

End of mission statement by the Special Rapporteur on the human rights to safe drinking water and sanitation, Mr. Pedro Arrojo Agudo

Lima, 15 December 2022

At the end of my visit to Peru undertaken at the government's invitation from 1 to 15 December 2022, I am pleased to share my preliminary findings and recommendations based on the information gathered before and during the visit. The final report will be presented to the United Nations Human Rights Council at its 54th session in September 2023.

I would like to thank the Government of Peru for the invitation and collaboration in the organization of the visit and for the respectful dialogue we had during the visit, which I am sure will continue in the future.

During the visit, I met with a large and organized representation of all spheres of society. I would like to thank all of them for sharing their concerns and daily struggles to defend the human rights to drinking water and sanitation, and for doing so by opening privileged spaces of open-hearted trust.

Finally, I would also like to thank the UN System for facilitating and supporting this visit.

Water Defenders

They learned that a mining company was going to exploit the gold and other metals that apparently lay beneath the Conga lagoons. The company promised work and progress for everyone, but they knew better. Years earlier another open-pit mining operation had destroyed the territory and poisoned the water. Soon their suspicions grew into alarm moving crowds of the affected peasant communities to the lagoons where the company was starting operations. Upon arrival, police officers stationed nearby shot at them. The water defender was shot several times. The one that hit his spine left him paralyzed forever. At the height of his youth Juan saw his life cut short without work or compensation from the State to support his family. Yet, sitting in his wheelchair, the defender talked to me about his life full of moral fibre: *"They want to impose on us a development with an expiration date. A development that condemns our territory to death without resuscitation. But I will always continue to fight for water and life."* he told me... My vision blurred and my throat tightened as I hugged him.

This story is fiction. I use it as a digest of the dozens of testimonies of water and life defenders that I have had the privilege of meeting during my visit.

My official visit to Peru took place in a context of political turmoil. In this statement, I seek to analyse the problems that undermine the human rights to water and sanitation, beyond the current situation, and that are the result of decades-long acts and omissions.

I thought I knew Peru's tremendous diversity. But this time I got to fully experience it. Its coastal strip is as rich in fish as it is desert and is where most of the population live. Its rugged mountain range where indigenous peoples and Andean peasant communities preserve ancestral cultures and take care of the rivers that serve as the lifeline of coastal cities. And its luxuriant Amazonian territory where water abounds, and indigenous peoples struggle to survive despite the oblivion of many and the greed of some.

From the experiences and testimonies gathered during these two weeks, I would like to highlight the eight major challenges that most concern me. These challenges are driven by two key facts:

- The criminal poisoning of water that undermines the health of ten million Peruvians and of future generations, especially that of indigenous peoples and peasants; and
- Peru's extreme vulnerability to climate change in terms of water and sanitation exacerbated by the prevailing extractive model.

First challenge: Give precedence to human rights to drinking water and sanitation, as the basis for public health, over production.

Although Article 7A of the Peruvian Constitution sets forth since 2017 that the state shall ensure and prioritize people's right to water over any other use it may be given – in alignment with international standards—I have found that in practice this legal principle is not complied with. This constitutional obligation should be reflected in the State's prioritization of the supply of drinking water and sanitation services to the population with the most accessible and highest quality water in each territory. However, during my visit, for example, I observed with concern how water concessions for mining companies are prioritized thus putting at risk the potability and availability of water for human consumption.

A dramatic example is the city of Cajamarca where 70% of its population are drinking water used by Yanacocha Newmont mining company. Years ago, the company dried up the springs of Rio Grande's waterhead, the city's historical water source. Currently, the company is pumping back into the river the water they took from the aquifer for its production processes, distributing it to the population as drinking water and thus violating the constitutional provision of priority. Regarding water quality, I have noted with concern the difficulty of having access to independent water quality tests on possible pollutants because the ones done by the company are deemed as good.

In the province of Espinar (Cusco), there is a similar case. Independent tests unveiled the falseness of the mining company's reports. The results showed the presence of serious toxic pollutants that had been hidden for years without any verification by state authorities.

