

# **EXECUTIVE SUMMARY REPORT**

## **Agreements between the National Police and the extractive companies in Peru**

Analysis of the agreements that allow human rights violations and disrupt the principles of a democratic constitutional State in Peru.



Instituto de  
Defensa Legal

***Executive Summary Report: Agreements between the National Police and the extractive companies in Peru. Analysis of the relationships that allow human rights violations and that break the principals of a Democratic Constitutional State.***

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# ORGANIZACIONES RESPONSABLES

Este trabajo ha sido realizado de manera conjunta entre las siguientes organizaciones:

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[www.earthrights.org](http://www.earthrights.org)

[www.idl.org.pe](http://www.idl.org.pe)

[www.derechoshumanos.pe](http://www.derechoshumanos.pe)



# Introduction

In Peru, for more than 20 years, there has been a legal framework that empowers the Peruvian National Police (henceforth PNP or the Police), to create agreements with extractive companies that allows the Police to provide private security services within the facilities and other areas of influence of extractive projects in return for profit.

EarthRights International (ERI), the Legal Defense Institute (IDL, as is known in Spanish), and the Human Rights National Coordinator (CNDDHH) did an extensive research regarding this topic and identified 138 existing agreements related to extraordinary police service provision<sup>1</sup> (henceforth agreements or contracts) between the PNP and the extractive companies, between 1995 and 2018<sup>2</sup>. Out of the 138, 29 are still valid to this day.

This report reveals the forms and methods of the contracts' as a strategy for the State to guarantee the ordinary course of action for extractive activities within the framework of its extractive policy. It also outlines the system with which the State has been regulating and subscribing to the agreements and their content, and it represents an analysis of how this strategy constitutes a human rights violation acknowledged in the Political Constitution of Peru, as well as how it contradicts several international treaties signed by the Peruvian State.

<sup>1</sup> extraordinary police services denomination is used in current legislation about the subject. The Sixth Complementary Disposition of the General Law of the National Police of Peru (Legislative Decree N° 1267).

<sup>2</sup> The PNP also made agreements with other types of entities. This report focuses solely on the analysis of the agreements signed with companies from the extractive industry.



# 1. Legislative Backgrounds

The report indicates that the agreements have been progressively regulated and acknowledged within the Peruvian legislation as follows:

- In 1994, the Private Services Security Regulation was approved through the Supreme Decree N° 005-94-IN, allowing for companies to hire security services that were until then exclusive to the National Police of Peru.
- In 2002, the Organic Law of the National Police of Peru (Law N° 27238) regulated the agreements that officialized the existing relationship between the PNP and the extractive companies.
- In 2006, the Law of the Regime's Personnel of the National Police of Peru (Law N° 27238) established an alteration in the Organic Law, which explicitly allowed for the provision of institutional, individual, complementary and extraordinary police services by police officers in active duty, on their official rest days and/or during their vacation. This was validated by

the Law of the National Police of Peru in 2012 (Legislative Decree N° 1148) and the subsequent in 2016 (Legislative Decree N° 1267).

- In 2017, the Supreme Decree N° 003-2017-IN established the guidelines for the hiring of the police services in accordance with the police functions that allow for the signing of the agreements, with both extractive and natural resources transportation companies, among others.



Photo: Jorge J. Chávez.

## 2. The agreements of extraordinary police services in Peru

This report details, thanks to multiple access requests for information, the existence and content of 138 agreements between extractive companies, especially mining, and hydrocarbons (such as oil and natural gas), between 1995 and 2018. It was found that 29 agreements are currently enforced and have an expiration date between 2019 and 2022.

### **Characteristics of the agreements**

#### **i. The parties in the agreements**

Out of 138 agreements, 89 (64.49%) do not specify which division of the PNP is involved in the agreement. Additionally, 45 (32.60%) agreements do not describe which unit will provide private security services to the company. The lack of definition of the unit with which

the agreement is made generates uncertainty about who decides and who provides the services.

