

Addressed to:

Ms. Leilani Farha,

UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living,
and on the right to non-discrimination in this context

srhousing@ohchr.org

Ms. Hilal Elver,

UN Special Rapporteur on the right to food

srfood@ohchr.org

Mr. Michel Forst,

UN Special Rapporteur on the situation of human rights defenders,

defenders@ohchr.org

Ms. Victoria Tauli Corpuz,

UN Special Rapporteur on the rights of indigenous peoples

indigenous@ohchr.org

**To the UN Working Group on the issue of human rights and transnational corporations and other
business enterprises**

wg-business@ohchr.org

urgent-action@ohchr.org

OHCHR-UNOG

8-14 Avenue de la Paix

1211 Geneva 10

Switzerland

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Dear Representatives of the above UN Special Procedures,

The Latin American Mining Monitoring Programme (LAMMP) is addressing this communication following renewed attacks against Peruvian indigenous woman, Máxima Acuña de Chaupe, and her family in Tragadero Grande, a land-based community high in the hills of the Sorochuco district in the department of Cajamarca, Northern Peru. Since 2011, her entire livelihood and well-being have been threatened by Yanacocha's Conga mine project as a result of an endless dispute over land-ownership. In this setting, Ms. Acuña and her family have lived in constant fear of attacks and of attempts of forced eviction.

With this allegation letter, LAMMP seeks to denounce the way in which the ongoing attacks against Máxima Acuña and her family constitute a violation of a series of their basic human rights and freedoms, particularly with reference to those enshrined in the Covenant on Economic, Social and Cultural Rights (ESCR) that include the right to adequate housing as a component of the right to an adequate standard of living and the right to food, as well as the denial of Ms. Acuña inherent right to a dignified life and to personal security, with

particular attention to her status as an indigenous woman. In order to emphasise the unlawfulness of recent and past acts of intimidation, this letter will also provide a brief description on the legal dispute between Yanacocha and Ms. Acuña over the land in Tragadero Grande, and list recent attacks dating from January 2015 to present.

Background on the Conga mining project:

The Conga gold and copper mine operated by Yanacocha S.R.L. (Yanacocha), is a joint venture of US-based Newmont Mining Corporation (51.35%), Peruvian Minas Buenaventura (43.65%) and of the International Finance Corporation (IFC, with 5%). It was approved in 2010 under the presidency of Alan García and was estimated to be Peru's largest mining investment worth \$4.8 billion (USD). According to the project proposal, over the 19 year life-span of the mine, Conga was to carry out the extraction and exploitation of 500,000 ounces of gold per year and some 54,000 ounces of copper over an area of approximately 3,000 hectares.

Following the project approval, communities in Cajamarca, predominantly indigenous and rural, voiced their opposition to the mine, concerned about the impacts on the surrounding lakes and rivers which are their principal water supplies. As of November 2011, violent clashes broke out between the community and local police which led acting President Ollanta Humala to declare a temporary state of emergency in the affected areas and to the deployment of special police and armed forces.

Eventually, the project was suspended in view of the surging protests. However, as communities reported ongoing work on the mining site, tensions continued throughout 2012 with violent clashes between police and demonstrators cumulating to the death of five civilians, several dozen people injured as well as many arrests of journalists and activists.

Operations at the Conga mine are estimated to resume in 2018. In the meantime, in an effort to nurture its social license to operate, Yanacocha implemented community-driven projects as part of their corporate social responsibility initiatives. These activities include a livestock management project and programmes to promote agricultural development across the communities of Cajamarca¹. Despite these “good” incentives, there are growing concerns that these are used to curtain on more serious abuses and violations, as exemplified in the case of Máxima Acuña de Chaupe.

Summary of the land dispute: May 2011-December 2014

The land dispute between Máxima Acuña de Chaupe and Yanacocha mining company rapidly became emblematic of the broader Conga conflict in Cajamarca, and an edifying example of human rights violations in the context of natural resource extraction in Peru. She is also recognised by many among her community as a courageous woman human rights defender resisting unlawful corporate practices in Latin America more broadly.

According to Máxima Acuña de Chaupe and her family, the dispute broke out in May 2011 when engineers from the mine, accompanied by private security agents and forces from the Division of Special Operations of the Peruvian National Police (DINOES) broke into the family's property, tearing down their fences and dismantling her adobe home.

