide critical lessons regarding the risks of proposed new projects, and the limitations of large-scale industrial mining in achieving the sustainable development sought by the IFC for the region of Cajamarca.

Over twenty years of industrial mining in Cajamarca has not lifted the region out of poverty. As of 2013, over 50 percent of the Cajamarca population lives in poverty, and Cajamarca is the poorest region in the country.[16] A 2011 study showed between 20 and 24 precent of Cajamarca residents living in extreme poverty, the highest rate in Peru, even though the region had received more than 418 million soles in mining royalties.[17] Cajamarca additionally ranks well below the national average on the Human Development Index, a summary measure that considers life expectancy, literacy rate, and per capita GDP.[18]

Beyond the protracted poverty in Cajamarca, the past two decades of Minera Yanacocha's operations have also been marked by environmental and social conflict. In one of the most emblematic examples, in 2000, a vehicle operated by one of Minera Yanacocha's contractors spilled approximately 151 kilograms of mercury over a section of highway passing through the towns of Choropampa, San Juan, and Magdalena, leading to lasting concerns about health impacts, water quality, and ground contamination.[19] To this day, the community of Choropampa continues to struggle with the social and health-related impacts of the spill.[20] There are also serious concerns about how the long-term operations of the Yanacoha mine have impacted the availability and quality of water in Cajamarca. A number of studies suggest that mining activity is linked to acidity and heavy metal contamination in rivers, drinking water, and food sources of

16 *INEI: Región Cajamarca se convirtió en la más pobre del Perú en el 2013*, América Noticias May 2, 2014, http://www.americatv.com.pe/noticias/actualidad/inei-region-cajamarca-se-convirtio-mas-pobre-peru-2013-n134358.

17 *See* Perú 21, *Cajamarca es la región con más extrema pobreza*, May 31, 2012, http://peru21.pe/2012/05/31/opinion/cajamarca-region-mas-extrema-pobreza-2026600.

18 *See* Programa de las Naciones Unidas para el Desarrollo, Informe sobre Desarrollo Humano: Perú 2009. *See also* José de Echave y Alejandro Diez, Más allá de Conga 19 (2013).

19 *See* Investigation into the Mercury Spill of June 2, 2000 in the Vicinity of San Juan, Choropampa, and Magdalena, Peru, Report of the Independent Commission to the Office of CAO of the IFC and MIGA (July 2000) http://www.cao-ombudsman.org/cases/document-links/documents/June2000MercurySpill.pdf. These concerns were subsequently raised by local communities in three complaints before the CAO. *See* Peru / Yanacocha-01/Cajamarca, filed Jul. 1, 2000, http://www.cao-ombudsman.org/cases/case_detail.aspx?id=110; Peru / Yanacocha-02/Cajamarca, filed Mar. 1, 2001, http://www.cao-ombudsman.org/cases/case_detail.aspx?id=111; and Peru / Yanacocha-03/Cajamarca, filed Mar. 1, 2006, http://www.cao-ombudsman.org/cases/case_detail.aspx?id=112.

20 *See* Magali Zevallos, *Choropampa: 15 años sin respuestas*, Gran Angular, Apr. 25, 2015, http://elgranangular.com/2015/04/25/choropampa-15-anos-sin-respuestas/.

local communities, presenting risks to the environment and human health.[21] Additionally, the San Jose Reservoir – built by Minera Yanacocha to provide water for local agriculture impacted by the Yanacocha mine operations – has dried up for periods, and has failed to serve as a reliable source of water.[22]

In the face of these environmental and social concerns, residents of Cajamarca have often felt the need to publicly demonstrate and organize to defend their rights and the environment, despite the risks this has entailed to their physical security. In 2004, for example, Minera Yanacocha began development of Cerro Quilish, a site near the city of Cajamarca, despite widespread opposition based on concerns about the project's environmental impacts, in particular on the city's water supply.[23] Minera Yanacocha only halted the project after two weeks of public protests by thousands of local residents.[24] This type of public opposition to mining practices has historically been met with violent repression, as those critical of mining practices have faced threats to their physical security from public and private security forces. Minera Yanacocha's policies and practices with respect to security and human rights have been criticized by large portions of the local population for many years in light of the suspicious deaths of the farmer Isidro Llanos Chavarría in August 2006 and the environmental activist Edmundo Becerra Corina in November 2006, and allegations of wiretapping, surveillance, death threats and harassment of those critical of the company, including members of the non-governmental organization GRUFIDES.[25]

With the proposed Conga project, many of these dynamics are playing out once again. Given its experiences in the region, the IFC is well positioned to assess the environmental and social risks of the Conga project, and use its influence to ensure that past mistakes are not repeated.

21 *See e.g.*, Yacoub, C., Pérez-Foguet, A., Miralles, N., Sci. World J. 732519 (2012); Barenys et. al, *Heavy metal and metalloids intake risk assessment in the diet of a rural population living near a gold mine in the Peruvian Andes (Cajamarca)*, Food and Chemical Toxicology 71, 254–263 (2014); Shannon Langdon, Peru's Yanacocha Gold Mine: The IFC's Midas Touch? 2, Project Underground, (Sept. 2000) http://www.ciel.org/Publications/IFCCSPeru.pdf (compiling sources); P. Marco Arana Zegarra, Agua y minería en Cajamarca. Defendiendo el derecho al agua: El conflicto de Cerro Quilish 2004, GRUFIDES.

22 *Reservorio San José de Yanacocha está vacío desde el año pasado*, La Republica, July 20, 2012, http://archivo.larepublica.pe/06-07-2012/reservorio-san-jose-de-yanacocha-esta-vacio-desde-el-ano-pasado.

23 CAO, *Monograph 3. Independent Water Monitoring and the Transition of the Mesa (2004-2006), in* Building Consensus: History and Lessons from the Mesa de Diálogo y Consenso CAO-Cajamarca, Peru, at 26, http://www.cao-ombudsman.org/publications/documents/CAO_Monograph_IndWaterMonitoring_EnglishPart3.pdf.

24 *Id*. at 27 (describing how "the issue of Cerro Quilish had become the 'last straw,' symbolizing Yanacocha's arrogance, power, and apparent disregard for community concerns," and both urban and rural communities voiced opposition to developing Cerro Quilish).

25 *See* Gino Costa, Comprehensive Review of Minera Yanacocha's Policies Based on the Voluntary Principles of Security and Human Rights, 12 (May 12, 2009); Jose Antonio Rivas, *Asesinan a dirigente ambientalista*, La República, Nov. 3, 2006, http://archivo.larepublica.pe/03-11-2006/asesinan-dirigente-ambientalista.

III. THE IFC'S SUSTAINABILITY FRAMEWORK: A BRIEF OVERVIEW

The International Finance Corporation (IFC) seeks to fight poverty through sustainable development. The IFC defines its goals as ending extreme poverty and boosting shared prosperity,[26] emphasizing that sustainable development is critical to these aims.[27] The IFC Sustainability Framework includes social and environmental sustainability standards for both the IFC and for its clients.[28] In these policies, the IFC states that it seeks to "'do no harm' to people and the environment," and is "committed to ensuring that the costs of economic development do not fall disproportionately on those who are poor or vulnerable, that the environment is not degraded in the process, and that renewable natural resources are managed sustainably."[29] The IFC works towards these ends by conducting due diligence prior to making an investment, identifying and categorizing the environmental and social risks posed by a project, and conducting continuous monitoring and supervision of its investments.[30] To ensure transparency and accountability, the IFC has also adopted an Access to Information Policy to provide accurate and timely information regarding its activities to stakeholders, including affected communities.[31]

A key to these policies are the IFC's Performance Standards. At the outset, Performance Standard 1 recognizes that businesses have an obligation to respect human rights and to remedy human rights violations.[32] Basic human rights include the rights to life,[33] health,[34] food,[35] wa-

26 IFC, Our Goals and Values, http://www.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/about+ifc/vision.

27 2012 Sustainability Policy, ¶ 8.

28 IFC, IFC Sustainability Framework, http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/our+approach/risk+management/sustainability+framework. *See also* 2012 Sustainability Policy, ¶ 2; 2012 Performance Standards, ¶ 1.

29 2012 Sustainability Policy, ¶ 9.

30 *See* 2012 Sustainability Policy.

31 IFC, Access to Information Policy, ¶¶ 3, 6, Jan. 1, 2012, http://www.ifc.org/wps/wcm/connect/98d8ae004997936f9b7bffb2b4b33c15/IFCPolicyDisclosureInformation.pdf?MOD=AJPERES.