Out of 138 agreements, 48 (34.78%) were signed with regional Directions and Police Departments, not directly with their main offices.<sup>3</sup>

#### **ii. Naming and the objectives of the agreements**

Out of 138 agreements, 59 (42.03%) have an agreement naming "to the provision of extraordinary and complementary services by the functioning police". Additionally, 42 (30.43%) are identified as "specific agreement of interinstitutional cooperation."

Not all agreements have established their objectives. Some of them have only established the matter of the agreements, or commitments by contracting parties.

<sup>3</sup> In addition, it is important to indicate that one agreement identifies the Major Roads Protection Direction as the contracting party (Mining Oro Vega S.A, concluded on October 24, 2006).

## EXISTING AGREEMENTS

CONTRACTING COMPANY		ECONOMIC ACTIVITY	LOCATION	SUBSCRIPTION DATE
<b>1</b>	Minera Antamina S.A.	Mining (Polymetallic)	Áncash	10/01/2017
<b>2</b>	CNPC Perú S.A.	Hydrocarbons and natural gas	Piura	10/01/2017
<b>3</b>	Consorcio Minero Horizonte S.A.	Mining (Gold)	La Libertad	10/06/2017
<b>4</b>	Minera Yanacocha	Mining (Gold)	Cajamarca	10/20/2017
<b>5</b>	Minera Las Bambas S.A.	Mining (Copper)	Apurímac	10/26/2017
<b>6</b>	Aurífera Retamas S.A.	Mining (Gold)	La Libertad	10/26/2017
<b>7</b>	Doe Run Perú S.R.L. (en liquidación)	Mining (polymetallic)	Huancavelica	11/13/2017
<b>8</b>	Minera Chinalco Perú S.A.	Mining (Gold)	Junín	11/14/2017
<b>9</b>	Minera Barrick Misquichilca S.A.	Mining (Gold)	La Libertad, Áncash	11/23/2017
<b>10</b>	Minera Quechua S.A.	Mining (Copper)	Cusco	11/27/2017
<b>11</b>	Century Mining Perú S.A.C.	Mining (polymetallic)	Arequipa	11/29/2017
<b>12</b>	Minera Antapaccay S.A.	Mining (Copper)	Cusco	2017*
<b>13</b>	Savia Perú S.A.	Hydrocarbons and natural gas	Piura	12/04/2017
<b>14</b>	Gold Fields La Cima S.A.	Mining (Copper)	Cajamarca	12/07/2017
<b>15</b>	Minera La Zanja S.R.L.	Mining (Gold)	Cajamarca	12/12/2017
<b>16</b>	Minera Coimolache S.A.	Mining (Gold)	Cajamarca	12/12/2017
<b>17</b>	Minera Cerro Verde S.A.A.	Mining (polymetallic)	Arequipa	12/14/2017
<b>18</b>	Anglo American Quellaveco S.A.	Mining (Copper)	Moquegua	12/15/2017
<b>19</b>	Sapet Development Perú Inc.	Hydrocarbons	Piura	12/18/2017
<b>20</b>	Minera La Soledad S.A.C.	Mining	Arequipa	01/10/2018
<b>21</b>	Cori Puno S.A.C.	Mining ('Gold)	Puno	01/18/2018
<b>22</b>	Petróleos del Perú - Petroperú S.A.	Hydrocarbons	Loreto, Amazonas, Cajamarca, Lambayeque, y Piura	01/19/2018
<b>23</b>	Apumayo S.A.C.	Mining	Ayacucho	01/19/2018
<b>24</b>	Anabi (Utunsa)	Mining (Polymetallic)	Apurímac	01/22/2018
<b>25</b>	Anabi (Amana)	Mining (Polymetallic)	Apurímac	01/22/2018
<b>26</b>	Aruntani S.A.C.	Mining (Gold)	Moquegua y Puno	2/5/2018
<b>27</b>	PETROPERU S.A.	Hydrocarbons	Loreto, Amazonas y Piura	03/30/2018
<b>28</b>	Southern Perú Copper Corporation	Mining (Copper)	Apurímac	7/3/2018
<b>29</b>	Southern Perú Copper Corporation	Mining (Copper)	Apurímac	7/3/2018

\*The agreement between the PNP and the Antapacay S.A Mining Company does not have a contract subscription date, it only indicates the year.





of the agreements aren't clear on with which Police division they're being signed with.



of the agreements don't state the exact number of policemen required for the job.



of the agreements state that the PNP will receive an additional payment besides the one destined to the policemen.

