

Observations on the State of Indigenous Human Rights in Peru

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Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous peoples' rights in countries throughout the world and publishes its findings in its magazine, the Cultural Survival Quarterly; and on its website: www.cs.org

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I. Executive Issue Summary

Peru struggles with issues of environmental and social justice relating to Indigenous Peoples living within the nation. Peru voted in favor of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007.¹ Additionally, Peru ratified the International Convention on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (CESCR) in 1978.² Peru also ratified the International Convention on the Elimination of All Forms of Racial Discrimination in 1971.³ However, interactions between resource extracting industry and Indigenous communities continue to fall below the guidelines laid out in UNDRIP. Furthermore, the justice system continues to discriminate against the rights of Indigenous Peoples.

II. Background

Peru is a geographically diverse country, with a strip of coastline, a wide stretch of the Andean mountain range, and Amazonian rainforests.⁴ Politically, the country is divided into 25 departments; five of which are located in the Andes Mountains where a majority of Indigenous Peoples live.⁵ Indigenous Peoples make up 14 percent of the national population of Peru; which has a population of 28.2 million people.⁶ There are 47 Indigenous languages spoken in the country. In the 2007 census, 15.9 percent of the Peruvian population reported learning an Indigenous language during childhood.⁷

The Constitution of Peru and laws note that all citizens have the right to use their own, native language before any authority through an interpreter.⁸ The Constitution also acknowledges the right of Indigenous Peoples to practice customary laws, and declares that nation's duty to protect the ethnic and cultural diversity of the nation.⁹

There tends to be a lack of government presence in many of the rural areas in Peru, and *rondas campesinas*, or civil defense patrols, still exist in parts of northern Peru.¹⁰ The largest group of Indigenous Peoples in Peru is the Quechua community. Over 4.5 million Peruvians speak Quechua, and over eight million Peruvians identify as Quechua.¹¹ Quechua was recognized as an official language of the country in areas in which a high populations of Quechuas live.¹²

III. Previous Recommendations from First and Second UPR Cycle

Several countries reviewed Peru during the first Universal Periodic Review (UPR) cycle in 2008, and the second UPR cycle in 2012.¹³ Greece recommended – and Peru accepted – that the country “[s]ystematically continue its efforts in the area of rights of Indigenous Peoples.”¹⁴

Additional recommendations made by countries, and accepted by Peru, during the 2012 are listed below:

“Intensify its efforts to ensure that Indigenous Peoples and the Afro- Peruvian community fully enjoy economic, social and cultural rights, as enshrined in the Universal Declaration on Human Rights.” (Trinidad and Tobago)¹⁵

“Continue working to reduce existing inequality gaps regarding indigenous peoples.” (Bolivia)¹⁶

“Take the necessary steps in cooperation with the ILO to ensure an inclusive consultation process with indigenous peoples aiming at a more effective implementation of the relevant legislation.” (Hungary)¹⁷

“Involve indigenous peoples and peasant communities in the implementation and planning of projects related to the extractive sector.” (Mexico)¹⁸

IV. Continuing Rights Violations

A. Consultation Process with Indigenous Peoples (Violation of UNDRIP Article 32)

Issues pertaining to the extractive industry are crucial to Indigenous Peoples in Peru, as often the companies – and the Government of Peru – fail to conduct proper consultations with Indigenous Peoples prior to extractive companies enter areas. The international legal concept of free, prior, and informed consent requires that the government of Peru consult with local Indigenous Peoples before the government undertakes actions which will impact those Peoples.¹⁹ Royalty payments from extractive processes usually have just one to three percent of royalties earmarked for Indigenous Peoples that are affected by the processes.²⁰ Often, however, Indigenous Peoples receive no royalties. Both arrangements fall well below international standards.²¹ Due diligence through consultation and the process of Free, Prior and Informed Consent (FPIC) by Indigenous Peoples on issues which impact them is key to supporting the rights and wellbeing of Indigenous communities.

