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Keywords

- > Gold mine
- > Congo project
- > Yanacocha
- > Newmont Mining Corporation

1. Introduction: The Yanacocha mine

The Yanacocha gold mine is located in Northern Peru, at an altitude between 3500 and 4000m, near the city of Cajamarca (35 km). It is considered to be one of the largest and most profitable in the world, and the largest and most profitable in Latin America.¹ It is operated by Minera Yanacocha, S.R.L. (MYSRL), a company controlled by three main shareholders: Compañía de Minas Buenaventura —a Peruvian company— (43.65%), International Finance Corporation (IFC) —a member of World Bank Group, promoting investment projects in developing countries— (5%); and Newmont Mining Corporation, which is the principal partner (51.35%).² The latter is one of the world's largest producers of gold, located in Denver (Colorado, USA) and operating through different companies in different countries around the world.³

It has been said of MYSRL that it “accounts for almost half of Peru’s annual gold production”. Almost all of Yanacocha’s numbers are gigantic. For example, its production increased from 81,000 ounces in 1993 to 3 million ounces in 2003. It is also of an enormous size: the land under concession is approximately 1,572 square kilometers, “including four major watersheds and the Andean continental divide”; the current mining district spans about 160km² with five open pit mines.⁴

The mine began to operate at the beginning of the 1990s. It was controlled by Buenaventura and a French state-owned company, Bureau de Recherches Géologiques et Minières (BRGM), which owned a 24.7% equity interest.

This partnership had ended by 1994, because the French government decided to privatize its mining assets. Newmont took control over the mine after a controversial process, including litigation before Peruvian courts.⁵



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According to information published by *The New York Times*, the takeover was only made possible by pressure brought to bear by Peruvian officials, such as the former intelligence chief Vladimiro Montesinos.⁶

Newmont has a new project in this region: the Conga project. It is a large copper-gold porphyry located 24 kilometers northeast of Newmont’s Yanacocha gold mine. According to the company, Conga is part of Newmont’s strategic plan to reach 7 million ounces of gold and 400 Mlbs of copper by the year 2017 while developing a diverse South American asset base. But Newmont halted their work at Conga Project in November 2011 because of strong protests.

T2. Various aspects of the case

2.1. The property/cultural aspect of the case

The Yanacocha project has involved a considerable amount of land transfer from the original proprietors to the company. This has been done through convoluted and even deceptive ways and people have been deprived of the land they possessed seemingly without knowing exactly what was happening.⁷ The local farmers (*campesinos*) soon became aware of the low price they had been paid for their land and the legal effects of the obligations contracted with MYSRL. Some of them have alleged that the negotiation was led through deception, menaces and false promises, as can be seen in a letter addressed by

¹ See S. Langdon, “Peru’s Yanacocha Gold Mine: The IFC’s Midas touch?”, 2000 <<http://www.ciel.org/Publications/IFCCSPeru.pdf>>, at 1.

² See C. Kamphuis, “Derecho y la convergencia del poder público y el poder empresarial: la desposesión campesina y la coerción privatizada en el Perú”, *Revista Latinoamericana de Derecho Social*, 15, 2012, at 2; *Report of the Independent Evaluation of the Mesa de Diálogo y Consenso CAO-Cajamarca*, Compliance Advisor Ombudsman, 2005, at 3.

³ See <<http://www.newmont.com/>>.

⁴ *Report cit.*, supra note 2, at 3.

⁵ See *Mining Operations Report on Yanacocha*, 2005 <<http://www.geomineinfo.com/Complimentary%20Downloads/Yanacocha.pdf>>, at 6.

⁶ See Ángel Páez, “The New York Times’ revive el caso Yanacocha”, *La República*, November 22, 2011 <<http://www.larepublica.pe/26-10-2005/new-york-times-revive-el-caso-yanacocha>>.

⁷ See R. E. Chacón, “El caso Yanacocha: crónica de la lucha contra una contaminación minera inevitable”, *Ecología Política*, 26, 2003, at 51; Langdon, supra note 1, at 2.



some farmers to the Human Rights Coordinator (CNDDHH), a local NGO, in June 1997.⁸

One example is that of the community of San Andrés de Negritos, very affected by the mine. According to the Peruvian agrarian law, this community was entitled to a certain amount of land (14,375ha), after a complex process that was initiated by the Agrarian Reform Act (1969) and finished with the official registering of the property in 1991.⁹ This property has been systematically eroded since the starting of the mining project in Yanacocha.