The ambiguity and the way in which the agreements' objectives are expressed reveals a lack of impartiality and independence from the PNP in regard to the extractive companies and make the intrinsic function of the National Police vague.

addition, within these 103 agreements, 19 were found to have a minimum number of police officers, nevertheless, these too indicate that that number can increase according to the company's needs.

On the other hand, 35 (25.26%) out of 138 do not specify the required number of police officers, therefore, this number depends on the availability and or on needs of the companies.

### v. Labor condition for the police

The agreements establish that the police personnel available to provide the extraordinary police service are those that are on vacation, on leave, or on their official day of rest. However, 24 (17.39%) out of 138 agreements establish that personnel on "active duty" can also provide extraordinary police service under certain circumstances.

In addition, it was found in one agreement<sup>4</sup>, that those police officers that are on their regular active duty schedule, may simultaneously provide extraordinary police service for the extractive companies..

### iv. The number of assigned policemen to provide security to the companies

The specific number of assigned police officers to provide security services to the extractive companies is indicated in 103 (74.64%) of the analyzed agreements, which on occasion include the specific rank of those police officers. 78 out of these 103 agreements establish the number of police officers between 2 and 32. It is noted that in 6 of these agreements, a total of 50 to 140 police officers are required to provide services. In

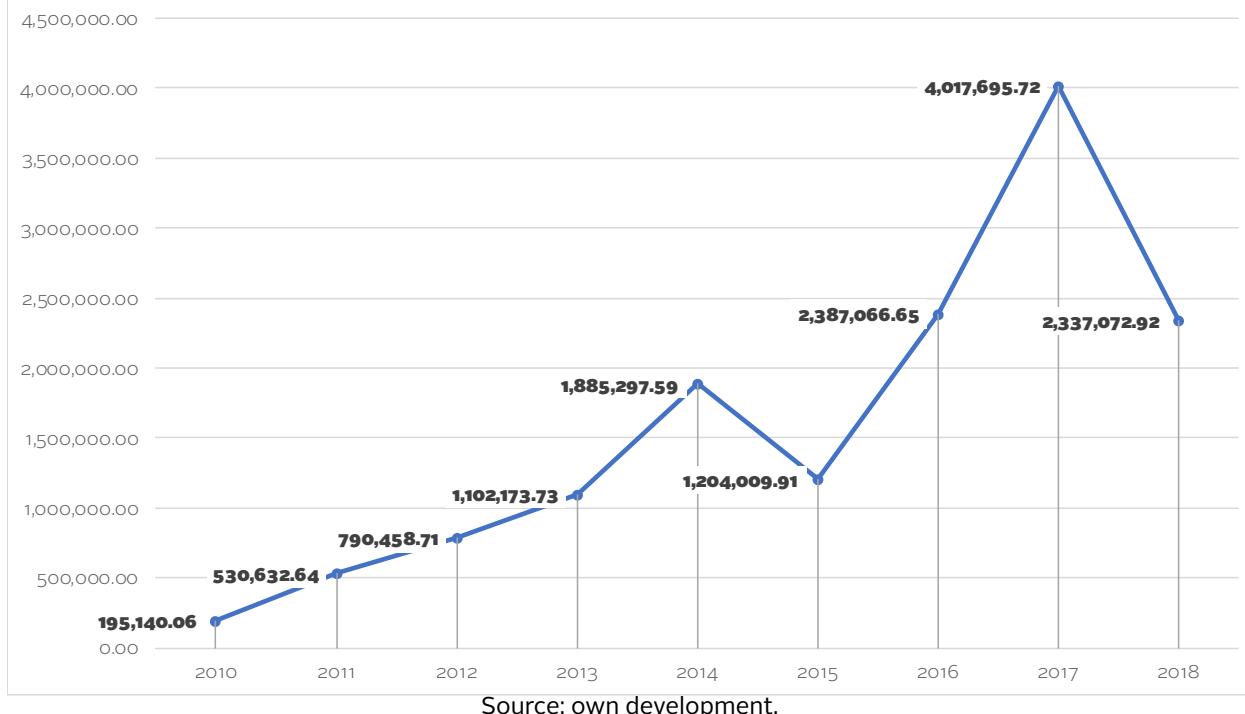
### vi. Payment to the National Police of Peru and policemen