In 2011 Peru enacted a law which required that Indigenous Peoples be informed, in a culturally appropriate manner, about government projects which would impact them.²² The law also requires that Indigenous Peoples have the opportunity to object to these projects. However, in contrast to international FPIC standards, the law in Peru does not mandate that Indigenous Peoples provide consent for the exercise of projects or laws which will impact their communities.²³

Extractive industries focused on hydrocarbons comprise a significant portion of the extraction sector in Peru. Over half of Peru’s exports were hydrocarbon products over the past several years.²⁴

While the Organic Act on Hydrocarbons governs the majority of processes related to mining, Peruvian law also requires extractive companies to consult with Indigenous Peoples affected by exploitation and production.²⁵

The Law of Prior Consultation (Ley de Consulta Previa or La Ley No. 29785) is the law governing the consultation process in Peru. This law requires the Government of Peru to conduct consultations with indigenous populations prior to issuing legislative or administrative measures that directly affect indigenous communities.²⁶ Article 1 of the Law of Prior Consultation notes that the Law is intended to conform to the obligations Peru agreed to when the country ratified Convention 169 of the International Labor Organization.²⁷ ILO Convention 169 was ratified by Peru in 1994.²⁸

One example of problems with existing consultation process as carried out under the Prior Consultation Law has been the concession of Lot 192. Indigenous Peoples, on whose territories Lot 192 covers, have faced disastrous environmental issues as a result of 45 years of oil extraction on their lands. Pluspetrol, an Argentine oil and gas company that operates within Peru, held a concession for oil extraction in Loreto that expired in August 2015. In the fall of 2015, the Government of Peru announced that the consultation process regarding Lot 192 had ended in August 2015,²⁹ and a new contract was then established with Pacific Stratus. The consultation had been in process since 2011.³⁰ The conclusion did not address any further actions that the Government of Peru would take to consult with the Indigenous communities. Indigenous communities responded by sending a letter to President Ollanta Humala. In the letter, indigenous leaders stated that their demands for fundamental rights “...were made invisible and were suspended,”³¹ and also stated that the consultation process did not fulfill “the fundamental principles like good faith, reasonable timeframe, and interculturality, which are requirements of the Law of Prior Consultation.”³² This case was indicative of a pattern within the nation that demonstrates problems with the functionality of the Ley de Consulta Previa in actually respecting Indigenous Peoples rights.

Further conflict occurred between Indigenous Peoples and Las Bambas, a Chinese-owned extractive industry corporation that has in recent years been engaged in copper mining in Peru.³³ Proposed changes to the mining project by Las Bambas led to conflict with local Indigenous Peoples who did not feel that they had been adequately consulted on the project. Protests over the project eventually led to the deaths of four protesters in September of 2015.³⁴

B. Environmental Contamination and Pollution (Violation of UNDRIP Articles 29, 31 and CESC Article 12)

The extractive industry has had a devastating impact on the environment in Indigenous territories. Pollution in water and on the land has caused significant issues particularly related to health of Indigenous people in large areas in Peru.³⁵ Lot 192, formerly known as 1AB, in Loreto Peru has been exploited for over 45 years first by Occidental

Petroleum, later, Pluspetrol, an Argentinian company, held 14 oil wells until 2015,³⁶ at which point Pacific Stratus Energy, of Canadian company Pacific Exploration took over the contract for 2 years. In Loreto, the Quechua, Achuar, Kichwa, Cocama and Urarina communities are currently facing a critical environmental health crisis resulting from oil industry which illegally dumped industrial waste for over 30 years.³⁷ In addition, aging infrastructure in oil pipelines that cross the area have led to hundreds of spills. Peru's Environmental Assessment and Oversight Agency (OEFA) has registered 2,181 contaminated sites in Lot 192³⁸ and Indigenous Environmental Monitors encounter new spills on a monthly basis. Even in ideal conditions, with new infrastructure, oil extraction itself can lead to devastating environmental impacts.³⁹ The wells are located deep within the Amazon rainforest with very few access roads.⁴⁰ Hydrocarbons have seeped into the communities' only source of fresh water, used for drinking, bathing, washing, and, irrigation, as well as the soil which is used for subsistence farming, and the rivers where communities engage in subsistence fishing.⁴¹ Throughout the various companies who have operated in the region, toxic waste from oil extraction was dumped directly onto the lands and into the waters, in clear violation of UNDRIP.⁴²