Toxic water pollution. According to data provided by the Ministry of Health, more than ten million Peruvians (about 31.15% of the population) are ingesting toxics – such as arsenic and heavy metals – through the water they receive. Specifically, more than half of the population of Pasco, Puno, Amazonas, Callao, Madre de Dios, Moquegua, Cusco, Ucayali and 100% of the population of Lambayeque.

“No one warned us that the water was polluted. My son's anaemia and health problems were explained when his blood tests showed high levels of heavy metals. Even though I boil and filter the water they serve us, I am always tormented by the thought of whether I'm poisoning my own son or not” a woman in Puno told me.

Our visit to the region of Cajamarca confirms how serious are the health effects of mining activities on the population. In addition to the severeness of the environmental damage, the drying up of lagoons, wetlands and springs, and the mortality and disappearance of fish species, the blood tests promoted by the municipality of Bambamarca are alarming. These tests reveal that 100% of Bambamarca's inhabitants have heavy metals in their blood. In light of the inaction of the National Water Authority, which – denies the evidence of toxic contamination – the testimonies reveal the population's distrust towards the relevant public institutions.

Both in Tumbes and Lake Titicaca, in Puno, the devastating impacts of mining pollution on public health also pressures and threaten the regional economy with the aggravating factor that these are transboundary ecosystems.

In Iquitos, the testimonies of the *mothers of the communities* and of the indigenous women regarding the toxic oil pollution impressed me. *“I attend births in my community...”* said Isabel *“... and I have never seen so many abortions and children with malformations. Boys and girls die, but also mothers and fathers are leaving orphans behind. This is why we women have organized ourselves to defend the health of our children and our sacred rivers...”* Another woman asked Father Miguel – the Bishop of Iquitos, who was seated discreetly at the back of the room – to speak. *“Oil companies have earned 32 billion dollars from their exploitation activities and paid about two billion to the authorities of Loreto,*

yet the value of their impacts on the territory, as far as money can measure, already amounts to 12 billion” he stated.

Since 1997, over 1,000 oil spills have been registered in the country. Particularly, Amazonian waters, riverbeds and environments were seriously polluted and thus affecting its indigenous peoples. To date, adequate prevention and redress measures are not guaranteed for them. Once again, oil economic interests prevail over the human rights to water and sanitation and the rights of indigenous peoples as recognized internationally. In short, beyond the direct impacts, these spills have generated what can be characterized as a huge diffuse environmental liability in watercourses and water spaces in the Amazon. In 2021, 7668 environmental liabilities were identified in Peru. Ancash, Cajamarca, and Puno ranked as the most affected regions¹. According to the testimonies collected, considering the pace and effort made to remediate these liabilities, it would take more than a century to resolve this urgent situation which affects public health.

Sewage pollution. Direct discharges together with the lack of supervision and maintenance of cesspools and septic tanks and the inefficiency of existing water treatment plants are leading to high levels of organic and biological pollution and, consequently, to serious repercussions on public health, especially in rural areas. The priority that sanitation deserves is often neglected in public budgets. Moreover, the inefficient budgetary execution of approved projects is particularly serious in sanitation works. The residents of Punchana, Iquitos, expressed how frustrating the development of the sewerage and sanitation project is due to alleged corruption problems. Another blatant reference in this regard is Legislative Decree No. 1285, dated 2016, that exempts for nine years the application of sanctions against those discharging untreated water. By operation of this decree, there are no sanctions for directly discharging Juliaca city’s used waters into Lake Titicaca because the wastewater treatment plant is not operating.

Priority in case of water shortages. In places like Ica – where water demand exceeds the supply – certain uses of water are prioritized, such as for irrigation of agroexport products - in fact the water used for such purposes ends up polluting with pesticides the aquifer that supplies water to the detriment of impoverished neighbourhoods whose water utility service is systematically cut off, such as – For example, the district of Santiago receives water four hours per week, yet exporters continue to apply for new concessions for ground waters.