32 2012 Performance Standards, Performance Standard 1, ¶3; IFC Guidance Notes: Performance Standards on Environmental and Social Sustainability, Jan. 1, 2012, Guidance Note 1, GN44-45, *available at* http://www.ifc.org/wps/wcm/connect/e280ef804a0256609709ffd1a5d13d27/GN_English_2012_Full-Document.pdf?MOD=AJPERES [hereinafter 2012 Guidance Notes] (stressing that the "corporate responsibility to respect human rights applies to all human rights and to all business enterprises" and expressly referencing the UN Guiding Principles on Human Rights, as well as the rights the in the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights).

33 International Covenant on Civil and Political Rights, art. 6., Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

34 International Covenant on Economic, Social and Cultural Rights, art. 12, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

35 ICESCR, art. 11.

ter,[36] an adequate standard of living,[37] and the rights of peoples "to freely dispose of their natural wealth and resources."[38] The Performance Standards also include specific protections for water access and quality, protections for ecosystems and biodiversity, safeguards to ensure respect for indigenous populations and cultural heritage, restrictions on forced displacement, and strict limitations on the use of force by security personnel. The IFC requires its clients to apply the Performance Standards, and uses the Performance Standards as the normative baseline for its own monitoring and supervisory obligations, with the aim of anticipating and avoiding adverse environmental and social impacts.

When a company in which the IFC invests proposes a new activity that would represent a material change from what was considered at the time of the IFC's original investment, as in the case of the Conga project, the IFC commits to ensuring that the company brings its environmental and social management plans in line with the Performance Standards.[39] The IFC works to advise companies on how to manage these issues, and when environmental and social concerns are significant, the IFC may request additional information and reporting from the company, and can also conduct site visits.[40] If the IFC finds that a company has failed to comply with its environmental and social commitments, the IFC will work with the company to try to facilitate compliance, and if unsuccessful, may take remedial actions as appropriate.[41]

36 The right to water stems from the right to life (codified in ICCPR art. 6) and the right to health (codified in ICESCR art. 12), and has been recognized by the UN General Assembly, the Human Rights Council, the Committee on Economic, Social and Cultural Rights, and the Inter-American Court of Human Rights. *See* General Assembly U.N. Doc. A/RES/64/292, July 28 2010; Human Rights Council U.N. Doc. A/HRC/9, September 24, 2010; Committee on Economic, Social and Cultural Rights, General Comment 15, U.N. Doc. E/C.12/2002/11 (the right to water is "inextricably related to the right to the highest attainable standard of health" in Article 12); and *Villagran Morales et al*, Inter-Am. Ct H.R., Judgment of Nov 19, 1999, Ser. C No. 63 (1998) 144.

37 ICESCR, art. 11.

38 International Covenant on Civil and Political Rights, art. 1(2), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

39 IFC, Sustainability Policy, ¶ 25.

40 IFC, IFC-CESI Environmental and Social Review Procedures Manual, version 7 (April 15, 2013), ESRP 6 §§ 2.1, 2.4, [hereinafter ESRPM] http://www.ifc.org/wps/wcm/connect/190d25804886582f-b47ef66a6515bb18/ESRP+Manual.pdf?MOD=AJPERES.

41 2012 Sustainability Policy, ¶ 45; ESRPM, ESRP 6 § 2.1.

IV. BASED ON IFC STANDARDS, THE CONGA PROJECT IS ENVIRONMENTALLY AND SOCIALLY UNVIABLE

The IFC's Performance Standards, and the human rights and environment they seek to protect, are threatened by the Conga project. The Conga project risks irrevocably damaging local hydrology, cultural heritage and biodiversity, and negatively impacting human health and subsistence in the region—outcomes that would infringe upon the rights of thousands of people living in the affected area, including *campesino* peoples. The Conga project is not a viable way of achieving the sustainable development sought by the IFC.

In this section, these concerns are each presented and analyzed in light of the Performance Standards:

A. The Performance Standards provide that a project may not adversely and significantly impact local communities' access to water,[42] yet the very design of the Conga project threatens precisely such an outcome.
B. The potential contamination of surface and ground water threatened by the Conga project risks undermining the Performance Standards' protections for water quality and human health.[43]
C. The Conga project is located in the type of important and sensitive ecosystem, with its numerous species and ecological processes, that the Performance Standards specifically seek to protect.[44]
D. The project has the potential to profoundly impact the livelihoods of campesino peoples – communities that should benefit from the protections in the Performance Standards that are afforded indigenous peoples[45] – yet does not have their consent.
E. The environment constitutes cultural heritage of those living in the area, and merits the special protections that are identified by the Performance Standards[46] – protections that are incongruous with this project.

A. ADVERSE IMPACTS ON THE AVAILABILITY OF, AND ACCESS TO, WATER RESOURCES

Performance Standard 3 requires businesses to ensure that projects do not require unsustainable water consumption. When a project will be a significant consumer of water, the business must "adopt measures that avoid or reduce water usage so that the project's water consumption *does not have significant adverse impacts on others*."[47] A project should not cause "unacceptable water stress" on local communities.[48] If some adverse effects on water access are

42 2012 Performance Standards, Performance Standard 3, ¶ 9.
43 2012 Performance Standards, Performance Standard 3, ¶ 4; 2012 Performance Standards, Performance Standard 4, ¶ 7.
44 2012 Performance Standards, Performance Standard 6, ¶ 1.
45 2012 Performance Standards, Performance Standard 7.
46 2012 Performance Standards, Performance Standard 8.
47 2012 Performance Standards, Performance Standard 3, ¶ 9 (emphasis added).
48 2012 Guidance Notes, Guidance Note 3, GN25.

unavoidable, then the business must find ways to adequately mitigate these impacts, and determine the acceptable level of mitigation through a community engagement process.[49] In cases where it is either technically impossible or prohibitively expensive to adequately mitigate adverse impacts, "*an alternative project site should be selected*."[50] The Guidance Notes state that if the cost of mitigating adverse effects on water access makes a project "unviable," then the company may not proceed with the project site.[51]

Independent analysis strongly suggests that, if allowed to move forward, the Conga project, situated at the headwaters of five river basins, would significantly reduce water resources for the region, and thus generate considerable water stress on local communities.[52] The project would require the loss of four mountain lakes and over a hundred hectares of wetlands for the purposes of open pit mineral extraction and waste disposal.[53] The Peruvian Environmental Ministry determined that the Conga project "will transform in a very significant and irreversible manner the headwaters" of the watershed.[54] The National Water Authority likewise concluded that the Conga project "will generate irreversible environmental impacts for all of the bodies of water located in the project's zone of influence."[55] In addition to the loss of the natural mountain lakes, the project will cause "the elimination of 103 hectares of wetlands, environmental factors which currently provide diverse permanent environmental services for the benefits of the surrounding populations."[56] The project area contains between 600 and 700 springs, which are key sources of water, including drinking water, for many communities in the region.[57] Cajamarca's water supply is "already inadequate to meet the present demands," and the Conga project risks placing further water stress on the region.[58]

Minera Yanacocha proposes the construction of four artificial reservoirs to compensate

49 2012 Guidance Notes, Guidance Note 3, GN26.

50 2012 Guidance Notes, Guidance Note 3, GN27 (emphasis added).

51 2012 Guidance Notes, Guidance Note 3, GN27.

52 Robert E. Moran, Ph.D., Michael-Moran Assoc., L.L.C. Colorado, U.S.A., The Conga Mine, Peru: Comments on the Environmental Impact Assessment (EIA) and Related Issues, 4.

53 MINAM, Informe Nº 001-2011, Comentarios al Estudio de Impacto Ambiental del proyecto CONGA aprobado en octubre de 2010, 11 (2011). *See also* Wilder A. Sánchez Sánchez, Con mina arriba ¿más agua abajo? La verdad sobre los reservorios de Minas Conga, Feb. 17, 2013.

54 MINAM, Informe Nº 001-2011, Comentarios al Estudio de Impacto Ambiental del proyecto CONGA aprobado en octubre de 2010, 4, 9 (2011) (Conga "transformará de manera muy significativa e irreversible la cabecera de cuenca").

55 José de Echave y Alejandro Diez, Más allá de Conga 74 (2013), citing la Autoridad Nacional del Agua informe técnico No.0064-2010-ANA-DGCRH/RBR, 17 de agosto de 2010, 5.3 ("las operaciones mineras de Yanacocha del Proyecto Conga, generará impactos ambientales irreversibles sobre todos los cuerpos de agua localizados en la zona de influencia del proyecto, así como la eliminación de 103 hectáreas de bofedales, factores ambientales, que actualmente brindan diversos servicios ambientales permanentes en beneficio de las poblaciones aledañas.")