Concerning levels of barium, lead, arsenic, mercury, aluminum, iron, and cadmium are found in water sources used by Indigenous Peoples as a result of the toxic substances that have been dumped directly into rivers in Loreto.⁴³ These substances have led to an increase in the toxic levels in fish; which has directly affected the Quechua people as they depend heavily on fish in their diet.⁴⁴ In 2005, the Ministry of Health in Peru found that 99.2 percent of Quechua adults inspected had "concentrations of lead in their blood exceeding the level that the human body can tolerate." That Ministry of Health also determined that 99 percent of children were found to have dangerous levels of cadmium in their blood, and 66 percent were found to have dangerous levels of lead.⁴⁵ Heavy levels of metal are known to lead to numerous medical conditions, such as lung cancer, heart disease, kidney failure and brain damage.⁴⁶

In a response to the environmental degradation in the area, the Government of Peru has declared many Environmental State of Emergency and a Health State of Emergencies in the area, but adequate funds have not been delivered for remediation.⁴⁷ In response to the environmental damage, Indigenous federations have turned to national and international legal systems to seek redress.⁴⁸ However, there has been little legal recourse. In fact, the Government of Peru lowered the maximum amount of fines for environmental crimes by 50 percent in 2014.⁴⁹

Thus, Indigenous people in the area have turned to protesting; blocking roads and the river, to impede transport in and out of the oil wells as a result of demands for remediation remain unmet and spills continue to occur.⁵⁰ The protests have been organized through the Indigenous Federations, the representative bodies of Indigenous Peoples in various river watersheds, that also make up the Amazonian Indigenous Peoples United in Defense of their Territory (PUINAMUDT).⁵¹ The Government of Peru, in addition to the companies, have urged the Indigenous Peoples to cease protesting,⁵²

but have not met their demands.

The government of Peru has taken monitoring steps in Loreto, including monitoring activities by the Environmental Assessment and Oversight Office.⁵³ Additionally, the government of Peru has undertaken minimal efforts to clean up the environment in the region and to mitigate the effects of pollution. In January 2017, Law 30321 was passed to allocate 50 million soles (15.2 million USD) for remediation. However, an independent engineering company has estimated the real cost of remediation to be 1 million USD. As the former UNSR notes, there has not been “any progress towards the development of specific regulations to identify the sources of pollution in the block and the corresponding measures required to undertake environmental rehabilitation, or to determine the organizations, public or private, responsible for undertaking such rehabilitation.”⁵⁴

In October 2016, however, a pipeline spilled in the Marañón Valley in Loreto; spilling oil into the Marañón River.⁵⁵ Indigenous Peoples demanded that the government declare a state of emergency in two districts in the lower Marañón Valley, where spills have occurred in the past. For example on August 21, 2016 4,000 barrels of oil were dumped into a canal.⁵⁶ The spill contaminated the land in Nueva Alianza, which is home to many Indigenous communities.⁵⁷ In addition, Indigenous Peoples request the government to require independent inspections; to examine the pipelines in the region – specifically identifying corroded sections of pipelines.

Current and former mining sites also pose environmental threats to some areas in which Indigenous Peoples live.⁵⁸ In Cojata, in the Huancane province, department of Puno, mining activities resulted in pollution in the Suches River; leading to the death of animals including alpacas.⁵⁹

The lack of government regulations regarding natural resource extraction and transportation and failure to monitor and punish cases of illegal hazardous dumping and negligent remediation are contributing to violations of UNDRIP. Additionally, the CDESCR guarantees that a state party takes all steps toward the improvement of all aspects of environmental hygiene. Peru’s lack of effective action regarding environmental issues in areas in which Indigenous Peoples live is incompatible with Peru’s obligations under the CDESCR.