In 1990, Alberto Fujimori was elected president of Peru. Almost immediately he started a comprehensive program of economic reforms which particularly affected agrarian legislation. One of his first actions was to amend this legislation by the Act of Promotion of Investments in the Agrarian Sector (1991), which focused on the individual property of land. Afterwards the Constitution was also amended and, in this case, the communal property of land was given less legal protection. With this constitutional amendment a new Land Act (1995) was made possible, allowing transfers of land from peasant communities to private investors.¹⁰

Peruvian law distinguishes between the property of mineral resources in the subsoil and the property of the land where these resources are located. The former is attributed to the Peruvian government, as is the case in several countries in the region.¹¹ Permission to mine these resources can be granted to private investors. The Yanacocha mine is partly located on land that is the property of the Negritos community. Therefore, although the Peruvian government granted the Yanacocha company permission to extract the gold from the Yanacocha mine, the Company was not allowed to use the surface because it was the property of the communal area of San Andrés de Negritos. This problem was solved by

complex litigations aiming to put an end to the communal ownership of the Yanacocha area and facilitate the mining activity.

First of all, in 1991, the property rights over part of the communal area were granted to individual commoners and the rest was declared a 'reserved area'—owned directly by the state and open to a further distribution in the future—by a decision of the Peruvian government. The goal was to suppress communal ownership in San Andrés de Negritos by opening the door to individual agreements between Yanacocha and the new proprietors of the land. The members of the community consented to the decision, but it has been alleged that this consent was obtained through deception and distortion of the consequences of the decision.¹² The largest part of the 'reserved area' was attributed in 1995 to individual commoners, almost suppressing the legal status of the community on the land. Even the very legal existence of the community was suppressed.

Moreover, in 1992 and 1994, Yanacocha requested the compulsory purchase of part of the land of San Andrés de Negritos to build various facilities associated with mining activity, and the constitution of an inevitable obligation associated with other parts of the land to allow the company's on-the-spot operations. A group of commoners, allegedly representing the whole community, negotiated with the company to set the compensation—the final sum was almost ridiculous—and it was decided to use the former communal land.¹³

In 1995, the original titleholder of the land—the community—was suppressed, the land was re-distributed among individual ex-commoners, and large parts of the land were assigned to Yanacocha so that it could carry out its activities. All this was done at minimal cost for the company, thus making the mine extremely profitable. Hardly any compensation was given to the local population. Then, the company took advantage of the situation by purchasing

⁸ See I. Ormachea Choque, "Utilización de Medios Alternativos para la Resolución de Conflictos Socioambientales: dos casos para reflexionar", 1999 <<http://scar.gmu.edu/Medios%20Alternativos.pdf>>, at 9.

⁹ See Kamphuis, *supra* note 2, at 6-8.

¹⁰ *Op. cit.*, at 10.

¹¹ See Peruvian Constitution, Article 66.

¹² See Kamphuis, *supra* note 2, at 14.

¹³ *Op. cit.*, at 16-18.



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pieces of land from the new individual owners at a very low price. This meant that almost a third of the former communal land had been transferred to the company. A significant part of the community's territory had been taken away and its very survival as a community was threatened.

As the members of the community were becoming progressively aware of the consequences of the convoluted legal process which had led to this situation of dispossession, they began to organize acts of protest against the company. The community tried to act as such, and asked the company to get the community's consent for its on-the-spot operations. MYSRL, however, did not take the community's demands into account and proceeded as if the community no longer existed as a legal entity.

Parallel to this, in 2004 a local court assigned the rest of the 'reserved area' to people who did not belong to the community. These newcomers used their formally acquired rights on part of Negritos' land. They blocked the access to their plots using firearms, seemingly in collusion with the company. The violence escalated and a community leader, Edmundo Becerra, was even killed. Edmundo Becerra had distinguished himself as an opponent of Yanacocha's gold mining project and he was shot dead in Yanacanchilla. It has been reported that he had received several death threats.¹⁴

The community started to use non-violent disobedience in order to force the company and the Peruvian government to recognize its existence and its claims on the land, contacting the Grupo de Formación e Intervención para el Desarrollo Sostenible (Grufides), a local NGO which supported the mobilization of the people of Negritos and documented the violation of human rights there.¹⁵ At the moment, the case remains open.

