



# Submission by Society for Threatened Peoples

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## **PERU**

The Society for Threatened Peoples (STP) is an independent international human rights organization, representing a strong voice for minorities and indigenous peoples worldwide. Our most important activities concern the protection of minorities and threatened peoples, the promotion of human rights and the fight against human rights violations by creating public awareness and informing national and international key stakeholders about the situation of threatened peoples which hardly appear in the daily press or on the political agenda, and carry out campaigns and projects for their protection and well being. We provide an extensive documentation on various issues regarding our field of work for any people interested in minorities and human rights in general.

## Overview of the situation of indigenous peoples in Peru

1. As the work of the Society for Threatened Peoples (STP) is focusing on the situation of indigenous peoples and minorities, this present submission will give special attention to the indigenous population of Peru.
2. Peru is a multicultural and multiethnic country with one of the highest proportion of indigenous peoples in South America. Although there are no trustworthy official statistics, it can be assumed that almost half of the Peruvian population has an indigenous background or is a member of an indigenous community. Scientific estimates suggest that around eight to ten million indigenous people live in Peru.
3. Peru has signed the ILO Convention 169 in 1994 and has supported international standards like the United Nations Declaration on the Rights of Indigenous Peoples.
4. The largest indigenous peoples in Peru are the Quechua and the Aymara which (to a large extent) live in the Andean highlands. Around 300,000 people belonging to nearly 1,800 indigenous communities and to 60 different ethnic groups live in the lowlands of Peru. Thirteen linguistic groups are reported. According to the national census of 2007, the *Asháninkas* and the *Aguaruna* represent the largest groups of indigenous peoples in the Peruvian Amazonia.
5. In public discourse three different types of indigenous communities are distinguished: *Comunidades Campesinas* (peasant communities), *Comunidades Nativas* (native communities) and *Pueblos Indígenas en Aislamiento Voluntario* (indigenous peoples in voluntary isolation). Public debates mainly focus on the situation of the native communities and the indigenous peoples in voluntary isolation and neglect the peasant communities with the consequence that these aren't taken into account when rights for indigenous peoples are discussed. This practice of disregarding the peasant communities as indigenous people is tolerated and boosted by official bodies. A prime example is the national censuses of 2007 which totally ignored the *Comunidades Campesinas* in the investigations on the indigenous communities.
6. Racism towards indigenous people is still widespread in Peruvian society even though the Peruvian Constitution of 1993 clearly declares that "the State acknowledges and protects the ethnic and cultural diversity of the Nation" and "respects the cultural identity of the rural and native communities". Being indigenous is often related with discrimination and Peruvian authorities do not act against this injustice. As a consequence many Peruvians negate their origins and renounce their culture and their identity. Because of the fear of being stigmatized and real-life discrimination, they often refer to themselves as *mestizos* and not as indigenous.
7. The indigenous population is especially affected by poverty, illiteracy and discrimination. According to the national census of 2007, 46.5% of the native population in the lowlands of Peru has no health insurance, only 5.5% is connected to the public water supply network and just 47.3% of those over 15 years of age have received primary education. Indigenous people are often refused the legal recognition and the demarcation of many of their territories.

## Negative impacts of infrastructure and major projects on indigenous peoples rights

8. Since the 1990s, the Peruvian state launched a neo-liberal agenda granting exclusive advantages to private investors. In the name of development, past Peruvian governments granted concessions to extract minerals, gas and oil without considering the negative impacts of extractive activities on the livelihood of indigenous peoples.

This process was reinforced in 2009 by the Free Trade Agreement (FTA) between Peru and the United States, which allows exclusive advantages to private investors.