Few months later, in August 2011, private security and DINOES returned to the farm and beat Máxima Acuña

1 <http://www.newmont.com/operations-and-projects/south-america/yanacocha-peru/community/default.aspx>

and her daughter, Ysidora unconscious, as well as threatening and physically assaulting Mr. Jaime Chaupe, Máxima Acuña's husband and their son, Daniel. Following this incident, Ms. Acuña and her children still suffer from chronic pains and psychological trauma. Despite the gravity of events, Ms. Acuña was not attended by the local police when she attempted to report the incidents and was forced to wait five hours before she could make her statement (See Annexe 1).

These acts of intimidation and aggression were perpetrated with the intention to forcibly evict the family from their land, and coerce them into giving it away to the mine. Ms. Acuña refused to vacate as she owns deeds demonstrating her ownership of the disputed territory. As a result, in 2012 the operating company, Yanacocha, filed charges against the Chaupe for "illegal occupation" of what according to them, constituted part of their concession. After two years of being forced to attend several court hearings in the towns of Cajamarca and Celendin, several kilometres from her home, the court ruled in favour of the Chaupe family on the 17th December 2014 (See Box 1).

Throughout the court case, Máxima Acuña de Chaupe and her family have reported over 20 instances of physical aggression and abuse, as well as threats perpetrated by mine workers, private security DINOES and pro-mining members of the community (See Annexe 1). In May 2014, the Inter-American Commission on Human Rights (IACHR) requested the government of Peru to provide cautionary protection measures to the family. However, these were only implemented in April 2015, and with limited success.

Box 1: Yanacocha Mining Company Vs. the Chaupe-Acuña Family over Disputed Territory, Tragadero Grande

29th October 2012: The Criminal Court of Celendín, Cajamarca rules in favour of Yanacocha and against the Chaupe-Acuña family on allegations of "illegal occupation".

Sentence: suspended prison terms of three years, and a fine of 200 soles payable for civil reparations to Yanacocha.

2nd August 2013: Following an appeal by the family's lawyer, the Superior Court of Justice of Cajamarca rules "null and void" the sentence of 29 October 2012 on the basis that the previous judgement contained errors of law and had failed to consider fundamental evidence favourable to the Chaupe Acuña family.

5th August 2014: After Yanacocha files a new complaint against the Chaupe Acuña family for illegal occupation, the uni-personal Court of Celendin rules in favour of the mine and against the Chaupe-Acuña family for "aggravated usurpation".

Sentence: suspended prison term of two years and eight months, a fine of 5,500 soles payable for civil reparations to the Yanacocha mining company, and a resolution that the family vacate the disputed lands.

17th December 2014: Following an appeal by the family's lawyers, the Criminal Chamber of Appeals for the Superior Court of Justice of Cajamarca overturns the 5th August 2014 ruling acquitting the Chaupe Acuña family of allegations of "illegal usurpation" and stops the previous resolution that ordered the family to evict the property.

List of incidents between January 2015-Present

Despite the Courts verdict ruling in favour of Máxima Acuña de Chaupe and her family in December 2014, attacks against her safety resumed as of January 2015. As well as being unlawful, the nature of incidents perpetrated against Ms. Chaupe are evident threats to her traditional way of life and subsistence. They also constitute arbitrary interference with their home, privacy and family as well as arbitrary destruction and demolition of their home.

Below are some of the incidents in question. For the sake of brevity, the list will only focus on incidents that demonstrate the way in which the company, in collusion with Peru's National Police, aim to prevent the family

from exercising their right to an adequate standard of living, including their right to food and adequate housing. A complete list of reported incidents that took place between May 2011 to present is available in Annexe 1 of this submission, along with supporting photographs, links and documents.

It is worth noting however that in addition to the reported threats and attacks, Máxima Acuña de Chaupe, her husband Jaime and their children allege that they are under constant surveillance from the mine security that tours their property on a daily basis and records their activities. They also reported a video installation outside their farm which they suspect was implemented to monitor their movements (see Annexe 2).

3rd February 2015: At approximately 9.00 am, a contingent of DINOES agents and private security employed by the mine, as well as other Yanacocha workers entered the property of the Chaupe family and destroyed part of the house which was under construction at the time. Ms. Acuña claimed that neither police or mine personnel presented a warrant or any form of documentation justifying this action.