56 *Id.*

57 Robert E. Moran, Ph.D., Michael-Moran Assoc., L.L.C. Colorado, U.S.A., The Conga Mine, Peru: Comments on the Environmental Impact Assessment (EIA) and Related Issues, 4. *See also* Wilder A. Sánchez Sánchez, Con mina arriba ¿más agua abajo? La verdad sobre los reservorios de Minas Conga 24 (Feb. 17, 2013); Fidel Torres & Marlene Castillo, M., El proyecto minero Conga, Perú: Riesgo de Desastre en Una Sociedad Agraria Competitiva, 14, GRUFIDES, (2012).

58 Robert E. Moran, Ph.D., Michael-Moran Assoc., L.L.C. Colorado, U.S.A., The Conga Mine, Peru: Comments on the Environmental Impact Assessment (EIA) and Related Issues, 18.

for the lost water supplied by the four mountain lakes.[59] Yet these reservoirs will not provide a viable long-term substitute for the region's existing hydrologic system. First, available evidence suggests that the reservoirs will not have the storage capacity, nor the supporting infrastructure, to compensate for the loss of water throughout the affected area when one combines the impacts to lakes and wetlands, the interconnected hydrology of the area, and the large usage of water by the mine.[60] The loss of the mountain lakes and the water held in the surrounding wetlands will impact water sources throughout the project zone, as "surface waters, ground waters, and springs in the Conga project area are all ultimately interconnected."[61] Many of the streams or springs will dry up, leaving populations living in areas near the springs without access to their traditional sources of water.[62] The mine's hydrologic studies do not sufficiently guarantee that the complex and interconnected groundwater systems will not be affected, and that all communities and households currently receiving water will continue to do so.[63] Second, even if the reservoirs maintain water volume in the system, the reservoirs will provide water treated only to meet water quality standards for agriculture and livestock use.[64] Thus, the reservoirs are unlikely to compensate the loss of drinking water or water used to support aquatic life, necessitating alternative mitigation measures whose full dimensions are still unknown.[65] Third, a reservoir is not able to replace an ecosystem. The Environmental Ministry emphasizes that "one cannot compare a mountain lake, which is a complete ecosystem, with a reservoir or dam, which is an artificial body with only some characteristics of an ecosystem."[66] According to Peter Koenig, an expert on hydrologic resources and ex-member of the World Bank, "Conga is part of an ecosystem that has been created over millions of years, which has a hydrological equilibrium that any

59 Knight Piésold Consulting, Minera Yanaococha S.R.L. Conga Project Environmental Impact Study, Executive Summary 5-2 (Feb. 2010).

60 Wilder A. Sánchez Sánchez, Con mina arriba ¿más agua abajo? La verdad sobre los reservorios de Minas Conga, 9-14 (Feb. 17, 2013).

61 Robert E. Moran, Ph.D., Michael-Moran Assoc., L.L.C. Colorado, U.S.A., The Conga Mine, Peru: Comments on the Environmental Impact Assessment (EIA) and Related Issues, 4. *See also* Wilder A. Sánchez Sánchez, Con mina arriba ¿más agua abajo? La verdad sobre los reservorios de Minas Conga, 7 (Feb. 17, 2013).

62 Guido Peralto Quiroz, Ing., A partir del día siguiente: Informe sobre las graves consecuencias del proyecto Conga, 18 (Apr. 2012). *See also* Wilder A. Sánchez Sánchez, ¿Por qué el proyecto Conga es inviable? (3rd ed.) 7-8, http://www.frentepatriotico.org/index.php/medio-ambiente/401-por-que-el-proyecto-conga-es-inviable

63 Luis Javier Lambán Jiménez, Comentarios generales sobre el estudio hidrogeológico presentado en la evaluación del impacto ambiental del proyecto Conga, Organismos Públicos de Investigación, (Nov. 29, 2011); Robert E. Moran, Ph.D., Michael-Moran Assoc., L.L.C. Colorado, U.S.A., The Conga Mine, Peru: Comments on the Environmental Impact Assessment (EIA) and Related Issues, 6-7.

64 Robert E. Moran, Ph.D., Michael-Moran Assoc., L.L.C. Colorado, U.S.A., The Conga Mine, Peru: Comments on the Environmental Impact Assessment (EIA) and Related Issues, 8.

65 *See* Robert E. Moran, Ph.D., Michael-Moran Assoc., L.L.C. Colorado, U.S.A., The Conga Mine, Peru: Comments on the Environmental Impact Assessment (EIA) and Related Issues, 8-9.

66 Ministerio del Ambiente, Informe No. 001-2011, Comentarios al Estudio de Impacto Ambiental del proyecto CONGA aprobado en octubre de 2010, 4 (Nov. 21, 2011) ("no se puede comparara una laguna, que es un ecosistema completo, con un reservorio o presa, que es un cuerpo artificial con solo algunas características de un ecosistema.")

human intervention will irreparably destroy."[67]

Even if the reservoirs are initially able to provide water to local communities, the reservoirs require operation and maintenance, including chemical treatment, in perpetuity.[68] Such an arrangement provides the very real risk that the costs of maintaining the treatment facilities will eventually fall to the public, even if efforts have been made to create trusts for their long-term operation.[69] In contrast to the mountain lakes, which have sustained the local ecosystem for thousands of years, the proposed project cannot clearly guarantee the continued existence of the planned new reservoirs, nor the ability to maintain them indefinitely.

B. ADVERSE IMPACTS ON WATER QUALITY AND HUMAN HEALTH

The Performance Standards require that companies avoid pollution and waste generation with the aim of protecting both the environment and human health. A project must avoid "the release of pollutants to air, water, and land" to the extent possible and otherwise must minimize and control their release, taking into account existing ambient conditions, the assimilative capacity of the environment, and current and future land use.[70] Project waste must be treated, destroyed, or disposed of "in an environmentally sound manner."[71] Projects must also protect against "community exposure to hazardous materials and substances that may be released by the project" and damage to "ecosystem services" which impact human health.[72] The Performance Standards recognize that "adverse impacts on the quality, quantity, and availability of freshwater, may result in health-related risks and impacts,"[73] and the Guidance Notes specifically state that these concerns apply to mining projects.[74] Companies must ensure that the quality of soil, water, and other natural resources are "protected so as *not to pose an unacceptable risk* to human health, safety, and the environment due to the presence of pollutants."[75] Additionally, companies must "minimize the potential for community exposure to water-borne, water-based, water-related, and vector-borne diseases,"[76] particularly for projects "that may cause significant changes in the natural hydrologic regime of an area."[77]

The Conga project poses significant risks of contamination to the water and land near

67 Rafael Ponce, *Ex miembro del Banco Mundial: 'Proyecto Conga no es posible*,' La Mula, Jan. 18, 2012, https://lamula.pe/2012/01/18/ex-miembro-del-banco-mundial-proyecto-conga-no-es-posible/rafael-ponc/ ("Conga es parte de un ecosistema que se ha creado durante millones de años, que tiene un equilibrio hídrico que con cualquier intervención humana se destruye de forma irreparable. Aunque se hagan estudios y estudios técnicamente parece que es posible pero no es posible").

68 Robert E. Moran, Ph.D., Michael-Moran Assoc., L.L.C. Colorado, U.S.A., The Conga Mine, Peru: Comments on the Environmental Impact Assessment (EIA) and Related Issues, 9.

69 *See* Guido Peralto Quiroz, Ing., A partir del día siguiente: Informe sobre las graves consecuencias del proyecto Conga, 21-22 (Apr. 2012).

70 2012 Performance Standards, Performance Standard 3, ¶ 10. See also 2012 Guidance Notes, Guidance Note 3, ¶ 8 (requiring businesses to take environmental aspects into account during project design, and look to the World Bank Group Environmental, Health and Safety Guidelines for default "discharged effluent, air emissions, and other numerical guidelines").

71 2012 Performance Standards, Performance Standard 3, ¶ 12.

72 2012 Performance Standards, Performance Standard 4, ¶ 7.

73 2012 Performance Standards, Performance Standard 4, ¶ 8.

74 2012 Guidance Notes, Guidance Note 4, GN15.

75 2012 Guidance Notes, Guidance Note 4, GN16 (emphasis added).

76 2012 Performance Standards, Performance Standard 4, ¶ 9.