Until 2017, the majority of the companies made direct payments to each policeman for their extraordinary police service. In addition to the aforementioned payments, another payment was made to the PNP, which was related to the logistic and administrative expenses that the institution made<sup>5</sup>. From 2017 onwards, the form and method of payment changed. Nowadays, the companies

<sup>4</sup> Agreement signed in 2018 (Petróleos del Perú S.A and the PNP subscribed on January 19, 2018).

<sup>5</sup> Supreme Decree N° 044-2009-IN, Art.8

## MONEY PAYED TO THE POLICE PER YEAR (IN AMERICAN DOLLARS)



Source: own development.

make a deposit into the current account of the Peru's National Bank Economic and Financial Direction, and then the payment is made to each police officer that provided the service<sup>6</sup>.

The Ministerial Resolution 552-2017-IN, with an erratum published on June 10, 2017, regulates the amounts that the companies pay to the PNP due to the expenses incurred during the extraordinary police services. According to that resolution, the payment to the PNP "to provide the external security of the facilities strategically linked to the exploitation or transportation of the natural resources" is \$4.54, (15.35 Peruvian soles) per hour<sup>7</sup>. Nevertheless, 27 agreements out of 29 signed between 2017 and 2018 established payment of \$3.12, (10.54 Peruvian soles) per hour.

The National Police of Peru earned, due to the above-mentioned items, \$14,449,547.94 (45,538,138.61 Peruvian soles) from 2010 to 2018. The table above explains the annual increase of the PNP earnings due to the extraordinary police service agreements:

As an example, the amount of the economic resources directly earned by the Regional Police of Cusco from the company Minera Las Bambas S.A between 2016 and August 2018 is \$1,242,816.25 (4,133,606.86 Peruvian soles). Regarding Minera Quechua S.A., the amount rises

to \$65,911.27 (219,220.90 Peruvian soles).

### vii. The uniforms and weapons used by the policemen

In 144 (82.60%) agreements, it is established that the police officers that provide extraordinary services must wear the particular uniform of their police forces. Twenty-four of the (17.39%) agreements do not specify the wearing of the uniform.

Concerning the weaponry, in 96 (69.64%) out of 138 agreements, it is stipulated that the police personnel must use the official weapons provided by the PNP to provide the extraordinary police service. In 9 (6.52%) agreements, it is stipulated that the staff must use their official weapons, as well as those that are privately owned, and only in one agreement is the use of a personal weapons established.

### viii. The presence of policemen in the extractive project areas

Police personnel provide extraordinary services at the contracting company's facilities, as well as in the areas of influence stated in the agreements, which generally include other corporate controlled properties. In older agreements, the areas of influence also included public access roads as well as avenues, communities, and entire

<sup>6</sup> Supreme Decree N° 152-2017-EF, Art. 1 and 2.

<sup>7</sup> Ministerial Resolution N° 552-2017- IN (corrected by the erratum) Art 5.

districts.

Most agreements signed before 2017 indicate that police officers would have been stationed in facilities provided by extractive companies on a permanent basis (24 hours at a time, in shifts) or semi-permanent (for part of the day). But, since 2017, the use of a space provided by the company within its facilities as police barracks has changed, at least in the text of the agreements.

## **ix. Logistic support to the police by the extractive companies**

For the most part, the agreements allow companies to provide different types of logistical support to the PNP, primarily for the performance of extraordinary services. In the agreements currently in place, this logistical support may take the form of providing basic services, such as cleaning services, radio communication equipment, and food, among others.