PRELIMINARY RECOMMENDATIONS:

- Repeal Decree 1285 dated December 2016, to prevent its enforcement in upcoming years.
- Stop new water concessions in headwaters and effectively enforce Law No. 30640 on the protection of headwaters, ensuring the effective participation of the populations involved.
- Urgently activate the current legislation on the remediation of environmental liabilities with adequate funding.
- Regarding groundwaters, enact legislation that emphasizes the sustainable management – regulation and monitoring – of aquifers with the participation of civil society by closing illegal wells and preventing the granting of new water concessions that exacerbate unsustainability.
- Prioritize the continuous supply of drinking water to meet the demands of the population over production demands.
- Independent and transparent research and monitoring of possible toxic pollutants in water sources and epidemiological analysis of its consequences on public health.
- Implement the Special Multisectoral Plan for the Comprehensive Care of the population exposed to heavy metals, metalloids, and other toxic chemicals.
- Guarantee the total transparency of mining agreements and mining operation management – in terms of what is extracted and generated waste – with monitoring open to citizen participation.

¹ Ministry of Energy and Mines, Actualización del Inventario Inicial de Pasivos Ambientales Mineros (Update of the Initial Inventory of Mining Environmental Liabilities), approved by Ministerial Resolution No. 290-2006-MEM/DM.

- Urgently reinforce joint interventions on the contamination of the Tumbes River and Lake Titicaca with Ecuador and Bolivia, respectively. Build on the positive grounds set by the binational Cabinets

Second challenge: Promoting adaptation strategies in the face of climate change

Peru's extreme vulnerability to climate change is contingent on climate change-induced weather phenomena and on unsustainable production strategies.

The accelerated melting of Andean glaciers is reducing the natural regulation capacity of river flows on the Pacific slope. On the other hand, precipitation events are decreasing in number in the mountain range owing to the degradation of the Amazon Forest and the subsequent reduction of the plant evapotranspiration necessary for precipitations and the river flows on the Pacific slope. Lastly, the intensification of El Niño and La Niña phenomena which generate harsher drought and downpours cycles with catastrophic floods such as the one of 2017, called El Niño Costero. This event impacted 14 regions, particularly in the North Coast, mostly affecting the poor who are still feeling the aftermath five years later, in Piura.

On the other hand, direct human action has been aggravating the country's vulnerability to climate change by imposing irresponsible and unsustainable production strategies in the areas of mining, agri-foods exports, and oil exploitation in the Amazon.

The destruction of wetlands, lagoons, marshlands, and aquifers in the headwaters of river basins caused by open-pit mining is ruining water pockets feeding and regulating river basins.

During my visit to Cajamarca, I witnessed the impact of the current drought cycle on the city where residents are experiencing dramatic water shortages while water availability is prioritized for mining activities. After this experience, the fact that the company is promoting expansions that threaten new lagoons and wetlands – such as those of Alto Peru – is worrying as these provide water in the quantity and quality needed to support the life and health of tens of thousands of families that are increasingly at risk due to climate change.

In Piura, the Rio Blanco mining project would affect the cloud forests, moorlands, and wetlands. These are like real sponges that capture, store, and distribute the water of the region.

Data provided by researchers from the Catholic University of Lima reveal that in 2011, 513 million cubic meters of the Ica-Villacurí aquifer were already being used. This is more than double the renewable flows available, estimated at 253 million cubic meters, which will be drastically reduced with the ongoing climate change.

The preference given to agri-foods exports today entails the overexploitation of Peruvian coastal aquifers in extremely arid areas. This threatens not only to collapse the successful development achieved, but also to undermine the human rights to drinking water and sanitation of the most impoverished – mostly immigrants from other Peruvian regions – while ruining the strategic water reserve in the face of future droughts.

PRELIMINARY RECOMMENDATIONS:

- Again, since there are valuable climate change adaptation plans, both at the national and regional levels, I recommend implementing binding measures of mandatory application in urban, territorial, and hydrological planning and management.
- In the face of flood and drought risks, the obsolescence and low maintenance of infrastructures requires investments to ensure adequate sizing and maintenance.
- Carry out urban development plans to avoid human settlements in risk areas.
- Implement hydrological planning plans that guarantee the function of aquifers as strategic reserves for drought cycles.

Third challenge: Combating social and territorial discrimination

Water and sanitation differ between urban and rural populations, and from region to region, leading to realities that are as unfair as they are paradoxical. For example, in the water-rich region of Loreto (the Amazon) barely 56% of the population has access to water through the public network, whilst in the province of Lima, on the deserts coast, 97% of the population has access to water through the network.