77 2012 Guidance Notes, Guidance Note 4, GN17.

the project, which carry resulting risks to the health of neighboring communities. An independent international assessment concluded that both "ground and surface waters will be contaminated, long-term, by the proposed Conga activities,"[78] and in particular by the "combination of the broken natural rock materials, tremendous quantities of toxic process chemicals, toxic fuels, explosive residues (like toxic ammonia), oils and greases, and other toxic chemicals (herbicides, pesticides, etc.)," which are "inevitably released into the environment, long-term, at comparable mine sites."[79] The Environmental Ministry stressed that the proposed Chailhuagón and Perol open pits, and their waste disposal sites, are located on volcanic rock and fractured limestone, which have "elevated levels of porosity and permeability," and thus heighten the "potential risk of leakage of acidic water into the subsoil," and the "probable contamination of deeper aquifers."[80] The same is argued for the 700 hectare tailings dam also located at the headwaters of the watershed.[81] The risk is not only that of acidic water, but also contamination of minerals such as mercury, arsenic, lead, copper, and cadmium, among others, all of which present grave threats to human and animal health.[82] Exposure to these chemicals – even at low doses, which can accumulate in living tissue over time – can lead to neurological damage, kidney and liver failure, abnormal heart function, intestinal disease, skin lesions, birth defects, miscarriages, and cancer.[83]

In the face of these risks, Minera Yanacocha's proposed plan does not clearly demonstrate how the company will prevent seepage from the open pits and the waste deposits into the groundwater.[84] Independent observers have found that the company's proposal to collect rainwater by surrounding the project with drainage pipes would be of limited efficacy and insufficient to guarantee the prevention of contamination of surrounding hydrology.[85] An independent expert in hydrogeology additionally found that the company's environmental impact

78 Robert E. Moran, Ph.D., Michael-Moran Assoc., L.L.C. Colorado, U.S.A., The Conga Mine, Peru: Comments on the Environmental Impact Assessment (EIA) and Related Issues 18.

79 Robert E. Moran, Ph.D., Michael-Moran Assoc., L.L.C. Colorado, U.S.A., The Conga Mine, Peru: Comments on the Environmental Impact Assessment (EIA) and Related Issues 8.

80 Ministerio del Ambiente, Informe No. 001-2011, Comentarios al Estudio de Impacto Ambiental del proyecto CONGA aprobado en octubre de 2010, 8-9 (Nov. 21, 2011) ("los estudios geológicos afirman que estos tajos se emplazarán sobre rocas volcánicas y rocas calcáreas fracturadas y meteorizadas que por naturaleza tienen elevados niveles de porosidad y permeabilidad" and "El depósito de desmonte Perol se ubica sobre rocas calcáreas solubles y tobas volcánicas con elevados niveles de permeabilidad que impactan sobre los acuíferos existentes.")("Los tajos Chailhuagón y Perol, afectarán las aguas subterráneas existentes con probable contaminación de acuíferos ubicados a mayor profundidad," and "existe un riesgo potencial de filtraciones de aguas ácidas al subsuelo.").

81 Wilder A. Sánchez Sánchez, ¿Por qué el proyecto Conga es inviable? (3rd ed.) 6-7, http://www.frentepatriotico.org/index.php/medio-ambiente/401-por-que-el-proyecto-conga-es-inviable.

82 Guido Peralto Quiroz, Ing., A partir del día siguiente: Informe sobre las graves consecuencias del proyecto Conga 8 (Apr. 2012).

83 Nilton Deza Arroyo, Oro, Cianuro y Otras Crónicas Ambientales, Editorial Universitaria de la Universidad Nacional de Cajamarca (2002), *available at* http://www.grufides.org/documentos/oro-cianuro-y-otras-cr-nicas-ambientales-nilton-deza-unc-2002.

84 Ministerio del Ambiente, Informe No. 001-2011, Comentarios al Estudio de Impacto Ambiental del proyecto CONGA aprobado en octubre de 2010, 7 (Nov. 21, 2011) ("MYSRL no ha realizado estudios que de manera fehaciente demuestren que los depósitos de relaves no producirán filtraciones.").

85 Guido Peralto Quiroz, Ing., A partir del día siguiente: Informe sobre las graves consecuencias del proyecto Conga 9, (Apr. 2012). *See also* Wilder A. Sánchez Sánchez, ¿Por qué el proyecto Conga es inviable? (3rd ed.) 8, http://www.frentepatriotico.org/index.php/medio-ambiente/401-por-que-el-proyecto-conga-es-inviable.

assessment (EIA) "used totally naïve geochemical approaches and assumptions" in attempting to show that the rocks would not generate acid and that the treatment plant would produce an acceptable water quality.[86] Furthermore, the waste generated by the Conga mine would remain on the site and require chemical treatment in perpetuity, such that the company would need to maintain "active (not passive) water treatment facilities, not simply for fifty or one hundred years post-closure, but forever"[87] with an estimated cost of millions of dollars per year.[88]

C. ADVERSE IMPACTS ON BIODIVERSITY AND ECOLOGICAL PROCESSES

Performance Standard 6 recognizes that protecting biodiversity is essential to sustainable development, and requires businesses to ensure that projects protect and conserve biodiversity.[89] The Performance Standards provide heightened protections to "critical habitats," including areas with high biodiversity and unique ecosystems;[90] those which serve essential landscape and ecological processes, including water catchments;[91] and areas which are legally protected as part of a policy to conserve nature, ecosystem services, and cultural values.[92] Within a critical habitat, a business may not pursue any project activities unless it can demonstrate that the project will not cause "measurable adverse impacts on those biodiversity values for which the critical habitat was designated, and on the ecological processes supporting those biodiversity values."[93]

The Conga project is situated in a hydrologically significant area at the headwater of five river basins and is comprised primarily of environmentally sensitive wetlands and the unique

86 Robert E. Moran, Ph.D., Michael-Moran Assoc., L.L.C. Colorado, U.S.A., The Conga Mine, Peru: Comments on the Environmental Impact Assessment (EIA) and Related Issues, 18.

87 Robert E. Moran, Ph.D., Michael-Moran Assoc., L.L.C. Colorado, U.S.A., The Conga Mine, Peru: Comments on the Environmental Impact Assessment (EIA) and Related Issues, 9.

88 Robert E. Moran, Ph.D., Michael-Moran Assoc., L.L.C. Colorado, U.S.A., The Conga Mine, Peru: Comments on the Environmental Impact Assessment (EIA) and Related Issues, 10. *See also* Guido Peralto Quiroz, Ing., A partir del día siguiente: Informe sobre las graves consecuencias del proyecto Conga, 6, 13 (Apr. 2012).

89 2012 Performance Standards, Performance Standard 6, ¶1. Performance Standard 6, citing to the Convention on Biodiversity, defines biodiversity as "the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are a part; this includes diversity within species, between species, and of ecosystems." Id.

90 2012 Performance Standards, Performance Standard 6, ¶ 16 (critical habitats include "(i) habitat of significant importance to Critically Endangered and/or Endangered species; (ii) habitat of significant importance to endemic and/or restricted-range species; (iii) habitat supporting globally significant concentrations of migratory species and/or congregatory species; (iv) highly threatened and/or unique ecosystems; and/or (v) areas associated with key evolutionary processes.").

91 2012 Guidance Notes, Guidance Note 6, GN56 (critical habitats are also characterized by "landscape and ecological processes (e.g., water catchments, areas critical to erosion control, disturbance regimes (e.g., fire, flood)) required for maintaining critical habitat.").

92 2012 Performance Standards, Performance Standard 6, ¶ 20 (a legally protected area is a "clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values," and includes "areas proposed by governments for such designation.").

