



**University of Oklahoma College of Law
International Human Rights Clinic
The United States of America**

Report on the Republic of Peru to the 28th Session of the Universal Periodic Review, Human Rights Council (Oct – Nov 2017)

Prepared by

Students

Kathryn Caudill, J.D. Candidate, 2017
Jeremy Otis, J.D. Candidate, 2017
Austin Vance, J.D. Candidate, 2017
Chandler Torbett, J.D. Candidate 2016
Renley Dennis, J.D. Candidate, 2017

Professors

Lindsay Robertson
Alvaro Baca

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Executive Summary

The International Human Rights Clinic of the University of Oklahoma College of Law (IHRC-OU) (United States of America) submits the following report on the Republic of Peru to the 28th Session of the Universal Periodic Review, Human Rights Council. This report and attached annex concerns indigenous peoples of Peru and how Peru has implemented the recommendations received during its first review. Specifically, the report focuses on the selected areas of (I) Illegal Mining; (II) Prior Consultation; (III) Land Title; (IV) Criminalization of Indigenous Leaders; and (V) Privatization of National Armed Forces. The purpose of this report is to provide a balanced view of indigenous concerns in Peru and recommend measures to address these concerns. The IHRC-OU notes the commitment expressed by PERU to continue to develop and improve the rights of indigenous peoples.

I. Mining Devastates the Indigenous Population

International Provision: In the 2012 Report of the Working Group on the Universal Periodic Review, Peru supported recommendations to: Take 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; and 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. The State has delegated responsibility of implementing the ILO to the Ministry of Culture.

Domestic Undertakings: In 2014, Committee on the Elimination of Racial Discrimination urged the Peruvian State to: (i) Redouble its efforts to strengthen the Legislative and administrative framework for the protection of indigenous peoples with regard to the exploitation of natural resources; (ii) Guarantee the full and effective enjoyment by indigenous peoples of their rights over the lands, territories and natural resources that they occupy or use, by such means as the appropriate issuance of deeds of titles; (iii) Ensure the effective implementation of protective measures and safeguards against environmental impacts. In the 2012 Report of the Working Group on the Universal Periodic Review, Peru supported recommendations to: (i) Systematically continue its efforts in the areas of rights of indigenous peoples; (ii) Continue working to reduce existing inequality gaps regarding indigenous peoples; (iii) and involve indigenous peoples and peasant communities in the implementation and planning of projects related to the extractive sector. The State has previously failed to include indigenous peoples in developments such as Lot 192.

On the Ground: The Ministry of Energy and Mining controls the power over the mining operations. However, there are two other departments of the Peruvian government that have interest in the effects of mining: The Ministry of Culture and the Ministry of Environment. However, currently, the Ministry of Energy and Mining seem to be the judge and jury over all mining operations. These mining operations do not have to answer whatsoever to the Ministry of Culture or the Ministry of Environment. Because of this, the mining companies and entities are circumventing the adequate procedures to respect indigenous peoples' rights.

Since the national economy turns on the extraction of various minerals and metals, there is a lot of weight given to the departments that seek to further the extraction of such minerals and metals. However, this extraction is the source of many of the problems that the Indigenous populations face. The current solution on the ground to help fight the problems faced by the Indigenous people of Peru is a prior consultation. In a perfect world, the consultation should be

done before, during and after extraction. However, the consolation requirement is only required to be undertaken before the extraction process. Furthermore, permits are often given for extraction before the consultation is done, which makes the process moot. Nevertheless, the consultation process is more of a tiger with paper teeth, as the State makes the final decision of whether or not to issue the permit.

Recommendations:

- Redistribute power in regards to Indigenous issues from the Ministry of Energy and Mining and the Ministry of Finances to the Ministry of Culture and the Ministry of Environmental Protection.
- The Ministry of Culture and the Ministry of Environmental Protection MUST be granted power to prevent mining when the Indigenous communities are at risk.
- Allow the Ministry of Culture and the Ministry of Environmental Protection to grant and enforce injunctions in favor of the interests of the Indigenous.

II. Land Titling in Peru

International obligations: Indigenous peoples in Peru are losing land and resources at an alarming rate. In the 2012 UPR Working Group Report, Peru agreed to examine the recommendation to “Ratify the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights (ICESCR-OP).” At present time, the Peruvian government has taken no action on the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights (ICESCR-OP).

