

The governance agenda for natural resources and extractive industries should not be chilled by threats of arbitration against our country

Urging a New Framework for the Regulation of Foreign Investment in Peru

An \$ 800 million claim, launched against Peru by Renco Group (Doe Run) under Peru's FTA with the United States, is the first of what could be a series of lawsuits that limit the ability of the Peruvian government to implement the necessary agenda of governance of extractive industries. Faced with this serious situation, the undersigned organizations wish to express the following:

- **There is evidence that this model of investment protection is outmoded:** Since the 1990s various mechanisms of "super-protections" of foreign investment have been promoted, seeking to place Peru as a favorable destination for investors. Several international studies show that FTAs do not necessarily constitute a determining factor for the attraction of investment, and instead constitute a significant limitation on the implementation of national regulations, promoting the rights of investors to the detriment of the rights of citizens.
- **There is a dramatic increase in legal attacks on regulation of the extractive industry:** The aggressive international dispute over natural resources has kept pace with the rapid increase in investment in Latin America's mining industry, therefore increasing claims against states for regulations applying to the oil, mining and gas sectors. Today, the threat of investor-state arbitration is a form of corporate pressure against states to prevent the implementation of necessary regulations.
- **Threats of investor-state arbitration restrict necessary regulations:** In our country, the investment protection framework occurred before the development of necessary social, fiscal, and environmental regulatory frameworks. The increase of socio-environmental conflicts is evidence of the need to promote urgent reforms such as the Law of Consultation, The Land-Use Order, environmental improvements, etc. These processes could be blocked under the FTA through potential lawsuits from investors who feel that these regulations affect their rights.
- **There are alternatives and we must join them.** There is no single model of investment protection. Countries like Brazil, Australia and India have been resisting the incorporation of mechanisms of investor-state arbitration in their trade and investment agreements without affecting investment flows to these locations.

Given the need to develop a new framework for the governance of natural resources and extractive industries in our country, we urge the Peruvian government to evaluate and adjust the model of investment protection that has been promoted. Therefore, the undersigned organizations believe that:

- An evaluation of an investment protection framework that takes into account the lessons learned from the impact of a model that is being depleted by global changes and financial crises is urgently needed. This model must rebalance investor rights with the regulatory capacity of the state.
- Taking into account recommendations of organizations such as UNCTAD, our country should promote reforms within the framework of existing investment protection by: a) renegotiating bilateral investment treaties (BITs) and FTAs already in force, and b) formulating a new position in current

negotiations, mainly in the Trans-Pacific Partnership (TPP). In both cases right we urge the limitation of investors' right to "fair and equitable treatment" and the exclusion of the "investor - state" arbitration mechanism in the agreements.

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Signed: Acción Internacional para la Salud – AIS, Asociación Filomena Tomaira Pacsi, Asociación Interamericana para la Defensa Ambiental – AIDA, Asociación Nacional de Centros de Investigación, Promoción Social y Desarrollo – ANC, Asociación Pro Derechos Humanos – APRODEH, Asociación Servicios Educativos Rurales – SER, Central Unitaria de Trabajadores del Perú – CUT PERÚ, Centro Cristiano de Promoción y Servicios – CEPS, Confederación Campesina del Perú – CCP, Confederación General de Trabajadores del Perú – CGTP, Confederación Nacional Agraria – CNA, Conferencia Nacional Sobre Desarrollo Social – CONADES, CooperAcción, Derecho, Ambiente y Recursos Naturales – DAR, Fundación Ecuménica para el Desarrollo y la Paz – FEDEPAZ, Grupo Propuesta Ciudadana - GPC, Mesa Técnica La Oroya, Movimiento por la Salud de La Oroya – MOSAO, Movimiento Ciudadano Frente al Cambio Climático – MOCICC, Programa Democracia y Transformación Global – PDTG, Red Muqui, Red Latinoamericana sobre Deuda, Desarrollo y Derechos – LATINDADD, Red Peruana por una Globalización con Equidad – RedGE, Red Uniendo Manos

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