93 2012 Performance Standards, Performance Standard 6, ¶ 17.

jalca ecosystem of that particular altitude.[94] The Peruvian General Law of the Environment identifies wetlands as fragile ecosystems whose conservation should be prioritized over other uses,[95] and the Law of Water Resources describes headwaters as environmentally vulnerable zones that the national government can declare "untouchable," prohibiting all activity in the area.[96] Peru is also a signatory to the Ramsar Convention (or the Convention on Wetlands of International Importance), which seeks to conserve wetlands for their "fundamental ecological functions…as regulators of water regimes and as habitats."[97] While the national government of Peru has ignored these protections in approving plans for the Conga project, the regional and local governments have made numerous efforts to declare the area untouchable and subject to environmental conservation and protection.[98]

The reasons warranting enhanced protection are clear: the Conga project risks destroying wetlands and the headwaters for the region, and threatens severe consequences for biodiversity and essential ecological services. There are hundreds of species of flora and fauna that would be impacted by the project, including species that are critically endangered, threatened, or in a category of national or international conservation.[99] While Minera Yanacocha proposes to restore the destroyed wetlands upon closure of the mine, the creation of new wetlands "takes at least several decades,"[100] and all previous attempts to reconstruct wetlands "have been unsuccessful, long-term, at restoring the overall complex ecological functions" of a region.[101] The disappearance of the Perol, Mala, Azul, and Chica lakes will also irrevocably impact the headwaters, thus "disappearing various ecosystems and fragmenting the rest in such a manner that the processes, functions, interactions and environmental processes will be affected in an

94 Robert E. Moran, Ph.D., Michael-Moran Assoc., L.L.C. Colorado, U.S.A., The Conga Mine, Peru: Comments on the Environmental Impact Assessment (EIA) and Related Issues, 4. *See also* Wilder A. Sánchez Sánchez, ¿Por qué el proyecto Conga es inviable? (3rd ed.) 10-11, http://www.frentepatriotico.org/index.php/medio-ambiente/401-por-que-el-proyecto-conga-es-inviable.

95 Ley General del Ambiente, Ley N°28611, art. 99 inciso 1, 2 y 3.

96 Ley de Recursos Hídricos, Ley N°29338, art. 75

97 Convention on Wetlands of International Importance especially as Waterfowl Habitat. Ramsar (Iran), Feb. 2, 1971. UN Treaty Series No. 14583.

98 Ordenanza Regional N°031-2011-GRCAJ/CR (declaring the conservation and protection of the river basins "public regional interest"); Ordenanza Regional N°018-2010-GRCAJ-CR (approving the ecological and economic zonification of the Department of Cajamarca and identifying the area to be affected by the Conga Project as a priority area for conservation); Ordenanza N. 020-2004-MPC/A (Ordinance of the provincial municipal government of Celendin declaring the site an area of environmental conservation, an intangible zone, and an ecological reserve protected from mining projects) (translation own).

99 *See* Wilder A. Sánchez Sánchez, ¿Por qué el proyecto Conga es inviable? (3rd ed.) 12-13, http://www.frentepatriotico.org/index.php/medio-ambiente/401-por-que-el-proyecto-conga-es-inviable; Fidel Torres & Marlene Castillo, El proyecto minero Conga, Perú: Riesgo de Desastre en Una Sociedad Agraria Competitiva 42-43, GRUFIDES (2012).

100 Ministerio del Ambiente, Informe No. 001-2011, Comentarios al Estudio de Impacto Ambiental del proyecto CONGA aprobado en octubre de 2010, 5 (Nov. 21, 2011) ("De la escasa información a nivel nacional sobre creación de bofedales se sabe que la creación o ampliación de bofedales toma por lo menos varias décadas (bofedal en la zona de Chichillapi, Tacna), y requiere de una técnica especializada tradicional para lograrlo.").

101 Robert E. Moran, Ph.D., Michael-Moran Assoc., L.L.C. Colorado, U.S.A., The Conga Mine, Peru: Comments on the Environmental Impact Assessment (EIA) and Related Issues, 19.

irreversible manner."[102]

D. ADVERSE IMPACTS ON CAMPESINO PEOPLES THAT SHOULD BENEFIT FROM THE PROTECTIONS AFFORDED INDIGENOUS PEOPLES

Performance Standard 7 requires businesses to ensure that projects respect the rights of affected indigenous peoples.[103] Whenever indigenous peoples will be affected by a project, the company must engage in a process of informed consultation and participation,[104] in which the company must fully consider and address indigenous peoples' concerns about project design and implementation.[105] Moreover, when a project threatens to impact traditional indigenous lands, displace indigenous persons from such lands, or impact critical cultural heritage, a business must further obtain the Free, Prior, and Informed Consent (FPIC) of affected indigenous peoples.[106] FPIC is also required when a project will impact "critical cultural heritage that is essential to the identity and/or cultural, ceremonial, or spiritual aspects of Indigenous Peoples[']lives," including "natural areas with cultural and/or spiritual value," such as "sacred bodies of water and waterways."[107]

Minera Yanacocha has not engaged in a sufficient prior consultation process nor sought the Free, Prior, and Informed Consent of the communities that would be affected by the Conga project. The project threatens to destroy over 3,000 hectares of land used by campesino peoples for animal husbandry and agriculture, and undermine access to clean water on the remaining land.[108] Yet neither the Rondas Campesinas – social organizations composed of the authorities from campesino communities responsible for self-governance and the system of autonomous justice[109] – nor campesino peoples living near the project zone have been consulted. In 2011 and 2012, campesino organizations and leaders filed both a request for precautionary measures and

102 MINAM, Informe Nº 001-2011, Comentarios al Estudio de Impacto Ambiental del proyecto CONGA aprobado en octubre de 2010, 4 (Nov. 21, 2011) (Conga "transformará de manera muy significativa e irreversible la cabecera de cuenca, desapareciendo varios ecosistemas y fragmentando los restantes de tal manera que los procesos, funciones, interacciones y servicios ambientales serán afectados de manera irreversible.").

103 2012 Performance Standards, Performance Standard 7, ¶¶ 8-12. The IFC notes four characteristics of indigenous peoples: 1) a group's self-identification "as members of a distinct indigenous cultural group and recognition of this identity by others," 2) the group's "collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories," 3) customary "cultural, economic, social, or political institutions that are separate from those of the mainstream society or culture ," and 4) a "distinct language or dialect." *Id*. at ¶ 5.

104 2012 Guidance Notes, Guidance Note 7, GN15.

105 2012 Guidance Notes, Guidance Note 7, GN19.

106 2012 Performance Standards, Performance Standard 7, ¶¶ 13-16.

107 2012 Guidance Notes, Guidance Note 7, GN27.

108 Wilder A. Sánchez Sánchez, ¿Por qué el proyecto Conga es inviable? (3rd ed.) 13-15, http://www.frentepatriotico.org/index.php/medio-ambiente/401-por-que-el-proyecto-conga-es-inviable.

109 Central Única Nacional de Rondas Campesinas, Resultados Preliminares de la Misión Internacional (Mar. 11, 2013), http://servindi.org/pdf/CUNARC_Conga11Mar2013.pdf; Bartolome Clavero, Informe sobre Visita a Cajamarca a Proposito del Caso Conga (Mar. 16, 2013), http://vertientes.org/documentos/docs/Informe_visita_a_Cajamarca_-_Bartolome_Clavero.pdf (arguing that the Rondas Campesinas can legitimately identify as authorities of original and campesino peoples descendants of the indigenous Caxamarcas, Coremarcas and Chachapoyas peoples. Clavero, a former member of the U.N. Permanent Forum on Indigenous Issues, travelled to Cajamarca and wrote an amicus brief in support of the IACHR petition filed by these communities.).

a complaint regarding the Conga project before the Inter-American Commission on Human Rights, arguing that they should be entitled to the protections afforded indigenous peoples, and asking the Commission to ensure that the State meets its obligations to respect their rights to be consulted and to define their own development priorities.[110] This position was reaffirmed in October 2014, when the *Cumbre de los Pueblos*, a gathering of social leaders and organizations, including from the area to be affected by the Conga project, met in Cajamarca and proclaimed their identity as indigenous peoples and expressed again their opposition to the Conga project.[111]

E. ADVERSE IMPACTS ON CULTURAL HERITAGE

Performance Standard 8 requires businesses to identify and protect cultural heritage in the design and execution of projects. Cultural heritage includes "unique natural features or tangible objects that embody cultural values, such as sacred groves, rocks, lakes, and waterfalls,"[112] and areas "where traditional land-use patterns have created and maintained landscape features that reflect a particular culture."[113] If cultural heritage cannot be either moved to a new location without resulting in irreparable damage or destruction, or replaced by a structure or natural feature "to which the cultural values can be transferred,"[114] the Performance Standards favor preservation of the cultural heritage in its place.[115] Indeed, a business cannot remove nonreplicable cultural heritage unless the "overall benefits of the project *conclusively outweigh* the anticipated cultural heritage loss from removal."[116] When making this determination, the Guidance Notes stress that losing nonreplicable cultural heritage is "a loss of a public good, not just for the present generation, but for future generations as well."[117] Thus, in evaluating the overall benefits of a project, a business must consider whether the benefits are sustainable after the project concludes, and whether any lost benefits from the destruction of cultural heritage negatively impact future development in the region.[118]

The Conga project risks the destruction of significant cultural heritage. According to the *Pacto de Unidad*, a national alliance of indigenous organizations, the four Andean mountain

110 *See* Comisión Interamericana de Derechos Humanos, Resolución 9/2014, Lideres y lideresas de Comunidades Campesinas y Rondas Campesinas de Cajamarca respecto de la Republica de Perú, Medida Cautelar No. 452-11 (May 5, 2014), http://www.oas.org/es/cidh/decisiones/pdf/2014/MC452-11-ES.pdf. See also Central Única Nacional de Rondas Campesinas, Informe Resumido de la Central Única Nacional de Rondas Campesinas de Perú (CUNARC-P) sobre el proceso internacional ante la Comisión Internacional de Derechos Humanos (CIDH), contra la imposición por parte del Estado del megaproyecto minero Conga (Jul. 9, 2013), http://cunarcperu.org/index.php?option=com_content&view=article&id=547.