17th March 2015: Máxima and Jaime Chaupe found their quinoa plantations destroyed with footprints of large boots and of alpacas stamped on the mud. Máxima Acuña suspects the alpacas originated from Yanacocha's community alpaca rearing project which is implemented near her home.

29th April 2015: The family's guinea pig (cuy in Quechua) hut was destroyed by the mine's private security. For the Chaupe family, like for most Andean indigenous communities, cuy production is at the heart their subsistence and income.

22nd May 2015: After rebuilding the cuy hut, Ms. Acuña returned home to find it destroyed for a second time. At the time of events, Ms. Acuña reports having been in the town of Celendín to give her statement to respond to a new accusation made by the company and is convinced the attack was timed and planned.

23rd May 2015: The family counted 20 police and 30 mine workers walking into their property to destroy for a third time the cuy hut. Following confrontation, Ms. Acuña's daughter-in-law, Maribel, was injured by a rock that was thrown at her.

25th and 26th May 2015: Yanacocha workers entered the Chaupe's land and began building a fence, closing off the foot paths that lead from her home to other communities. Despite her pleas, the construction continued. The family is convinced the fence is an attempt to restrict their freedom of movement, and isolate them further from the nearby markets where they would traditionally sell and buy vital produce. Ms. Acuña also claims transport across the fence is not a viable option as they are forced to cross security checkpoints where they are subjected to systematic harassment and humiliating treatment.

07th July 2015: Members of neighbouring communities that are in favour of the mine mobilised and entered Máxima Acuña's land holding sticks. Ms. Acuña interpreted this incident as an act of defiance and intimidation to warn her that the land she is occupying does not belong to her.

17th July 2015: A worker from Yanacocha's community alpaca rearing reserve brought a pack of animals to graze on the Chaupe's pastures. When confronted, Máxima Acuña was told: "You can't say anything to me, I can go whenever I want, I can walk all over this land and no one can say anything".

21th July 2015: At 4.30pm Ms. Acuña saw a police agent sitting in front of her house, observing them. As she approached him, the policeman walked away. At 5.30pm, a group of approximately 20 people walked into her house to take her sheep.

22nd July 2015: After walking for four hours, Ms. Acuña found her sheep tied to a stump and unattended.

28th July 2015: The family's motorbike, which was a donation from LAMMP, was stolen in the town of

Cajamarca as Daniel had taken it for repairs.

30th January 2016: The family's pet dog "Cholo" was stabbed in the neck, the cut was straight and clean which suggests it was clearly made by a knife or a razor blade. Despite the lack of photographic evidence, the family is convinced the perpetrators were from Yanacocha's staff who have set camp at 100metres from their home.

2nd February 2016: Yanacocha personnel entered Máxima Acuña's property, destroying the family's crops. Photographic evidence taken on the day also show that assailants stole bags potatoes (See Annexe 2). The family and their lawyer believe this was premeditated, as perpetrators purposefully waited for the harvest to be ready before carrying out their theft (ie. The potatoes were planted 3 months ago).

Specific concerns regarding the right to an adequate standard of living

Since 2011, Ms. Acuña has reported a series of offenses and acts of aggression targeting her family. These ranged from intimidation, surveillance and threats, including death threats to physical assaults, grievous bodily harm, and destruction of crops and property. Based on allegations made by the family, which are supported by a number of video and photographic evidence, interactions between the family and mine security and personnel, as well as DINOES, are characterised by disproportionate and excessive use of force. In this precarious situation, the Chaupe family live in constant fear of persecution and of forced eviction, which is clearly denying them the possibility to enjoy a life in dignity.

Incidents and assaults that took place following the court ruling of December 2014 constitute further threats to Máxima Acuña's security as well as that of her family. However, they also constitute direct attacks to her livelihood and put her entire survival at risk. As subsistence indigenous farmers, the family relies almost exclusively on home-grown crops and animal produce. They also possess very rudimentary resources to sustain this way of life. In view of this, there are significant reasons for concern as to the family's capacity to maintain their livelihood and access to food.

The ongoing arbitrary destruction and demolition of the family's home and property are evident interferences with their right to an adequate living as they are clear attempts to force Máxima Acuña and her family off their land, and they also undermine their privacy in combination with the constant monitoring and surveillance of their farm. It is worth noting that, despite the heavy presence of police force in these operations, the family was never presented an official warrant which infers the unlawfulness of these acts.