**For example, the Cuzco Macro-Region received between 2015 and 2018, S/. 4'133,606.86 from the Las Bambas S.A. Mining Company.**



### 3. The agreements in light of National and International Law

#### a. Constitutional Law Analysis

In the report, an analysis was conducted on the basis of constitutional law in which three aspects were addressed; the police function in the Peruvian constitution, the privatization of the police function and separation of power, and the commodification of the police function.

It should be noted that the National Police, according to its institutional design, has the preservation of internal order and criminal investigation among their functions. However, the agreements signed by the PNP and the extractive companies change and undermine this function, since they allow the police service to be

commercialized and granted to those who can pay for it. In fact, it is a differentiated and privileged provision of services against the interests of the community. The PNP, by signing an agreement, lose their independence and impartiality, since they are providing a private security service to a private client in return for profit.

The agreements, in practice, allow for the transgression and/or violation of the rights of indigenous people living around extractive<sup>8</sup> investment projects. This results in situations of social conflict, where the partial implementation of the PNP can produce (and has produced) clear violations of human rights<sup>9</sup>. The police function, evidently, does not pursue the protection of internal order, but of corporate interests.

<sup>8</sup> Leyva, Ana (2018). *Consúltame de verdad. Aproximación a un balance sobre consulta previa en el Perú en los sectores minero e hidrocarburífero*. Lima: Oxfam América y CooperAcción, p. 39.

<sup>9</sup> This is demonstrated, for example, in the case of Las Bambas (Apurímac), where the criminalization of the peasant population has even resulted in the death of 4 demonstrators since 2015.



At an earth right's defender's wake, the police tries to stop the religious ceremony based on the State of Emergency declared by the Peruvian government.

The function of the PNP is obviously a public function. As such, it is permanent and on a full-time basis. One does not cease to be a public official at the end of the working day. The situation is even more sensitive when it comes to police officers since they exercise the monopoly of the legitimate use of state force.

As noted, the agreements involve the provision of a private security service, which is a different purpose from what is established in the Constitution. The discretionary behavior of the PNP, which attributes the capacity to commercialize their services, is arbitrary and, therefore, unconstitutional in light of the legal system.

Finally, the agreements represent an unlawful state of business activity. The provision of security services by the PNP, like all State business activity, is governed by the principle of subsidiarity, and in that order, the State can only exercise this, in a subsidiary manner, when it has been authorized by an explicit law, and is pursuing national or public interest.

## b. International Law Analysis

From the perspective of international law, the following aspects were addressed: the infringement of the right

to equality and non-discrimination, the effects of the agreements on citizens' security, the use of preventative force, and public institutions as a tool to illegitimate the defense of human rights.

In order to analyze the agreements and the way they undermine the right to equality and the principle of non-discrimination, it is useful to resort to the test of proportionality. This test is composed of three sub-principles: suitability, necessity, and proportionality. For a measure to be considered constitutional or conventional, it has to surpass the three sub-principles. The absence of any of them will undermine their legitimacy.

It is important to start this analysis by indicating that the agreements between the PNP and the extractive companies are not, in any way, a suitable measure if they do not pursue a compatible aim with the American Convention on Human Rights. On the contrary, this measure infringes the rights recognized by itself, and it opposes the object and purpose of this agreement.

Thus, in this case, the degree of benefits provided by these agreements in terms of the regulation and subscription should not be exaggerated or excessive, and not put before the restriction or limitation of the protected legal assets; such as public security and



Police forces using the government-issued uniform and gear, block the entrance to the Yanacocha mine.

law enforcement. However, the analysis reveals that the difference of treatment that the regulation of the extraordinary police service and the subscription to these agreements are not justified. Consequently, it does not meet the requirements of proportionality in the strict sense.

In addition, it is important to indicate that the agreements caused more damage than benefits. The transgression of the rights of the population that live nearby to the extractive projects is more prominent than the satisfaction produced by those companies.

Finally, it is convenient to point out that the infringement of the rights of the population (such as the right to life, personal integrity, personal security, and social protest) is very high in socio-environmental conflicts, contrary to the protection of the companies' rights (the property). In this way, the agreements are disproportionate in the strict sense.