111 GRUFIDES, Pronunciamiento Cumbre de los Pueblos Cajamarca, (Oct. 29, 2014), http://grufidesinfo.blogspot.com/2014/10/pronunciamiento-cumbre-de-los-pueblos.html, English translation *available at* http://grufidesinfo.blogspot.com/2014/11/the-protest-movement-in-peru.html. Signatory organizations from the Conga project area include the Frente de Defensa Cuenca del Rio Jadibamba, Celendín - Frente de Defensa El Tambo, Hualgayoc-Bambamarca - Ronda Campesina Distrital Sorochuco.

112 2012 Performance Standards, Performance Standard 8, ¶ 3.

113 2012 Guidance Notes, Guidance Note 8, Annex A.

114 2012 Performance Standards, Performance Standard 8, ¶ 11 fn. 3.

115 2012 Performance Standards, Performance Standard 8, ¶ 12.

116 2012 Performance Standards, Performance Standard 8, ¶ 12.

117 2012 Guidance Notes, Guidance Note 8, GN23.

118 2012 Guidance Notes, Guidance Note 8, GN23.

lakes which the project seeks to utilize as mining pits and waste deposits have "cultural and spiritual value" for local communities, who pass down legends about the history of these lakes.[119] In an archaeological study of the Conga project, Minera Yanacocha identified 68 archaeological sites within the project zone that could potentially be impacted.[120] The project's impact on both the land and access to water would also threaten the cultural and spiritual subsistence, and indeed the entire way of life, of the *Rondas Campesinas* and the *campesina* communities who work and live off of this land.[121] Given the risk to cultural heritage, the Performance Standards strongly favor measures of protection that are incompatible with the continued development of the Conga project.

V. LEGITIMATE OPPOSITION TO THE CONGA PROJECT HAS BEEN MET WITH VIOLENT REPRESSION IN CONTRAVENTION OF THE PERFORMANCE STANDARDS

Despite the environmental and social risks discussed above, the IFC has yet to take a public position with respect to the project. Although the IFC has not intervened to enforce its Performance Standards, those individuals and communities living near the project site have taken action to uphold their rights and protect their environment, including by holding large assemblies and demonstrations against the project, and, in the case of one family, refusing to leave their home near the proposed project site. In addition to the environmental and social protections described above, the Performance Standards also include protections for people's legitimate exercise of their rights, including the rights to liberty and security of person,[122] expression and peaceful assembly,[123] and housing.[124] Many individuals who have been exercising these fundamental rights, however, have faced acts of violence and harassment by those providing security services to the company, in the form of repression and criminalization of protest activity, as well as acts of intimidation, harassment, and property damage raising serious concerns about potential forced eviction. Thus, in addition to posing a grave future risk to rights, the proposed project thus *already* impacts basic human rights. This present impact implicates particularly urgent responsibilities for the World Bank and the IFC. The World Bank should use its international influence, and the IFC should use its investment influence in the mining company, to promote and ensure respect for the necessary liberty, security, expression, assembly, and housing rights of those opposing the planned project.

119 Pacto de Unidad, Vulneración del derecho al consentimiento de los pueblos indígenas por parte del Estado peruano al pretender imponer por la fuerza el megaproyecto Conga, http://servindi.org/pdf/COMUNICACI%C3%93N_PACTO_DE_UNIDAD_A_JAMES_ANAYA.pdf ("las lagunas que serán afectadas por el megaproyecto tienen un valor cultural y espiritual para nosotros dado que tenemos leyendas que han pasado de generación en generación.").

120 María Teresa García, *Conga: El oro de las ruinas,* Jul. 16, 2012 https://celendinlibre.wordpress.com/2012/07/16/conga-el-oro-de-las-ruinas-2/. *See also* Mesías Guevara Amasifuen, *Conga: ¿Y Los Monumentos Arqueológicos?*, Apr. 13, 2012, https://celendinlibre.wordpress.com/2012/04/13/conga-y-los-monumentos-arqueologicos/.

121 See Instituto Internacional de Derecho y Sociedad, Ilegal presencia de maquinaria pesada de Yanacocha genera malestar en Conga, http://www.derechoysociedad.org/IIDS/Rondas_Campesinas/Nota_Prensa_MAQUINARIA_PESADA_DE_YANACOCHA_GENERA_MALESTAR_EN_CONGA.pdf.

122 ICCPR, art. 9.

123 ICCPR, art. 21.

124 ICESCR, art 11.

A. ABUSE OF FORCE, REPRESSION AND CRIMINALIZATION OF PROTESTS

When a business employs security forces in connection with a project, Performance Standard 4 requires that it do so "in accordance with relevant human rights principles," and with the understanding that "providing security and respecting human rights can and should be consistent."[125] Thus, businesses and their retrained security personnel must respect the right of local communities to "associate, assemble, and speak out in opposition to the project," and businesses must clearly prohibit "arbitrary or abusive use of force" in response to such activity.[126] Performance Standard 4 requires the business to train security personnel in the proportional use of force and "good international practice," and obligate security personnel to follow applicable laws.[127] Security personnel may not use force unless it is "for preventive and defensive purposes in proportion to the nature and extent of the threat,"[128] and then "only as a matter of last resort."[129] These requirements apply as equally to public forces deployed to serve a security function as they do to private security personnel and contractors.[130] Businesses have an ongoing obligation to only hire and use security professionals who are adequately trained in these principles, and to investigate and take corrective action in response to any security abuses.[131] The obligations in the Performance Standards must also be read in light of the UN Guiding Principles on Business and Human Rights, which identify the responsibility of businesses to respect human rights and to remedy adverse impacts which they have caused or to which they have contributed.[132]

The numerous acts of violence and abuse of force by those providing security services to Minera Yancocha against the individuals demonstrating against the Conga project, and the company's practice of filing criminal complaints against demonstrators, strongly suggests the failure of the company to live up to the requirements of the Performance Standards and international human rights law. Hundreds of "Guardians of the Mountain Lakes," as a means of defending their environment from what they perceive to be an existential threat posed by the Conga project, have held a near constant vigil at the site of the project, punctuated by massive demonstrations of thousands of people converging on the area. This need to lend their bodies and voices to their struggle against the project has left these demonstrators vulnerable to abusive security practices and frivolous criminal complaints that undermine their right to associate, assemble, and speak out against the project.

Members of the DINOES – the specially-trained anti-riot division of the Peruvian National Police – acting pursuant to a memorandum of understanding with Minera Yanacocha for the provision of security services at the site of the Conga project, have at times violently repressed these demonstrations. In one of the most violent incidents, during a large protest on

125 2012 Performance Standards, Performance Standard 4, Objectives; 2012 Guidance Notes, Guidance Note 4, GN30.

126 2012 Guidance Notes, Guidance Note 4, GN30.

127 2012 Performance Standards, Performance Standard 4, ¶ 12.

128 2012 Performance Standards, Performance Standard 4, ¶ 12.

129 2012 Guidance Notes, Guidance Note 4, GN29.

130 2012 Guidance Notes, Guidance Note 4, GN33.

131 2012 Guidance Notes, Guidance Note 4, GN31, 32.

132 John Ruggie, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, A/HRC/17/31 (Mar. 21, 2011).

November 29, 2011, the members of DINOES fired teargas, rubber bullets, and live ammunition against many unarmed protesters, injuring dozens.[133] One of these unarmed protesters, Elmer Eduardo Campos Álvarez – at the time a 30-year-old farmer and father of two – was shot in the back by a police officer, causing him to lose a kidney and his spleen and leaving him paralyzed from the waist down. Another unarmed demonstrator, Carlos Chávez, was shot in the leg causing his femur to shatter. Mr. Chávez is still undergoing treatment for the injury and walks only with the aid of crutches.