All these facts show that the company had a significant lack of respect for the local people, which has been the the

case since the beginning of the project, when Minera Yanacocha concealed from IFC the fact that the people living there were indigenous. Given IFC's very high standards, this would have involved a considerable amount of tact in setting up the mining operation because, according to Peruvian law, if a people regard themselves as indigenous, they are.¹⁶

Given that the World Bank had dramatically changed its attitude to indigenous peoples with the passing of the Operation Policy (OP) and Bank Procedure (BP) 4.10, this was by no means a minor issue.¹⁷ As a consequence, the legal process by which the lands were acquired is debatable from the point of view of respecting the indigenous legal institutions, and particularly the common property of land. The Yanacocha case shows that large, alleged development, projects (as is often the case in the mining sector) can have a considerable impact on the traditional economic and social structures of communities in developing countries, particularly when they are indigenous.¹⁸

2.2. The environmental aspect of the case

However, the impact on traditional structures of social organisation is not the only issue at stake: the mining activity also caused significant health and environmental problems. The most serious incident was at Choropampa in 2000, and it is on this that we will focus in this report. The incident caused a series of legal/administrative proceedings in the World Bank Group, the Peruvian Courts and even the American courts, and gave a wide perspective on the type of problems caused by the mining operations in Cajamarca.

a) The mercury spill of 2000

On 2 June 2000, a truck carrying mercury from the mine to Lima spilled part of its load while passing through the

¹⁴ Earthworks, *A brief overview of community concerns at Newmont operations and investments in Peru, Ghana, Indonesia, the United States, and Romania*, 2007 <<http://www.earthworksaction.org/files/publications/NewmontAGMbackgrounder.pdf?pubs/NewmontAGMbackgrounder.pdf>>, at 1.

¹⁵ See Kamphuis, *supra* note 2, at 23.

¹⁶ See Langdon, *supra* note 1, at 3.

¹⁷ See J. Daniel Oliva Martínez, "Políticas de Estado en cooperación internacional para la promoción del desarrollo de los pueblos indígenas", in M. Berraondo (ed.), *Pueblos indígenas y derechos humanos*, Bilbao, Universidad de Deusto, 2006, at 384.

¹⁸ The relative position of the Department of Cajamarca among the Peruvian departments regarding the HDI has been worsening since 1972 and, particularly since 1993 when the mine started its operations. In 1993, Cajamarca was the 20th of 25 departments regarding its HDI. In 2000, it was the 23rd (see C. E. Aramburú, M. Bustinza Nalvarte, *Cajamarca: el proceso demográfico*, Asociación Los Andes de Cajamarca, Cajamarca, 2006 <<http://www.losandes.org.pe/downloads/2006/libros/01.pdf>>, at 26). Since then, the situation seems to have improved, but Cajamarca remains one of the poorest departments in Peru, even though it has one of the most important gold mines in the world. Maybe "the people of Cajamarca are better off now than they were in 1993", as Wellams (*supra* note 21, at 62), suggests, but are they as well off as they should be given the resources extracted from their land? In our opinion, the mining operations there have altered the living conditions of local people but has not compensated them with a remarkable improvement in their standard of life.



small town of Choropampa, and the municipalities of San Juan and Magdalena.¹⁹ Seemingly, the local people in Choropampa were not informed about the dangers of the substance that had been spilled either by the local authorities or the mine personnel. They collected it up, thinking it to be valuable, and kept it in their homes. Consequently, symptoms of mercury poisoning appeared affecting many people, some of whom were children.²⁰

The investigation into the facts of the case has shown that the truck was neither closed nor equipped with the special handbarrow required for the transport of mercury. In fact, it seems that at that moment the normal procedure was to use a truck that was not specially equipped for mercury transportation.²¹ The inappropriateness of the truck used is probably at the origin of the loss of some of the load and the resulting incidents. In any case, the mercury was spilled along a considerable sector of the road and it was in sight of the local people in Choropampa and neighbouring villages.