The above-mentioned reveals an infringement of the right to equality and non-discrimination that affects mainly the people who live in areas of direct or indirect influence of the extractive projects, and particularly more seriously, the indigenous populations and defenders of the earth, the territory, and the environment. Thus, through the possibility of the implementation of these

agreements, the Peruvian State is adopting measures that privilege the company's interests over the rights of the citizens by producing differential treatment that threatens human dignity.

In order for a differential treatment not to be considered discriminatory and breaching of human dignity, it should be objective and reasonable; however, it was found that the norms that support the existing agreements do not have those characteristics in any way. There are no reasons to explain the necessity of the State to provide security to private companies of the Extractive Sector.

According to the jurisprudence of the Inter-American Court of Human Rights (IACtHR), the agreements are considered to be a form of indirect discrimination. The Sixth Complementary [Office1] Provision of the PNP General Law establishes that the agreements exist to maintain "public order and security." The text itself doesn't include anything that is directly discriminatory. So, in theory, and only in theory, the law is neutral. Therefore, such neutrality is just a facade, because in practice, its development and application produce human rights violations. It was found within the Criminality and Public Security Statistic Annual Directory of the National Institute of Statistics and Informatics of Peru that a very limited number of police officers were assigned to



The fact that the police officers use their uniforms as is stated in the agreements violates the principle of legality, as this type of exertion of a preventive force hasn't been regulated by the peruvian legal system.

protect the citizens. For instance, in 2017 there were 673 inhabitants<sup>10</sup> per police officer, while in 2016, there were 755 inhabitants per police officer.

The agreements and regulations in force produce acts of indirect and intersectional discrimination based on economic and social inequality, which are highly discriminatory against the vulnerable populations in relation to the extractive business sector.

The agreements violate public security, mainly of those indigenous people who live in areas of direct or indirect influence of extractive projects. The objective of the legal/contractual relationship - agreement of extraordinary police service- is contrary to the law and to law enforcement<sup>11</sup>, also contrary to the guidelines, standards, and policies in public security matters.

The way the extraordinary police services are authorized and executed distorts the essential aim of

public security, due to the fact that they establish that their objective is to generate benefits for the police staff, the PNP and the extractive companies.

The report points out that for the Peruvian State, the use of force constitutes: "(...) the means that are used by the National Police of Peru on different levels and within the framework of the law in order to attain the control of a situation that represents a threat or puts at risk the security, law enforcement, integrity or the lives of people"<sup>12</sup>. The use of force, in consequence, could be exercised on several levels; among them the use of force at a preventative level, which can only occur in the presence of a police officer who is "in uniform, equipped, alert and making visual contact, and is preventing and dissuading the attempt to commit an infraction or a felony".<sup>13</sup>

The Inter-American Court of Human Rights has made evident that the use of force is justified, only if it complies

<sup>10</sup> National Institute of Statistic and Informatics, Peru: Criminality and Public Security Statistic Annual Directory 2011-2016, Available at: [https://www.inei.gob.pe/media/MenuRecursivo/publicaciones\\_digitales/Est/Lib1534/libro.pdf](https://www.inei.gob.pe/media/MenuRecursivo/publicaciones_digitales/Est/Lib1534/libro.pdf).

<sup>11</sup> Torres Vásquez, Aníbal, Acto Jurídico, Lima Perú 2001, Instituto Pacífico, pág.224. Autor que refiere que "[e]l fin perseguido por el sujeto al celebrar un acto jurídico debe ser justo y lícito y no puede ser contrario a la moral o buenas costumbres o al orden público, Precisamente la causa fin es el instrumento que nos permite establecer si la obligación contraída es o no justa y moral, no pudiéndose exigir su cumplimiento independientemente de su origen, contenido, justificación y moralidad".

<sup>12</sup> Legislative decree that regulates the use of force by the National Police of Peru, Legislative decree N° 1186 available at: <https://busquedaselperuano.pe/normaslegales/decreto-legislativo-que-regula-el-uso-de-la-fuerza-por-parte-decreto-legislativo-n-1186-1275103-2/>

<sup>13</sup> Ibidem



Máxima Acuña in front of the Courthouse of Lima, one of the many times she's presented her case to the law courts, asking for justice.

with “(...) the principles of legality, absolute necessity and proportionality (...)”<sup>14</sup>.