There are numerous similar reports of police abuse of force in the context of providing security services to the mining company. In March 2014, for example, the police security personnel are alleged to have forcibly dispersed the Guardians of the Mountain Lakes in the midst of their peaceful vigil, again by firing live ammunition and tear gas, and then subsequently setting fire to the demonstrators' campsite, burning their clothing, equipment, and food.[134] Even members of the press covering these protests have reportedly been subject to violence on the part of the police in the area of the Conga project.[135] These are only dramatic examples of what many demonstrators feel to be a generalized practice of abuse of force by the security personnel, marked additionally by frequent blocking of ancestral paths and physical and verbal abuse. In fact, the Inter-American Commission on Human Rights granted precautionary measures in 2014 in favor of 46 individual leaders in Cajamarca, finding that the information submitted suggested *prima facie* that these leaders were facing threats to their physical security from state security forces and suspected members of the company's private security forces for their opposition to the Conga conflict.[136]

The prevalence of these violent incidents suggests a failure on the part of Minera Yanacocha to adopt an adequate system of hiring, training, monitoring, and properly sanctioning all of the security personnel working in its service to ensure compliance with the Performance Standards and international human rights law. To date, there has been impunity for these and other abuses, suggesting additionally a failure on the part of Minera Yanacocha to investigate abuses and adopt corrective measures, including measures designed to meet its responsibility to remedy human rights violations. In the face of such actions, the IFC should use its influence to ensure full respect for the rights to freedom of expression and of peaceful assembly of those demonstrating in opposition to the project.

Individuals seeking to exercise these rights have had to confront the additional threat of criminal prosecution for their protest activity. Hundreds of individuals participating in protests have faced, or are currently facing, criminal proceedings for rebellion, terrorism, usurpation, trespassing, abduction, outrage to national symbols, and other offenses based on criminal complaints initiated by Minera Yanacocha, its staff, or public prosecutors.[137] The vast majority of

133 EarthRights International, Factsheet: Campos-Alvarez v. Newmont Mining Corp. (2014) http://www.earthrights.org/media/us-federal-court-action-requests-information-newmont-regarding-repression-protests-its-conga.

134 Frontline Defenders, Environmental Rights Defenders at Risk in Peru 3 (2014).

135 *See, e.g., Perú: Agentes de la DINOES agreden violentamente a periodista indígena César Estrada*, SERVINDI, Aug. 6, 2013, http://servindi.org/actualidad/91478.

136 Comisión Interamericana de Derechos Humanos, Resolución 9/2014, Lideres y lideresas de Comunidades Campesinas y Rondas Campesinas de Cajamarca respecto de la Republica de Perú, Medida Cautelar No. 452-11 (May 5, 2014), http://www.oas.org/es/cidh/decisiones/pdf/2014/MC452-11-ES.pdf.

137 Frontline Defenders, Environmental Rights Defenders at Risk in Peru, 2 (2014), https://www.frontlinedefenders.org/files/fld_report_peru_final.pdf.

these charges never advance beyond the initial stage,[138] yet the burden of defending against the charges is substantial. Community and social movement leaders have been especially impacted. Some leaders of the protest movement face dozens of these complaints. Milton Sánchez Cubas, for example, the Secretary-General of the *Plataforma Interinstitucional Celendina*, has faced approximately 50 criminal complaints without any conviction. The pattern of pursuing criminal charges against those publically opposing the project has had the effect of undermining the right to protest in defense of human rights and the environment.

B. INTIMIDATION, HARASSMENT, PROPERTY DAMAGE, AND RISK OF FORCED EVICTION

In order to protect the right to housing and the right to an adequate standard of living, the Performance Standards impose very clear limitations where projects involve the forced displacement or eviction of individuals living on a project site. Performance Standard 5 seeks "to avoid forced evictions."[139] Through reference to both international human rights law and national law, this Performance Standard prohibits evictions unless the Free, Prior, and Informed Consent of those to be displaced has been sought, the eviction is approved by decision of the state authority empowered by law to order such measures, and those affected have been able to obtain review of such decisions by the appropriate judicial authorities.[140] Moreover, even when a business has met these requirements and the forced eviction is unavoidable, the business should not participate directly in the physical acts of eviction and should utilize independent third party monitors to ensure respect for human rights.[141]

Testimonial and documentary evidence raises serious concerns about the risk of the violation of these standards in the treatment of the *campesino* family of Máxima Acuña de Chaupe. According to the Chaupe Acuña family, since 2011, the company – in response to the refusal of the family to give up their plot known as "Tragedero Grande," for which the family has held a certificate of possession since 1994, and which is adjacent to the proposed Conga project – has engaged in acts of intimidation and harassment that have threatened the physical integrity of the family and their property.[142] Recent allegations from the family and members of civil society accuse the employees and security forces of the company, sometimes accompanied by the National Police of Peru, of having destroyed the family's house, belongings, animals and crops, and

138 Frontline Defenders, Environmental Rights Defenders at Risk in Peru, 2 (2014), available at https://www.frontlinedefenders.org/files/fld_report_peru_final.pdf.

139 2012 Performance Standards, Performance Standard 5, Objectives. The Performance Standards define forced evictions as the "permanent or temporary removal against the will of individuals, families, and/or communities from the homes and/or lands which they occupy without the provision of, and access to, appropriate forms of legal and other protection." 2012 Performance Standards, Performance Standard 5, ¶ 24, n. 23. *See also* 2012 Guidance Notes, Guidance Note 5, GN55, noting that this is the definition provided by the UN Office of the High Commissioner for Human Rights.

140 *See* 2012 Performance Standards, Performance Standard 5, Objectives, ¶ 24 (incorporating by reference Peruvian law which includes, among other provisions, Article 139 of the Political Constitution of Peru and Article 585 of the Code of Civil Procedure); 2012 Guidance Notes, Guidance Note 5, GN6 (incorporating by reference the United Nations Guiding Principles on Internal Displacement, including Principle 7.3 discussed here).

141 2012 Guidance Notes, Guidance Note 5, GN55.

142 *See* Ben Hallman, *One Peruvian Woman Is Standing Up To A Gold-Mining Goliath*, Huffington Post, Feb. 12, 2015, http://www.huffingtonpost.com/2015/02/11/newmont-peru_n_6664724.html.

subjecting the family to constant fear and intimidation.[143] Allegations such as these prompted the Inter-American Commission on Human Rights to issue precautionary measures on behalf of the family in 2014, requesting that the state adopt the necessary measures to guarantee the life and personal integrity of the family.[144]

Nonetheless, allegations of abuses have continued. Minera Yanacocha has sought to justify its actions in defense of their "possessory interest" in the land.[145] Furthermore, Minera Yanacocha filed a criminal complaint against the family for "aggravated usurpation" for the act of seeking to live a life of subsistence on that plot of land. On December 17, 2014, the Superior Court of Cajamarca, at the highest appellate level, found the charges unfounded, declaring the family innocent.[146] Nonetheless, the family reports that Minera Yanacocha has continued its campaign of harassment, including limiting access to the property by visitors, constructing a large fence adjacent to the property cutting off traditional access routes, and placing a sentry nearby with a constant view of the family's land and home.

The alleged acts of harassment, intimidation, and property damage raise serious concerns about potential forced eviction in violation of the Performance Standards, and about the violation of the Chaupe family's rights to housing, health, liberty, and physical security.

In 2015, following an internal audit, the World Bank acknowledged its own failures in its oversight of projects that displace affected peoples from their homes and has pledged reform.[147] In line with the motivation underlying its new reforms, the World Bank should ensure that it monitors the case of the Chaupe Acuña family, and protects the family against further abuse.

143 Joseph Zárate, *Máxima Acuña la dama de la Laguna Azul versus la Laguna Negra,* Etiqueta Negra, Apr. 24, 2015, http://etiquetanegra.com.pe/articulos/maxima-acuna-la-dama-de-la-laguna-azul-versus-la-laguna-negra; Rocío Silva Santisteban, Máxima amenazada de muerte, La Republica, Aug. 4, 2015, http://larepublica.pe/impresa/opinion/19957-maxima-amenazada-de-muerte.

144 Comisión Interamericana de Derechos Humanos, Resolución 9/2014, Lideres y lideresas de Comunidades Campesinas y Rondas Campesinas de Cajamarca respecto de la Republica de Perú, Medida Cautelar No. 452-11 (May 5, 2014), http://www.oas.org/es/cidh/decisiones/pdf/2014/MC452-11-ES.pdf.