Many local people, guided by their beliefs that mercury could be converted into gold or used to cure a disease they called *susto* (shock), went into the streets to collect the metal and store it at home. The company did nothing to inform people about the health hazards of contact with mercury and accepted no responsibility for the consequences of the spill. Indeed it has even been said that mine employees offered local people money for recovering the mercury.²² As a result, many people inhaled mercury, which had negative effects on their health. In fact, eight years after the incident local people were still suffering consequences to their health.²³

Obviously, this did nothing to improve the reputation of Minera Yanacocha among local people. In fact, it made it

worse and prompted people to mobilize against mining in Yanacocha. As we will see, this has led to some incidents affecting human rights and the security of local activists. Nevertheless, it is true that the company offered some compensation. Individually, it is alleged that MYSRL compensated 749 local people for the damages suffered with an overall amount of 5,350,000 nuevos soles (the Peruvian currency). Collectively, the company funded various activities for the benefit of the local communities, such as the improvement of schools, water works, medical facilities, etc.²⁴

b) Water pollution

As well as such specific incidents as the Choropampa mercury spill, analysed above, the local population has alleged that the quality (and quantity) of the water supply has worsened since the opening of the mine.²⁵ The water sources have been polluted as a result of the mining activity, and this has affected land irrigation and, consequently, the food supply.²⁶ Independent experts have found some evidence to support these allegations.²⁷

To illustrate this, let's take a look at the community of Combayo, where the local people have complained about the bad quality of the river and irrigation waters affected by the mining activity —“*¡Esas aguas apenas sirven para los caballos y las vacas!* [these waters are hardly good for horses and cows]”, said María Santos, a local farmer; and “[*t]empranito las aguas aparecen de color turbio y al mediodía se van aclarando* [early in the morning the waters are muddy, then at noon, they become clearer]”, said Reina Llanos, who assures that the quantity of water has decreased as well, causing a decrease in the milk production in her cattle.

At the beginning of August 2006 the local people in Combayo protested because a dam was being built near

¹⁹ Mercury (Hg) is a harmful substance, the use of which will be regulated through a legally binding instrument at international level if the process propelled by the Governing Council of the UNEP in 2009 succeed. See information about at <<http://www.unep.org/hazardoussubstances/Mercury/Negotiations/tabid/3320/Default.aspx>>.

²⁰ See Langdon, supra note 1, at 4.

²¹ According to the *Informe de la Defensoría del Pueblo n.º. 62 (2001)*, quoted by Comisión de Pueblos Andinos, Amazónicos y Afroperuanos, Ambiente y Ecología del Congreso de la República del Perú, *Informe del grupo de trabajo encargado de levantar información sobre la situación ambiental y estado de salud de los afectados por el derrame de mercurio en las localidades de San Juan, Choropampa y Magdalena, departamento de Cajamarca en junio del año 2000*, Lima, 2008, at 10. See too Compliance Advisor Ombudsman, *Investigación del derrame de mercurio del 2 de junio de 2000 en las cercanías de San Juan, Choropampa y Magdalena, Perú*, Washington DC, 2000, at 15.

²² Op. cit., at 17-18. See as well M. Arana Zegarra, *Informe de la verdad sobre el desastre ambiental en Choropampa, ECOVIDA, Cajamarca, 2000*, at 7; P. Hecht, “Peasants in Peru near showdown on mercury spill”, 2005 <<http://www.minesandcommunities.org/article.php?a=1384>>.

²³ See Arana-Zegarra, supra note 7, at 128.

²⁴ See Comisión de Pueblos Andinos, Amazónicos y Afroperuanos, supra note 22, at 9.

²⁵ An independent investigation has determined that fecal coliforms and copper are, respectively, 160,000 times and 10 to 20 times higher than WHO standards. “The acidity of the water is also extremely high with a PH of 3.3 as compared to 6.5, which is the highest acidity considered drinkable” (see Langdon, supra note 1, at 2).

²⁶ See Chacón, supra note 8, at 51; Langdon, supra note 1, at 2.

²⁷ See *Identificación y cuantificación de impactos medioambientales generados por MYSRL*, 2006 <<http://upcommons.upc.edu/pfc/bitstream/2099.1/4110/1/Memoria.pdf>>.



<http://www.elciudadano.cl> – A protest against the Congo project.

their village. They set up a road blockade and there were clashes between the farmers, and policemen and Yanacocha security guards. In these clashes the farmer Isidro Llanos Chavarría was killed.²⁸ After the murder, the local people blockaded the traffic on the Cajamarca-Bambarca road and the Peruvian government were obliged to send a commission to mediate between the company and the farmers. MYSRL agreed to improve the quality of the water.²⁹ The killing of Isidro Llanos, like that of Edmundo Becerra previously (see above), leads us to the human rights question.