The Peruvian State violates the principles of the use of force through the content and execution of the agreements. This is produced when the police provide extraordinary police services, in compliance with the rules of the agreement; wear uniforms and use the mandatory weaponry provided by the PNP. In this case, the PNP violates the principle of legality because, according to the Peruvian legal system, a norm that regulates the use of preventative force to provide extraordinary police services for the benefit of extractive companies does not exist.

This situation is even worse within the context of social conflicts, due to the nonexistent protocols or procedures that ensure that the police officers who provide extraordinary police services distance themselves from the relationship with the extractive companies and give priority to the protection of the people and the community.

On the other hand, it has been pointed out that the agreements violate the principle of necessity and

proportionality, due to the lack of a procedure to evaluate the necessity of the use of preventative force before its execution.

Consequently, it can be noted that the Peruvian State has established norms and created agreements to secure the normal development of the extractive projects, where native people and rural communities usually live, undermining its international obligations on public security matters.

The execution of the agreements has discredited the police function since the perception of authority now varies significantly depending on the population, because it is no longer an authority who ensures compliance with the law and common good but an authority that's about private security.

The tendency towards the privatization of public security erases the borders between what is public and what is private, plus it creates a “grey zone” between the State Public Services and the extractive companies. This relationship gets stronger with the economic contribution of extractive companies in favor of the PNP and the police officers that provide extraordinary police

<sup>14</sup> Inter-American Commission of Human Rights, Annual report 2015. Chapter IV A. Use of Force, part. 7. Available at: <http://www.oas.org/es/cidh/docs/anual/2015/doc-es/informe/annual2015-cap4a-fuerza-es.pdf>

services.

This dynamic is not just a state responsibility but also includes the companies. Thus, the United Nations General Assembly (UNGA) in its report about human rights and transnational<sup>15</sup> companies', has developed three important concepts to identify and determine the companies' responsibility, which include: "the influence sphere," "complicity," and "due diligence".

In this case, the level of influence is evident when the Peruvian State authorizes the extraordinary police service in favor of the extractive companies in exchange for profit that directly benefits the PNP and the police, even when this produces an inadequate use of public force in areas where there is direct and indirect influence of extractive projects.

The level of complicity between the Peruvian State and the extractive companies was revealed when human rights defenders started to condemn the transgression of human rights of those who live in areas of direct and indirect influence of extractive projects, where current agreements are still in force.

Regarding the due diligence, it is convenient to specify that the extractive companies have not shown signs of taking action to prevent the negative effects on human rights since there are many complaints of harassment and persecution of human rights defenders.

It is important to mention that since 2015, the Peruvian State apparently has used the "State of Emergency" to ensure that the extractive companies can continue their normal operations, even when this means the limitation of the relative right to freedom of the communities who live in areas of direct or indirect influence of extractive projects. Thus, in those contexts, the PNP is taking on a double function; first, they provide extraordinary police services to the mining enterprise, and second, they restore peace and internal order.

In addition to this, the report reveals the relationship that exists between the agreements and the states of emergency and how they produce serious consequences in the population. Hence, for example, it is pointed out that on August 16, 2017, the government decided to declare a State of Emergency in the districts of Chalhuahuacho, Haquira, and Mara, part of the province of Cotabambas

(Apurímac), areas of direct and indirect influence of the project Las Bambas. This decision was held on the report N° 021-2017-VII-MACREGPOL/SECEJE, written and signed by the director of the VII-Macro Police Region Cusco Apurímac, who at the same time served as coordinator in the execution and compliance of the agreement of extraordinary police service between the PNP and Las Bambas (2017-2019). This means that the same person was in charge of safeguarding opposite interests<sup>16</sup>.

All the above-explained reveals that the agreements were and are a mechanism used by the State to protect the normal processes of extractive projects for the benefit of the extractive companies. Besides, it suggests an apparent influence, complicity, and lack of the due diligence of the State and the companies in human rights matters.