145 *See, e.g.*, Minera Yanacocha, Una vez más, Yanacocha realiza pacíficamente defensa posesoria en tragadero grande (Jul. 22, 2015), http://www.yanacocha.com/una-vez-mas-yanacocha-realiza-pacificamente-defensa-posesoria-en-tragadero-grande/; Minera Yanacocha, Nueva defensa posesoria pacífica en terrenos de Yanacocha (Aug. 12, 2015) http://www.yanacocha.com/nueva-defensa-posesoria-pacifica-en-terrenos-de-yanacocha/.

146 *Absuelven a familia Chaupe en proceso con Yanacocha*, La Republica, Dec. 18, 2015, http://larepublica.pe/18-12-2014/absuelven-a-familia-chaupe-en-proceso-con-yanacocha.

147 World Bank Acknowledges Shortcomings in Resettlement Projects, Announces Action Plan to Fix Problems, World Bank,(Mar. 4, 2015) http://www.worldbank.org/en/news/press-release/2015/03/04/world-bank-shortcomings-resettlement-projects-plan-fix-problems.

VI. AN ALTERNATIVE VISION OF SUSTAINABLE DEVELOPMENT: AGRICULTURE, ANIMAL HUSBANDRY, ARTISANRY, AND ECOLOGICAL TOURISM.

Instead of relying solely on extractive industry, truly sustainable development in Cajamarca should seek to preserve the region's environment and culture. Deputies from the European Parliament noted that the strong social opposition to mining projects in Peru is "a very clear signal of the exhaustion of the extractive model."[148] Local governments and communities have instead proposed development plans that seek to promote agriculture, animal husbandry, artisanry, and tourism.[149] These alternatives extend to the area that would be affected by the Conga project. Recent studies of the *jalca* ecosystems comprising much of the land to be impacted by the Conga project found a rich diversity of vegetable species – including particularly tubers such as potatoes, *ocas*, *ollucos*, and *mashua*, that only grow in this particular environment – and wild species with great potential for uses in health, cosmetics, and nutrition.[150] These crops, combined with the area's capacity for milk and cheese production, give the area great economic potential.[151] Others have pointed to unique features of the landscape, such as waterfalls, that make the area an attractive tourist destination.[152] A current proposal already exists to embrace the area's potential for agriculture and animal husbandry, rather than mining, and invest in a plan to convert the area into a tourist destination.[153] Such an alternative would take advantage of the area's unique potential for diverse forms of economic development while preserving its environmental health and ecosystem services. By preserving the wetlands, such an approach to sustainable development would also contribute to efforts to curb climate change, as the *jalca* ecosystem serves key functions in carbon storage, potentially even surpassing that of tropical forests.[154]

148 Letter from Catherine Greze to Ollanta Humala (June 12, 2013), https://celendinlibre.wordpress.com/2013/06/12/diputados-del-parlamento-europeo-piden-a-ollanta-humala-que-abandone-definitivamente-el-proyecto-conga/ ("Según dato provenientes de fuentes peruanas, hoy en día, más de 250 conflictos socioambientales están en curso en el Perú, todos ellos ligados a proyectos que van en contra de los intereses de las comunidades circundantes, en materia económica, de salud y de peligro de daño ambiental. Esto para mí y para muchos de mis colegas en el Parlamento Europeo es una señal muy clara del agotamiento del modelo extractivista.").

149 José de Echave y Alejandro Diez, Más allá de Conga 123 (2013); Beatriz Jimenez, Entrevista a Porfirio Medina, electo Vicepresidente de la Región Cajamarca (Oct. 20, 2014), http://puntodevistapropuesta.co/2014/10/20/peru-entrevista-a-porfirio-medina-electo-vicepresidente-de-la-region-cajamarca/.

150 Fidel Torres& Laura Lucio, Conocimientos tradicionales y potencialidades de la Jalca. Alternativa de desarrollo al modelo actual y estrategias de conservación, Ingeniería Sin Fronteras, GRUFIDES, ENTREPUEBLOS, (2014); Fidel Torres & Marlene Castillo, El proyecto minero Conga, Perú: Riesgo de Desastre en Una Sociedad Agraria Competitiva, GRUFIDES, Cajamarca, Perú (2012).

151 Fidel Torres & Marlene Castillo, El proyecto minero Conga, Perú: Riesgo de Desastre en Una Sociedad Agraria Competitiva 23-26, GRUFIDES (2012).

152 *See* Wilder A. Sánchez Sánchez,¿Por qué el proyecto Conga es inviable? (3rd ed.) 8-9, http://www.frentepatriotico.org/index.php/medio-ambiente/401-por-que-el-proyecto-conga-es-inviable.

153 *#BAMBAMARCA: Laguna en Conga podría convertirse en una zona turística*, Otra Prensa, Feb. 5, 2015 http://www.otraprensa.pe/2015/02/bambamarca-laguna-en-conga-podria.html.

154 Fidel Torres & Laura Lucio, Conocimientos tradicionales y potencialidades de la Jalca. Alternativa de desarrollo al modelo actual y estrategias de conservación 10, Ingeniería Sin Fronteras, GRUFIDES, ENTREPUEBLOS. Cajamarca, Peru, (2014). *See also* MINAM, Áreas Temáticas: Ecosistemas, http://www.minam.gob.pe/diversidadbiologica/problematica/ecosistemas/.

VII. CONCLUSIONS AND RECOMMENDATIONS

We, the coalition of social organizations from the provinces of Celendín and Hualgayoc in the region of Cajamarca, Peru, conclude that the proposed Conga project risks irreversible environmental degradation and social harm. It poses serious risks to water access and quality, human health, the ecosystem and biodiversity, the way of life of *campesino* peoples, and cultural heritage. Despite these risks, the IFC has yet to release any assessments of the proposed project, to take a public position with respect to the project, or to intervene to enforce its Performance Standards.

Our organizations, along with the individuals and communities we represent, have stood up in defense of our rights, our environment, and our way of life. Many of us, however, have faced acts of violence and intimidation by those providing security services to Minera Yanacocha. We have voiced our opposition and our concerns about the proposed project numerous times before the company, the Peruvian government, and the international community. Now we raise our concerns directly with the World Bank and the IFC.

In light of our concerns, we recommend the following:

A. The IFC and World Bank should stand with the affected communities and declare the Conga project unviable

We conclude that the proposed Conga project is not a viable way of achieving the sustainable development sought by the IFC and the World Bank, and that its continued advancement would risk violating numerous aspects of the Performance Standards and fundamental human rights. We thus recommend that the IFC and World Bank immediately make public any internal assessments they have conducted of the Conga project and of the project's compliance with the Performance Standards, publically recognize the environmental and social unviability of the project, and seek to use their influence to stop this project from moving forward.

B. Until such time as the Conga project is definitively abandoned, the IFC and World Bank should take steps to ensure greater respect for the rights to express and peacefully demonstrate opposition to the project, and for the right to a remedy when violations occur.

We have organized and protested against the Conga project as a means of defending our human rights and our environment. In response to this opposition, however, those providing security services to the mining company have harassed, intimidated, or attacked members of our communities. Hundreds of us have faced, or are currently facing, criminal proceedings for our opposition to the project. Our rights to expression, assembly, and housing have been undermined.

The World Bank and the IFC should publicly denounce the abuses that we have suffered, and take all necessary measures to ensure that Minera Yanacocha, and all entities working on its behalf, comply with the Performance Standards, international human rights, and Peruvian law. Hostility and harassment in response to our efforts to defend our rights should cease; remedies should be provided for the harms already committed, including an acknowledgement of responsibility; and our health, physical integrity, and lives should be protected from future harm.

C. If the IFC is unable to leverage its influence to change the behavior of Minera Yanacocha, then it should withdraw its investment.

If the IFC cannot successfully use its influence as an investor in Minera Yanacocha to stop the project, or to ensure respect for the rights to express and demonstrate opposition to the project, then we recommend that the IFC can best meet its goal of pursuing sustainable development by withdrawing its investment in the company.

Signed by:

Plataforma Interinstitucional Celendina – PIC
Rondas Unificadas de la Provincia de Celendín
Frente de Defensa de la Cuenca del Río Jadibamba
Frente de Defensa del Distrito de Huasmín
Frente de Defensa del Centro Poblado de Jeréz
Frente de Defensa del Distrito de Sorochuco
Frente de Defensa de los Intereses de la Provincia de Hualgayoc - Bambamarca