C. Discrimination against Indigenous Peoples in the Judicial System, Threats to HRDs (Violations of UNDRIP Articles 7, 17 and ICCPR Article 14)

In recent years the government has criminally prosecuted Indigenous individuals, particularly due to protests occurring in Loreto. UNSR Anaya noted that many Indigenous Peoples consider the government’s response to the protests in Loreto disproportionate, as the government has called in the police and armed ⁶⁰forces, as well as a number of police officials who have taken on roles as private security.⁶¹

On September 22, 2016 a judge absolved 53 Indigenous and Mestizo men who had been charged arbitrarily in the death of police officers during the Bagua Massacre of 2009.⁶²

At that time, members of the Awajun and Wambis communities blocked a road into the Amazon in relation to a law that allowed for much of the Amazon forests to be privatized for extractive uses.⁶³ The protesters and police officers clashed, resulting in the death of 12 police officers and 10 community members. Over 200 protesters were also injured.⁶⁴ No charges were ever filed related to the deaths of the 10 community members.

The men were charged with 7 crimes including homicide, and two Indigenous leaders, Alberto Pizango and Santiago Manuin with the additional charges of being instigators and conspirators. Many of the accused did not even take part in the protest; Pizango was in Lima at the time. Of the 53 individuals charged, 24 are Indigenous and the rest Mestizo campesinos, poor farmers of both Indigenous and non-Indigenous descent.

Lawyers representing the Indigenous Peoples successfully demonstrated the 53 men had been arrested despite the lack of clear evidence against them.⁶⁵ Meanwhile, the men suffered serious injury during the 7 years wait time it took to bring them to trial during which they had to travel regularly a full day's journey to be present at hearings. One man died while awaiting the trial. The oral hearings were heavily delayed until 2014 due to the court's inability to provide interpretation in the Indigenous languages spoken by the accused.⁶⁶

Human Rights Defenders continue to be persecuted and criminalized in Peru. Indigenous Peoples protesting environmental and human rights impact of the extractive industry especially face harsh repression, including intimidation, smear campaigns, death threats, surveillance, and judicial harassment. In December 2013, a report unveiled the existence of agreements between the national police and several mining companies whereby the police provides 'extraordinary additional services'. Under such agreements, the police conduct routine patrols on behalf of the companies aimed to "prevent, detect and neutralise" threats. In effect, the result is that the police are acting as a private security agency for the companies.⁶⁷

V. **Questions**

1. What immediate steps will the government of Peru take to address the devastating impact of the extractive industry on the environments – including the land and water – in which Indigenous Peoples live?
2. How is Peru addressing Indigenous Peoples' right to Free, Prior, Informed Consent, rather than just consultation?
3. How does Peru protect human rights and environmental defenders?

VI. **Recommendations**

Cultural Survival recommends that the government of Peru:

1. Meet the demands of Indigenous federations regarding remediation.
2. Take steps to implement the provisions of UNDRIP into domestic legislation.
3. Declare a state of emergency in the lower Marañón Valley.
4. Ensure that sufficient funds for environmental remediation are delivered to Indigenous Federations to administer on their territories.
5. Require and conduct an independent inspection of oil pipelines in the Marañón Valley; specifically inspecting aging pipelines and other infrastructure that may be corroding.
6. As a minimum standard, ensure compliance with domestic Law of Prior Consultation.
7. Beyond consultation, develop a plan to create legislation that achieves Free, Prior and Informed Consent of Indigenous communities in all projects affecting them.
8. Ensure Indigenous participation in decision-making at all levels in all matters affecting them.
9. Invite the UN Special Rapporteur on the Rights of Indigenous Peoples to visit Peru
10. Create a National Action plan on implementing the rights of Indigenous Peoples based on the World Conference on Indigenous Peoples' Outcome Document.
11. Engage in remediation, land titling, and compensation for use of and damage to lands owned by Indigenous Peoples.

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³ International Convention on the Elimination of All Forms of Racial Discrimination, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=136&Lang=EN

⁴ Id.