<sup>15</sup> Report N.º A/HRC/8/5 influence, "Report of the Especial Representative of the General Secretary for the subject of human rights and transnational companies and other enterprises, Jhon Ruggie", April 7, 2008, pg. 21. The report also points out that "(...) the companies have to take care of their effects over the employees and nearby communities" and, also, over the impacts produced far from the source. "Consequently, it is not the proximity what determines if their effect over human rights falls under the obligation to respect them, but actually the activities and the company network relations" Available at: [https://observatoriorsc.org/wp-content/uploads/2013/11/Proteger\\_respetar\\_remediar\\_abril2008.pdf](https://observatoriorsc.org/wp-content/uploads/2013/11/Proteger_respetar_remediar_abril2008.pdf)

<sup>16</sup> It is decreed State of Emergency in the districts of Chalhuahuacho, Haquira and Mara, province of Cotabambas of Apurímac Department DECREE SUPREME N° 085-2017-PCM. Available at: <http://www.osteringfirm.com/documentos/webma/normas/DS-85-2017-PCM.pdf>

# 4. Conclusions

After the detailed analysis of the 138 agreements of extraordinary police service, the report has the following conclusions:

- The Peruvian State does not acknowledge its international obligations included in the articles 1.1 and 2 of American Convention on Human Rights, while the agreements infringe on the full exercise of the rights and liberties of the people who live in areas of direct and indirect influence of extractive projects.
- The agreements for the provision of the extraordinary police services are unconstitutional and unconventional, and so are the Sixth Complementary Provision of the PNP Law, and other norms that allow these types of agreements. This happens because the design and application of these agreements threaten human rights and the police function.
- In effect, the agreements discredit the police function, for many reasons. First of all, they represent the privatization of the police function, which is oriented to the protection of corporate interests instead of those of the community.
- Moreover, the agreements have become an illegitimate tool against social mobilizations, particularly against protest. They take part in an institutional framework created in favor of the companies, which also occur in climates of tension and violence.
- From the quantitative analysis of the 138 agreements subscribed by the National Police and the extractive companies, possible cases of conflicts of interest, especially within the police authorities, have been identified.
- The purpose of the agreements is to protect the economic interests of extractive companies. However, the problem is that in order to accomplish their aim, a privileged and differential treatment is given to them, and local populations suffer the consequences as well as the social cost when human rights infringements occur due to police force abuse.
- Besides, it was discovered that the number of police officers needed for the agreements and whether they're working, on vacation or on leave, is not delineated by the agreements themselves but by the economic capacity of the company, since they can discretionarily increase the number of police officers needed according to their needs.
- Finally, the agreements break the obligations that the companies should also assume, many of them multinational companies, in the framework of Corporate Social Responsibility and International Law. The protection of their facilities and employees can be ensured without resorting to the National Police.

# 5. Recommendations

## **For the State:**

- End the active agreements signed by the PNP and extractive companies throughout the country, and also refrain from creating new ones.
- Modify the legislation in order to exclude the extractive companies from the protection offered by the National Police to private clients, as defined in agreements for the provision of extraordinary services.
- Create a multi-sectoral commission for the creation of an independent report that documents the consequences produced by the execution of agreements between the National Police and extractive companies during the last decades, especially in contexts of social conflict.
- Generate a public intersectoral policy that prevents the persecution, harassment, and criminalization of human rights defenders in the framework of the police labors performed in areas of extractive projects influence.

## **For extractive companies:**

- End active agreements signed with the National Police, and also refrain from creating new ones. Work with qualified personnel in matters related to human rights in order to handle possible social conflicts, especially at their Community Relations and Corporate Social Responsibility offices.

## **For the civil society:**

- Monitor the signing and execution of the agreements through a reporting and complaints mechanisms.
- Make efforts to file public and legal complaints or reports of human rights violations made by police officers under the framework of agreements with extractive companies.
- Create an alternative record of human rights violations made by police officers under the framework of agreements with extractive companies, keep it outdated –open for new information- and in digital format.

*Executive Summary Report: Agreements between the National Police and the extractive companies in Peru. Analysis of the relationships that allow human rights violations and that break the principals of a Democratic Constitutional State.*

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