2.3. The human rights aspect of the case

The local opposition to the Yanacocha mine allegedly triggered the repression and persecution of activists, which bordered or even went beyond the bounds of the violation of human rights. This can be seen in the consequences of the involvement of Grufides in the Choropampa incident and the further mobilization of local communities against the mining company. Grufides is a local organization that was created in Cajamarca in 2001, as a direct result of the Choropampa mercury spill in 2000. It was formed mainly by university students, led by Marco Arana, a Catholic priest, responsible for the parish where the University is located. It has been helping the communities and particularly those involved in the conflicts related to the Yanacocha mine.

The turning point in the repression of local activists came about as a result of the Cerro Quilish conflict. This mountain was considered to be a protected area by the local government, but MYSRL challenged the decision before the Constitutional Court, which declared in 2003 that the decision and the rights of the company on the protected area were compatible. On the basis of this ruling, the Ministry of Energy and Mines authorized Yanacocha to work on Cerro Quilish, which gave rise to the social contestation of the communities. Marco

Arana acted as mediator and managed to get the company to withdraw from the controversial area. This was a significant boost to the prestige of Grufides among the communities. Finally the company itself “requested that the Peruvian Ministry of Energy and Mines annul the company’s exploration permit for Cerro Quilish.”³⁰

The Cerro Quilish conflict seemed to represent a turning point in the way MYSRL viewed its social responsibilities. Executives of the company have stated that they became conscious that “although it may have been operating legally, it was not operating legitimately in the eyes of the community members.”³¹ Nevertheless, subsequent cases of the alleged violation of human rights shed doubt on these statements.

Grufides investigated some of the facts of the Negritos, Choropampa and Combayo incidents, particularly with regard to the killings and the support provided to the families of the people killed or injured by the violent situations within the mining conflict in Cajamarca. This involvement has allegedly led to some harassment of Grufides activists, and particularly Father Marco Arana and Mirtha Vasquez, who reportedly received several death threats. They alleged that they were followed and filmed by personnel of the company Forza, a private security agency connected with WYSRL and former Peruvian intelligence and military officials. Newmont, however, denied all these allegations. Moreover, the Peruvian authorities have been somewhat lax in investigating these activities.³²

3. The mercury spill of Choropampa: legal channels and consequences

Of all the incidents that the Yanacocha mine has caused since 1993, the richest in legal consequences is the Choropampa mercury spill. It is worth analysing the various legal channels that

²⁸ <http://www.business-humanrights.org/Categories/Individualcompanies/M/MineraYanacochajointventureNewmontCompaadeMinasBuenaventura?sort_on=publication&batch_size=10&batch_start=8>.

²⁹ For all the facets of the Combayo incidents, see Milagros Salazar, “El oro se va con el agua”, 2006, <<http://www.ipsnoticias.net/nota.asp?idnews=38759>>.

³⁰ See M. Wellams, *The Role of CSR in Development: A Case Study Involving the Mining Industry in South America*, Masters Thesis, Saint Mary’s University, Halifax, 2007, at 54. According to Ricardo Morel, Manager of Yanacocha’s Community Relations and Social Development department, Yanacocha learned an important lesson from the conflict over Quilish: the company needs to listen more to its neighbouring communities (ibid.)

³¹ Ibid.

³² <<http://www.business-humanrights.org/Documents/Yanacocha>>



have been followed and the consequences they have had before discussing the conclusions of the case, which are obviously provisional given the complexity of the Yanacocha mine effects on the local people in Cajamarca.

3.1. *The involvement of IFC in a controversial project and the claim before the CAO*

First of all, the involvement of the World Bank Group in the mining project must be taken into account because it shows the importance of the Yanacocha mine for local development. Indeed, the effects of the Yanacocha project—where, as seen, economic, environmental and human rights issues are intertwined—are made even more complex by the involvement of IFC, an institution of the World Bank Group, which claims to support sustainable development projects in developing countries.

The IFC has been involved in order “to support a project promising to generate substantial revenue, employment and foreign currency flows” in Cajamarca, which, as has been said, is one of the poorest departments in Peru.³³ However, it seems that the project has significantly worsened the quality of life of the local people, altering their traditional economic and social practices on the land, generating important environmental damages and putting at risk the life of some people who were publicly against the project.

It has been argued that the IFC has been wrongly informed about such important facts as the condition of the indigenous local people or the behaviour of the company in the Choropampa incident. But it seems that the IFC was not careful enough in checking the project in its initial stages, and it did not monitor it appropriately once it was underway.