Domestic Undertakings: In the 2014 CERD committee report, the committee urged the State party to: (i) Redouble its efforts to strengthen the legislative and administrative framework for the protection of indigenous peoples with regard to the exploitation of natural resources, (ii) Guarantee the full and effective enjoyment by indigenous peoples of their rights over the lands, territories and natural resources that they occupy or use, by such means as the appropriate issuance of deeds of title, (iii) Ensure the effective implementation of protection measures and safeguards against environmental impacts, and (iv) Guarantee that indigenous peoples affected by natural resource activities in their territories receive compensation for damage or loss suffered and participate in the benefits arising out of such activities.” The State party has thus far not implemented any new legislative or administrative procedures to expedite the indigenous land titling process. The state party has continued to approve numerous concessions, many of which overlap with indigenous territories.

Human Rights on the Ground: Though the state has adopted international treaties on indigenous human rights, even with regard to land and natural resource ownership, the government of Peru and the Constitutional Tribunal continue to maintain that the state is the sole owner of the natural resources and as such is the only one with the authority to sell and dispose of these resources. There are laws that recognize the rights of Indigenous peoples to own and have full enjoyment of their traditional lands and territories, such as the Ley de Comunidades Campesinas. Facially, this law seems to provide indigenous people with rights of ownership, but the hurdles that indigenous peoples must jump through to get a title as described by this law are far too numerous and labor intensive for these rural and largely uneducated peoples to pursue in any meaningful fashion. In recent years, indigenous communities have received only a fraction of the number of titles to their lands as compared to land concessions for natural resource extraction.

Recommendations:

- Reconcile the differences between the interpretations of Art. 55, Art. 66, Art. 88, and Art. 89 of the Peruvian Constitution.

- Protect the indigenous communities from extractive industries by enforcing the laws that protect their rights to their land, such as the Ley de Comunidades Campesinas.
- Simplify and expedite the Indigenous peoples land titling process so as to give the indigenous peoples access to the laws that have been designed to protect their rights to their lands.
- Consolidate the information from the numerous agencies involved in indigenous land titling into a simpler database so as to enable indigenous communities to be more involved in acquiring these titles.

III. Prior Consultation (The *Consulta* Requirement)

International Provisions: In the 2012 UPR Working Group Report, the State supported recommendations to: (i) Take 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. The State has developed appropriate procedures including creating a guidance manual for prior consultation as required by Article 6 of ILO C169, although requirements for mining concessions are not yet fully developed.

In 2014, the CERD committee recommended in its concluding observations that the State party should: Adopt an appropriate methodology for conducting prior consultation procedures in conformity with international standards and ensure the allocation of sufficient resources. The State has included this methodology in the published guidance manual and has worked to distribute this manual to indigenous leaders.

Domestic Undertakings: In the 2012 UPR Working Group Report, The State supported recommendations to: (i) Ensure that the new legislation of “Consulta Previa” is effectively implemented in order to protect the rights of the indigenous population. The State government is continuing to take steps to provide training to translators and indigenous leaders in effective consultation, although insufficient resources have been dedicated to trainings.

Human Rights on the Ground: The Database of Indigenous Peoples includes a list of 54 indigenous communities. Indigenous organizations consider the current criteria required by the database to be too restrictive as a means of controlling who can participate in the process of Prior Consultation. Present government guidance allows for the state entity proposing a measure to decide on further action in the event that no agreement is reached. The Constitutional Court found that it is unclear in Convention 169 if indigenous people have a right to veto. This unfairly advantages the government in circumstances where an agreement cannot be reached.

As of 2016, 23 prior consultations have been held or scheduled. The Ministry of Energy and Mining has only begun conducting prior consultations on mining activities as of late 2015. The Ministry has argued the law could not be applied retroactively to projects that have already begun.

Recommendations:

- To effectively consider the needs of indigenous peoples, retroactive application should be instituted.
- Improve standards for self-identification for inclusion in the Database of Indigenous Peoples.
- Clarify guidance regarding the right to veto and further action in event of disagreement.
- Ensure that all projects on the development and exploitation of natural resources, are submitted to the consultation process.
- Institute retroactive application of the law in instances where projects have already begun.

IV. Criminalization of *Comunidades Campesinas* (Indigenous Community) Leaders

International Provisions: In July, 2014, the Inter-American Commission on Human Rights (IACHR) issued precautionary measures calling on the Peruvian State to protect the lives of 46 leaders of campesino communities and patrol, the members of the Chaupe family, patrolman Luis Mayta, and journalist Cesar Estrada, that are opposed to the Conga project. Unfortunately, these precautionary measures have not been implemented by the Peruvian government. These individuals and communities remain unprotected.