⁵ Id.

⁶ International Work Group for Indigenous Affairs, *The Indigenous World* (2016), p. 156 http://www.iwgia.org/images/stories/sections/regions/latin-america/documents/IW2016/Peru_IW2016_web_redu.pdf.

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⁹ Id.

¹⁰ Id.

¹¹ <http://minorityrights.org/minorities/aymara-and-highland-quechua/>

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¹³ United Nations Human Rights, Office of the High Commissioner, Universal Periodic Review; Peru,

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¹⁴ Universal Periodic Review, Database of Recommendations; Peru, https://www.upr-info.org/database/index.php?limit=0&f_SUR=183&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly

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¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ FPIC: Turning Rights Into Reality. (2013). https://issuu.com/culturalsurvival/docs/fpic_en

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²¹ Id.

²² Id.

²³ Id.

²⁴ Anaya, James, United Nations Special Rapporteur on the Rights of Indigenous Peoples, *The situation of indigenous peoples' rights in Peru with regard to the extractive industries* (Jul. 3, 2014), p. 5

²⁵ Id.

²⁶ Ley de Consulta Previa website, <http://www.consulta-previa.org.pe/consultaprevia.html>

²⁷ Ley de Consulta Previa, <http://consultaprevia.cultura.gob.pe/wp-content/uploads/2014/11/Ley-N---29785-Ley-del-derecho-a-la-consulta-previa-a-los-pueblos-ind--genas-originarios-reconocido-en-el-Convention-169-de-la-Organizacion-Internacional-del-Trabajo-OIT.pdf>

²⁸ Ley de Consulta Previa website, <http://www.consulta-previa.org.pe/consultaprevia.html>

²⁹ Cultural Survival, *Peru Concludes Consultation on Lot 192 Before Agreement Reached with Indigenous Federations* (Sept. 29, 2015).

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³¹ Id.

³² Id.

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Las Bambas Project: A Restriction on Indigenous Vocal Input in Peru's Mining Operations

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³⁸ Prado, Elizabeth, *La Republica :Se inicia la remediación de lugares impactados por actividad petrolera*, (Jan.2, 2017) <http://larepublica.pe/imprensa/politica/835775-se-inicia-la-remediacion-de-lugares-impactados-por-actividad-petrolera>

³⁹ Anaya, James, United Nations Special Rapporteur on the Rights of Indigenous Peoples, *The situation of indigenous peoples' rights in Peru with regard to the extractive industries* (Jul. 3, 2014), p. 6.

⁴⁰ Id.

⁴¹ Id.

⁴² Anaya, James, United Nations Special Rapporteur on the Rights of Indigenous Peoples, *The situation of indigenous peoples' rights in Peru with regard to the extractive industries* (Jul. 3, 2014), p. 6.

⁴³ Cultural Survival, *Convention on the Rights of the Child: Shadow Report Submission: Indigenous Children's Rights Violations in Peru* (Dec. 2015), p. 3.

⁴⁴ Id.

⁴⁵ Id.

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⁴⁹ Cultural Survival, *Convention on the Rights of the Child: Shadow Report Submission: Indigenous Children's Rights Violations in Peru* (Dec. 2015), p. 4.

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⁵¹ Id.

⁵² Id.

⁵³ Anaya, James, United Nations Special Rapporteur on the Rights of Indigenous Peoples, *The situation of indigenous peoples' rights in Peru with regard to the extractive industries* (Jul. 3, 2014), p. 7

⁵⁴ Id.

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⁵⁸ Anaya, James, United Nations Special Rapporteur on the Rights of Indigenous Peoples, *The situation of indigenous peoples' rights in Peru with regard to the extractive industries* (Jul. 3, 2014), p. 6

⁵⁹ Id.

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⁶¹ Anaya, James, United Nations Special Rapporteur on the Rights of Indigenous Peoples, *The situation of indigenous peoples' rights in Peru with regard to the extractive industries* (Jul. 3, 2014), p. 7.

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