This dramatic paradox evidences the unjust marginalization of rural populations, particularly, that of indigenous peoples, who continue to migrate to big cities where irregular settlements and urban belts of misery are growing.

Only 5% of the urban population lacks water from public networks, while in rural areas it is 24%. In Lima, there are 700,000 people living on the outskirts without a water supply network. They buy water of dubious quality from water tank trucks paying five times more than those who have a network. In Ica, human settlements such as *Tierra Prometida* (9,000 inhabitants) buy non-potable water at 20 soles/m³, while a short distance away, tourist resorts have uninterrupted water supply at a cost fifteen times lower. In Iquitos, in neighbourhoods without access to the network, people pay 50 soles per m³ for water and 150 soles per m³ for filtered water.

Fortunately, in some cities, public operators – such as SEDACAJ in Cajamarca – deliver free water in tanker trucks to impoverished neighbourhoods where the network does not arrive. Meanwhile, in other places, such as Lima, SEDAPAL covers the costs of water vendors for the time being since social measures against COVID are in force until the end of the year.

The social and territorial discrimination contrast is heightened if we consider access to adequately chlorinated water. Compared to the 46% of the urban population that has access to well chlorinated water, only 2% of the rural population has access to water that is adequately chlorinated.

In the interviews and community visits, numerous testimonies certified the discontinuous service in most impoverished neighbourhoods – in cities such as Ica, Piura, Cajamarca, Puno – and even in 20% of the population of Lima – in neighbourhoods such as Carabayllo, Puente Piedra, Ventanilla, Lurin or San Juan de Miraflores. In rural municipalities, systematic water cuts are common. Their frequencies are two or three hours a week, or even less.

On the other hand, the deterioration of water networks due to obsolescence and the consequent losses (often over 40%) – Sanitation Service Providers recognized an average of 47% of unbilled water in the provinces – implies the intrusion of contaminants through leakage points when the water is cut off and there is no pressure in the pipes. This hinders the networks' capacity to provide drinking water, even if it is chlorinated water.

In terms of sanitation services, while only 10% of the urban population lacks sewerage, in rural areas it amounts to 80%.

PRELIMINARY RECOMMENDATIONS:

- Promote an Extraordinary Sanitation and Health Plan to bridge the existing gaps in rural areas, the Amazon, and human settlements in urban outskirts.
- Strengthen community management and build the capacities of rural municipalities with special attention to water potabilization and sewage sanitation through extensive sanitation systems and adequate maintenance.
- Ensure drinking water for the population of Loreto and adequately sized and healthy sanitation systems for the cities and ensure systems adapted to the reality of the rural communities in the Amazon bringing in intercultural and gender perspectives, especially, in the districts of Urarinas and Parinari which were seriously affected by oil spills in recent years.

- Assist municipalities in large cities in their development of water supply and sewerage networks in impoverished districts and human settlements.

Fourth Challenge: Human rights to water and sanitation of indigenous peoples and peasant communities

I welcome the Peruvian state's efforts to provide a legal framework for the recognition and protection of indigenous peoples and peasant communities. However, I am concerned that the legislation does not acknowledge the control and management of their territories, including natural resources and water and is limited to property rights over land.

I have collected testimonies about the restrictions on the right to water and sanitation in the Amazon – where forests have been ceded in use to logging companies – and how the State uses free disposal and administrative expropriations to give in concession headwaters, marshlands, and wetlands of indigenous territories in the Andean region. In fact, in the words of indigenous leaders, these assignments of for use are like a ‘system of dispossession.’

It is noteworthy that this situation occurs even though the country has made significant legislative progress in establishing the right of indigenous or aboriginal peoples to prior consultation. However, the testimonies I have gathered from indigenous organisations and individuals indicate that there is still a long way to go for its effective enforcement.