As well, in July of 2014, a Report was completed by James Anaya, Special Rapporteur on the rights of indigenous peoples, which explained a disproportionate access to judicial remedies. Specifically, indigenous peoples in Peru allege to have suffered undue criminal prosecutions of leaders who have protested extractive operations. All recommendations by James Anaya have not been addressed by the Peruvian government.

Domestic Undertakings: In 2013, the ICCPR committee stated that: (i) The State party should also ensure that reports of serious human rights violations committed during the state of emergency are promptly and effectively investigated, and that those responsible are brought to justice, (ii) That the State party fully guarantee the right to freedom of opinion or expression in all its forms.

Unfortunately, it does not seem as though current human rights violations are being investigated, or even documented. As well, the rights to freedom of opinion and expression are not being adequately protected, especially in regards to its indigenous populations.

Human Rights on the Ground: The Peruvian government has yet to commit its attention, nor its funding, to the equal protection of Indigenous peoples under the law. Indigenous leaders, from all over Peru, allege to be involved in multiple criminal proceedings, with these various charges carrying sentences of around 30 years. Some of the charges, all of which stem from the act of protesting, even carry the possibility of life sentences.

In light of all these concerns on the context of protest, the state questions the effectiveness and appropriateness of its commitments with the rights to freedom of peaceful assembly and of association. However, we are confident that the state can better handle this situation.

Recommendations:

- The Peruvian government must start investing—both time and money—into the equal protection of indigenous peoples under both domestic and international legal systems.
- Peru should absolutely investigate into the disproportionate criminalization of indigenous leaders.
- Peru must ensure that police officers act in conformity with the rule of law, especially in regards to peaceful protests.

V. Privatization of National Armed Forces

International Provisions: In the 2012 UPR Working Group Report, Peru supported recommendations to (i) establish mechanisms, such as additional training and guidelines for police forces, aimed at preventing security forces from using force in any excessive or unjustified manner, including all cruel and inhuman treatment of citizens and prisoners, and (ii) take measures to avoid human rights abuses by the armed forces and national police personnel during conflicts, including by complying with international norms on the use of lethal force, ensuring that enforcement personnel receive relevant training, and by investigating acts of violence in a timely manner. Peru also claimed to have implemented mechanisms that permit the

prevention of social conflicts, particularly through integrating human rights in training for police forces, but the effects of such a mechanism have yet to be seen.

Domestic Undertaking: The 2016 CERD Concluding Observations on the Eighteenth to Twenty-first Periodic Reports of Peru notes that Peru has established the National Office for Dialogue and Sustainability of the Office of the President of the Council of Ministers (NODS), an office that seeks to promote democratic dialogue and deter social conflicts. To address social conflicts regarding mineral development specifically the NODS created an Early Warning and Response System to gather information, monitor, and respond. Peru also asserts that it already maintains guidelines regarding the use of force by its armed forces, such as Legislative Decree No. 1186, which regulates the use of force by members of the national police. Further, in February 2015, the Ministry of the Interior entered into an agreement with the International Committee of the Red Cross to coordinating actions and efforts to incorporate international standards regarding the use of force and the protection of persons into the regulatory framework, principles, education system and training of the national police.

Human Rights on the Ground: Indigenous communities continue to be the recipients of violence from national armed forces when they create opposition to the exploration, development, and extraction of natural resources by private companies. While Peru continues to assert that it has created guidelines and training for its armed forces to prevent human rights abuses, in recent years many indigenous people have been severely harmed or killed as a result of protest. These conflicts do not occur by chance as Peru maintains security contracts with the mining companies, which both provides incentives for the armed forces to ensure the projects continue without delay and undermines the objectivity and fairness required of national security forces. Currently, however, there is little to no recourse for victims of human rights abuses from these armed forces as Peru asserts statutory immunity its national police under Act No. 30151.

Recommendations:

- Review and amend or repeal Act No. 30151 to ensure compliance with International human rights standards, such as allowing the prosecution of human rights abuses.
- Private security contracts with companies must be in accordance with the United Nations Declaration on the Rights of Indigenous People and Convention 169 of the International Labour Organization (ILO) on indigenous and tribal peoples in independent countries.
- Increase outreach to indigenous communities for reporting and preventing human rights abuses.