The Choropampa incident is illustrative. After the spill, in July 2000, the IFC’s Compliance Advisor Ombudsman oversaw an independent investigation, which found that there were significant

discrepancies in the company’s waste management and emergency procedures. This investigation led to a comprehensive understanding of the magnitude and seriousness of the incident.³⁴ Subsequently, in December 2000, the Frente de Defensa de Choropampa lodged a complaint with CAO on behalf of the citizens affected by the mercury spill.³⁵

In response to the complaint, CAO conducted meetings with all the relevant an Independent Health Evaluation (IHE) process would be adequate. According to the official version of the CAO, it “continued to help implement recommendations derived from the IHE for over two and half years, despite encountering various hurdles posed by the Ministry of Health and civil society organizations. CAO decided against pursuing a health study due to a lack of institutional and social support and closed the case in November 2003.”³⁶

One way or another, the CAO action led to the constitution of a forum for dialogue between the community and MYSRL. A roundtable (*Mesa de Diálogo y Consenso*) was formed, which was involved above all in monitoring water quality in the four basins affected by the Yanacocha mine activity, but there was no significant result regarding the Choropampa mercury spill.³⁷ This action was derived from the complaint filed by the Federación de Rondas Campesinas Femeninas del Norte del Perú (FEROCAFENOP) in March 2001.³⁸

According to CAO, “[s]ince the Mesa began in 2001, the CAO has sought ways for the Mesa to become an organic, fully Cajamarcan entity. The CAO has supported the Mesa financially and technically since 2001. The CAO has agreed to support the water monitoring program of the Mesa until February 2006, after which it will no longer be involved in the process. Through training, local hiring, and coordination with local universities, the

³³ See Langdon, *supra* note 1, at 1.

³⁴ See Compliance Advisor Ombudsman, *supra* note 22, at 1.

³⁵ See Compliance Advisor Ombudsman, *Exit report regarding two complaints filed with the CAO in relation to Minera Yanacocha (Cajamarca, Peru)*, 2006, at 1-2.

³⁶ http://www.cao-ombudsman.org/cases/case_detail.aspx?id=110

³⁷ See Compliance Advisor Ombudsman, *supra* note 36, 2006, at 1-2.

³⁸ *Ibid.*



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CAO has sought to ensure that the Mesa can continue sustainably.³⁹ However,

the Mesa did not have enough appeal for local NGO's and did not gain enough credibility with local stakeholders.⁴⁰ Therefore, besides the poor results of the CAO in the Choropampa incident, the Mesa did little to alleviate concern about water pollution in Cajamarca, as the facts about Combayo show. In fact, it has been alleged that it was incapable of being an adequate forum for new issues (such as the Combayo dam), and not even very useful in the management of mine-related conflicts.⁴¹

3.2. The Yanacocha case before Peruvian courts

Despite the (not very successful) involvement of the CAO in the various consequences of the Yanacocha mining operations, the Choropampa mercury spill has been taken before the Peruvian courts. Lawsuits relating to the Choropampa incident were filed against Yanacocha in the local courts of Cajamarca in May 2002 by over 900 Peruvian citizens, most of whom entered into settlement agreements with Yanacocha. The most significant proceedings on the matter concern

Giovanna Angélica Quiroz and her two children.

After the Choropampa incident, the company tried to reach agreements with the people affected by the incident for small economic compensations so that they could avoid further legal action before the courts. This was the case of Ms. Quiroz, who received \$14,000 to settle her claims against the company. Afterwards, when she realised that the compensation was ridiculous compared with the damage caused, Ms. Quiroz claimed a higher quantity before the Peruvian courts. This led to a controversial journey through the courts, which ended with an extraordinary decision by the Peruvian Supreme Court, where for the first time it decided on an appeal of cassation in plenary session, given the conflict between the two courtrooms that had been involved in the proceedings. This decision of 2008 was the first to use the rules on cassation established by the Procedure Code of 1993. In this decision, the Supreme Court upheld the validity of the settlement agreement reached by the plaintiff and the company. Subsequently, the Supreme Court reached the same decisions for other people from Choropampa in the same situation, but by the start of 2010 Newmont reported that claims of approximately 200 plaintiffs still remain unsettled.

The Quiroz decision was controversial. The majority of the Supreme Court decided that the extrajudicial settlement

³⁹ Op. cit., at 3.