In fact, the information received indicates that they have not been consulted about extractive activities taking place within their territories and affecting their water sources nor about drinking water and sanitation projects in their territories. Furthermore, I am concerned about the repeated testimonies on the scarce intercultural approach and true dialogue with indigenous peoples. This makes me recall the words of a Kukama indigenous leader “*water does not come from a pipe. It comes from freshwater springs*” when she was explaining the relevance of the Marañon River, as a living being, for her people. Respecting the worldview of indigenous peoples should always come first.

PRELIMINARY RECOMMENDATIONS:

- The Ministry of Agrarian Development and Irrigation and the Regional Governments and the National Water Authority should guarantee the participation, the consultation, and the free, prior, and informed consent of the indigenous peoples before granting authorizations and permits and executing projects that may affect aquatic ecosystems in their territories.
- Ensure the effective and equal participation of indigenous peoples in watershed planning when the watershed exceed their territorial boundaries.
- Respect the governance mechanisms of indigenous peoples in the design and implementation of water and sanitation projects with the corresponding support of the State and respect for the timing of indigenous peoples.

Fifth Challenge: Promoting democratic water governance

Peru has made great strides in legislative, institutional, and planning development in the matter of water resources and water and sanitation services. The complex institutional framework combines a centralist tradition with a half-developed decentralization effort. In terms of water management and planning, the resource is predominantly seen from the lens of productivity. This leads to the centralization of formal authorities under the National Water Authority (ANA, for its acronym in Spanish), from the Ministry of Agriculture, although the effective power ends up residing de facto in the Ministry of Energy and Mining. In terms of water and sanitation services, the governing body is the Ministry of Housing, while management responsibility falls in the hands of municipalities – acting through Sanitation Service Providers (EPS, for its acronym in Spanish) except for SEDAPAL. But municipalities have scarce resources and financial capacity. SUNASS, from the Presidency of the Council of Ministers, is responsible for the general regulation. Finally, in rural areas where the State does not reach, there are

boards of sanitation services (JASS, for its acronym in Spanish). These are community-based organizations (about 24,000) that undertake the management of their water and sanitation services with little or no support from the State.

However, the gap between said legislative and planning development, on the one hand, and the realities on the ground, on the other, is striking. The low level of budget execution was brought up in the interviews by concerned officials and outraged citizens. The 11% execution rate of sanitation projects in Piura, according to SUNASS officials, serves as a reference. Additionally, the institutional weakness of the regional governments, municipalities and EPS has led to the centralized intervention of 18 of the 50, or so, existing EPS by SUNASS. Despite this effort, investments to revive them have largely failed due to blocked investments and projects. This has led FENTAP to fear the possible reactivation of previous failed privatization strategies.

The productivist logic of water management and planning leads to the relegation of the environmental values at stake and duties of the Ministry of the Environment in water matters, as well as to the irrelevance of climate change adaptation strategies. The growing public health crisis – due to pollution and overexploitation of aquatic ecosystems – and the increasing vulnerability to drought cycles, call for radical changes in the coherence of water management and planning.

On the other hand, the predominance of large economic interests weakens and even undermines the principles of transparency and citizen participation that are explicit in the legislation. In this regard, the veil of opacity and secrecy surrounding the State's public contracts with mining companies is building reasonable distrust towards competent public institutions. *“There is talk about national sovereignty. But what kind of sovereignty are we talking about when foreign corporations are in charge and decide about our territories and our health protected by secret contracts with the Government?”* said a leader of *Rondas Campesinas* in Bambamarca.

In a country like Peru, with environmental liabilities and impacts of extractive industries, transparency and effective access to information should be the rule. In this sense, the fact that Peru was among the signatory countries of the Escazu Agreement in 2018 is commendable, yet it is surprising and regrettable to see it has not ratified it yet. The Congress rejected its ratification on the grounds that national sovereignty in the management of natural resources would be compromised, protecting business interests above environmental sustainability and public health, and the information that companies want to keep as reserved is shielded preventing that ‘anyone’ can have access to it because it is in the public interest.

PRELIMINARY RECOMMENDATIONS:

- To shift from the traditional approaches to water as a mere resource towards a systematic human rights and sustainability approach.
- Considering the current dispersion and overlapping of authorities among several ministries and state agencies, move towards an integrated model of democratic and ecosystemic water governance for the management of basins and aquifers.
- From this integrative model, strengthen municipal and community capacities in water and sanitation services management.
- Ratify the Escazu Agreement and implement mechanisms for participation, transparency, and access to information.