Finally, LAMMP wishes to bring careful attention to the impacts of these incidents to Máxima Acuña de Chaupe as an indigenous woman; across Peru, natural resource extraction activities have disproportionately affected indigenous communities, and particularly women, as a result of long-standing forms of discrimination. This entrenched exclusion has recognised significant impact on communities' ability to enjoy their basic rights that are encompassed in their ESCR².

Specific concerns in relation to the Business and Human Rights Framework

The case of Máxima Acuña de Chaupe and Yanacocha is directly relevant to the business and human rights framework. Despite several pleas and communications by Máxima Acuña de Chaupe, her family and supporting civil society organisations (both in and outside Peru- see Annexe 3), Yanacocha and its parent

2 <http://lammp.org/wp-content/uploads/2009/11/LAMMP-report-2015-UN-Forum.pdf>

company, Newmont, continue to deny any unlawful behaviour from its workers and any acts of aggression and intimidation against the family.

In the course of recent attacks on the Chaupe's farm, photographic evidence revealed the high presence of Peruvian National Police, DINOES. Agents appear to be fully dressed and equipped in riot gear and armed with batons (See Annexe 2). However, despite wearing their official uniform, all labels and signs on the shield and dress that would indicate "Police" were hidden by black tape.

This collusion between the mining company and DINOES has already been the subject of worrying reports highlighting the endemic impunity in the context of socio-environmental conflicts in Peru³. This relationship is increasingly concerning following newly implemented legislation that guarantees police exemption in cases of injury or death⁴.

As a result of her resistance to the Conga project, Ms. Acuña rapidly became recognised as a woman human rights defender representing the broader struggle of affected communities in Cajamarca. LAMMP is concerned that this has led to further repression and persecution from both the company and the State of Peru in an attempt to tamper her efforts to defend her land and property. It is also a source of alarm that the destruction of their crop and plantation fields prevents Ms. Acuña from providing food and adequate means of living to her family.

Recommendations:

In view of the above allegations, LAMMP expresses its concern for the safety of Máxima Acuña and her capacity to support her family. Since 2011, we have noted the alarming deterioration of her situation, both physically and emotionally, as a result of the endless and systematic abuse she faces from the mining company and the government's failure to guarantee the protection of her and her family's rights.

With this letter, we kindly ask for your support in achieving the following demands:

1. For Yanacocha to refrain from attacking and intimidating the Chaupe family, particularly attempts to restrict their freedom of movements, the invasions of privacy, the theft and obstructions to their means of subsistence as well as the destruction of their property. The family does not possess the means or resources to replace the destroyed and stolen food. It is therefore of great concern that Yanacocha employees are utilising this vulnerability to coerce them into leaving their home;
2. The investigation and sanction of all the criminal offenses carried out in attempt to forcibly evict and intimidate the Chaupe family, including physical assaults and threats in light of the Court ruling of December 2014, acquitting the family of charges of illegal occupation of Yanacocha's concession. The recent attacks are only the latest in a series of incidents that have been denounced at the office of the public prosecutor. To this date there yet to be an investigation, regardless of the gravity of these violations;
3. For Yanacocha to halt its excessive deployment of security, both private and DINOES agents on Máxima Acuña's property, and for interactions between these agents and the Chaupe family to remain in compliance with international standards and human rights obligations;
4. For the State of Peru to abide by its human rights obligations, namely in ensuring Máxima Acuña and her family's right to a life in dignity, to security, and to guarantee the protection of their right to food and adequate housing among others.

3 http://assets.gfbv.ch/downloads/report_english_def_2_12_13.pdf

4 <http://www.theguardian.com/environment/andes-to-the-amazon/2014/jun/29/peru-licence-to-kill-environmental-protectors>

ANNEXE CONTENT (AVAILABLE IN ATTACHMENTS)

ANNEXE 1:

Chronology of Security Incidents against the Chaupe Family: May 2011-Present

ANNEXE 2:

Photographic evidence of surveillance and attacks

ANNEXE 3:

Urgent Action in solidarity with the Chaupe Family, Addressed to the Ambassador of Peru in the UK and the Peru's Permanent Representative at the United Nations in Geneva, signed and supported by the mentioned individuals and organisations.