⁴⁰ See *Report cit.*, supra note 2, at 28. Moreover, the image of the Mesa for the community has been tarnished because of the perception that it is not entirely independent of Yanacocha. This was stated by CAO (ibid.).

⁴¹ Ibid.



between Ms. Quiroz and MYSRL was right and there was no reason for further judicial control.⁴² However, a significant minority of the court opposed the decision. For them, the settlement had been reached by an error of the plaintiff, and this error had been induced by deception. So the minority—in the Quiroz decision and in the other decisions on settlements between Yanacocha and the people affected by the mercury spill in 2000—considered that the extrajudicial settlement was void.⁴³

3.3. The Yanacocha case before US courts

Some people affected by the Choropampa mercury spill tried to bring the matter before the US Courts, given the fact that the majority shareholder of Yanacocha was (is) Newmont, a Denver-based corporation. Newmont lost the fight to keep the lawsuit out of the US courts and in 2004 offered the possibility of settling the demands of the people affected before two retired Colorado judges. The Peruvian plaintiffs were unsatisfied with the mediation talks and went ahead with their lawsuits before the federal courts in Colorado.

Approximately 1,100 Peruvian citizens filed lawsuits before the Denver District Court for the State of Colorado. These actions aimed to obtain compensation for the damages caused by the mercury spill. Finally, in October 2007, the parties entered a court-approved settlement agreement, and most of the cases were resolved. At the present time, it seems that the lawsuits filed in US courts on the incident have all been resolved in this way.

⁴² Supreme Court of Peru, Decision on Cassation Appeal 1465-2007 (Cajamarca).

⁴³ *Ibid.* For the minority, “las transacciones extrajudiciales celebradas entre la empresa minera demandada y la parte demandante son también altamente cuestionables desde la perspectiva de los derechos fundamentales y las limitaciones al principio de la autonomía de la voluntad en un Estado Constitucional de Derecho [the extrajudicial settlements between the mining company and the plaintiff are highly dubious from the point of view of human rights and the limitations on the freedom of contract within a constitutional state]”.

⁴⁴ See Wellams, *supra* note 31, at 24.

4. Concluding remarks

Despite the compensation for the Choropampa mercury spill obtained by some farmers through the settlements approved by US Courts, the various aspects of the Yanacocha mine case show that environmental injustice is linked with the exploitation of natural resources in developing countries.

(i) First, as we have seen, the exploitation of natural resources has a significant social and economic impact on the traditional organisation of local communities: their land is put on the market, it is turned into a commodity, and it is allowed to be purchased by multinational corporations so that resources can be obtained at lower prices. All this is done with no significant improvement in the standard of living of local people, as the HDI statistics in Peru shows in the case of Cajamarca after the opening of the Yanacocha mine.

(ii) National governments are often interested in investments and land acquisitions by international companies, because they obtain financial revenues, which have no direct effect on local people, as the case of the Negritos community shows dramatically. It is obvious that the economic rewards of mining in Yanacocha are not going to the Cajamarca people but elsewhere in Peru and abroad.⁴⁴

(iii) This type of activity often generates severe environmental and health hazards because national standards are often relaxed in order to attract international investments. The monitoring of water quality in the basins affected by Yanacocha activity shows this.

(iv) The failure of local governments to protect human rights in developing countries (if they are not involved in violating them) means that it is easy for threats to be made on the lives of

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activists in environmental and social conflicts linked to mining activity. Normally economic interests aim to maximize benefits derived from the exploitation of natural resources in these countries and are not very sensitive to human rights.

(v) Mining activity in developing countries often causes damage to the environment and health, because of the much greater lack of control and assessment compared with developed countries. In this situation, and given the weakness of local institutions, the only option is to obtain some compensation through proceedings before foreign courts, thus reinforcing the neo-colonial structures of the global economy. The Choropampa incident is a good example of this.

(vi) These minimal compensations for real damages do not cover the real impact of the extractive activities of foreign companies in developing countries, and to some extent conceal the real situation of injustice in terms of the loss of assets and the breaking up of consolidated social structures. The impact of Yanacocha on the life of the people of Cajamarca shows how insufficiently the local people are rewarded by the mining activity.



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More on this case

- <http://www.foxbusiness.com/markets/2011/11/09/newmont-halts-work-at-perus-conga-project-due-protests/#ixzz1nUCUA04P>

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