Sixth challenge: Water and territory governance of the communities

Indigenous peoples and peasant communities have a rich community tradition for water and land management that is vital to guarantee the human rights to drinking water and sanitation in rural areas. Based on their history, prestige and formation, *Rondas Campesinas* organized in the Central Única de

Rondas Campesinas (CUNARC) and their duties of imparting justice and resolving conflicts in their territories and communities were recognized and in Article 149 of the Peruvian Constitution and Law 27908 of 2002. However, their determination to oversee and have control over their territories to preserve the good condition of their ecosystems and particularly their bodies of water together with other social organizations – like the Environmental Defence Fronts – often comes into conflict with the interests of companies with mining, oil, or other resource exploitation concessions but without consultation or agreement with the affected communities.

On the other hand, JASS are community institutions that manage water and sanitation services in rural communities where the State does not reach. They often lack the necessary support from the State. Funding, which hardly ever reaches rural municipalities is usually allocated to main centres but not to the JASS in the communities under their purview.

In this context, the so-called *Nucleos Ejecutores* represent a decentralized option for financing projects that should strengthen the JASS. However, in addition to positive experiences, serious problems were identified with the indigenous peoples of the Amazon since their indigenous knowledge and practices were overlooked by the State during the groundwork of the projects, as well as their full sovereignty and responsibility in the design, development, and implementation of the projects.

PRELIMINARY RECOMMENDATIONS:

- Recognize the authority of indigenous authorities and community institutions – such as Rondas Campesinas – for the surveillance of their aquatic ecosystems to preserve their good condition and sustainability.
- Conduct a participatory evaluation of the executing units experience in rural areas considering the problems faced with indigenous peoples, especially in the Amazon, and ensure the acceptability of water and sanitation projects and the responsible appropriation of these projects by the communities.

Seventh challenge: Promoting the effective and equal participation of women

Households not served by the public water network represents 9% of the total population. Particularly, 24% of the rural population do not have water in their households. In these cases, women and girls bear the responsibility for collecting water. However, women are often marginalized in decision making. For example, women participation is 32.4% in the watershed councils and JASS. Encouraging women to organize in their own spaces of trust will open deliberative spaces and spaces for the advancement of their proposals. This will reinforce their gradual inclusion in decision-making spaces and processes on an equal footing. The organization of women's Rondas Campesinas groups and the multiplicity of powerful organizations – such as *Huaynakan Kamatahuara Kana*, formed by the Kukama women to demand the recognition of the legal personality of the Marañón River – are references of how women are organizing in face of the emergence of challenges to defend their rights to water and sanitation and to watch over rivers and aquatic ecosystems.

PRELIMINARY RECOMMENDATIONS:

- Recognize and value women's organizations in deliberative processes and in the management and planning of aquatic ecosystems and water and sanitation services at all levels.
- Include water carrying and other activities related to drinking water, sanitation, and hygiene in women's time use surveys.

Eighth challenge: Ending the criminalization of protests and denunciation

The criminalization and harassment of human rights and water defenders is extremely worrying. During my visit, I heard the testimonies of people who, over decades, have accumulated hundreds of legal

proceedings for having denounced abuses and irregularities. The constant court filings, hearings, travel, and lawyers' fees affects the lives of these people. As well, the fact that whistle-blowers are being treated systematically as defendants is extremely serious. Likewise, FENTAP union members have voiced the retaliations faced by EPS workers who denounce corruption or simply poor management.

PRELIMINARY RECOMMENDATIONS:

Implement the recommendations made by the Special Rapporteur on the situation of human rights defenders contained in his report on his Visit to Peru presented at the 46th session of the Human Rights Council in March 2021.

I would like to take this opportunity to reiterate my willingness to support the government of Peru in the fulfilment of the human rights to safe drinking water and sanitation for all those living in the country.

I would like to reiterate that this statement includes my preliminary thoughts and ideas. A report containing a comprehensive analysis will be submitted to the United Nations Human Rights Council at its 54th session in September 2023.