9. The consequences are, in particular, damaging effects to collective rights of indigenous communities, loss of their ancestral land, pollution of water, air and soil and a general decline in their living standard. STP is observing this development with great concern.
10. As lots of examples from the past and present have shown, the implementation of huge infrastructure projects and the exploitation of natural resources increase the potential for conflicts in Peru. Today, there are more than two hundred social conflicts in the country, most of them caused by major projects or extractive industries. A concrete example is the current conflict in Cajamarca where interests of the mining company Yanacocha clash with the interests of the majority of the local population. The mine Yanacocha is the largest gold mine in Latin America and the second largest in the world. Since its launch in 1993, the Yanacocha mine caused strong public protests, basically because of the fact that open pits and leach pads are used to mine the gold in an environmentally sensitive area. Local organizations assert that water sources have been contaminated, that peasant families have felt pressure to sell their lands to the mining company and that the mine infringed on peoples' rights to a sustainable livelihood and ability to determine their economic development.
11. As a reaction to the latest expansion plans of Yanacocha, the Mine Conga, strikes and protests broke out last year in the region of Cajamarca. The situation escalated when President Ollanta Humala, contrary to his election pledges, publicly stated that he was willing to support the Conga project. At the beginning of December 2011, the president, in response to the local protests and to the failed negotiations, sent soldiers to the region and declared a state of emergency in four provinces. Civil rights were disregarded and even human rights defenders who carried out legitimate and peaceful protests were defamed as "criminals" and "terrorists". Several people had been injured during the clashes.
12. The Peruvian government considers that Conga can co-exist with farming in the region Cajamarca. But due to the fact that Newmont Mining Corporation and the Compañía de Minas Buenaventura, the two companies involved in Conga have a long track record of environmental contamination (eg. a truck of Minera Yanacocha's contractors spilled 150 kilograms of mercury over a 40-kilometer area, contaminating three villages in 2000), the local population fears further environmental pollutions and especially pollution of water resources. The Conga gold mine will destroy water lagoons which serve as a foundation for local ecosystems, as a source of water for farming communities and which provide water for human consumption, among others for the city of Cajamarca. The Environmental Impact Assessment on this project submitted by Yanacocha was criticized as insufficient regarding several aspects. STP shares the fears and misgivings expressed by the local population.
13. The conflict in Cajamarca as well as other examples (like the bloody clashes in June 2009 in Bagua) show the growing risk of social conflicts associated with mining and other extractive industries in Peru. In the last Universal Periodic Review in 2008, the Peruvian authorities were already recommended "to counter adverse effects of economic activities such as oil production and mining on the full enjoyment of some economic and social rights of communities living in adjacent territories". This recommendation is still pending and should be maintained, however, it does not go far enough.
14. Additionally, STP urges the Peruvian authorities to implement the principle of "free, prior and informed consent" of indigenous peoples regarding potential development

projects or other activities carried out on their lands. Before the Peruvian state authorizes national and foreign companies to start projects causing environmental damage and negative effects on health and quality of life of the local population, it has to be guaranteed that the affected population can freely express their consent or their disagreement. Regarding the conflicts relating to mining projects and water pollution, STP claims a prohibition of extractive industries with a high risk of pollution in headwater regions.

## **Indigenous peoples in voluntary isolation**

15. Estimates assume that up to fifteen indigenous groups live in the Peruvian Amazon in voluntary isolation and without contact to the outside world. These uncontacted peoples are extremely vulnerable to any form of contact with outsiders as they lack immunity to common diseases. As a consequence, these people need special protection, but due to the neoliberal economic development of Peru in the last years the situation of these indigenous peoples even worsened. Past governments denied the existence of uncontacted peoples and prevented protective measures.
16. The greatest threats to Peru's indigenous peoples in voluntary isolation are oil companies and illegal loggers. Nearly three quarters of the Peruvian Amazon have been licensed by the government for the extraction of oil. Some of these areas include regions inhabited by uncontacted indigenous peoples. Based on the extreme rise in gold price, the department Madre de Dios became a stronghold for illegal small-scale gold miners. Besides the risk of disease transmission, the uncontacted peoples are threatened by the extreme environmental pollution resulting from these extractive industries. These indigenous peoples avoid contact with the majority population. When the companies invade their territories they flee or try to protect their land with their bows and arrows.
17. The United Nations Permanent Forum on Indigenous Issues has prioritized the needs of indigenous peoples in isolation because "these peoples and their cultures are facing imminent danger and extinction, and require the implementation of urgent measures to guarantee their survival". In February 2012 the United Nations High Commissioner for Human Rights (UNHCHR) published the final version of the Guidelines on Isolated Indigenous Peoples stating clearly that indigenous peoples in voluntary isolation have explicit rights of self-determination and that national legislations of the countries concerned have to respect their decision to live without contact to the majority population.
18. Since the nineties and the beginning of the new millennium five territorial reserves were created in Peru's Amazon rainforest mainly on request of the indigenous organisation AIDSESEP. Some of the Peruvian isolated indigenous groups are living inside these demarkated areas, others are living in areas without special protection. Claims to create further territorial reserves have been ignored by the administration of past President Alan García. The results of the last twenty years concerning this protection areas are sobering: Although there was progress in fighting illegal logging in the region of Madre de Dios and in some parts of the territorial reserves, and the assignment of oil concession was prevented, the administration of the reserves in practice remains a huge problem. The responsibility for the implementation and control of the territorial reserves is not clearly defined by the Peruvian administration. The Peruvian government shirked from stating publicly the protection of the indigenous groups and from totally prohibiting extractive industries in the areas concerned. The protection of the indigenous territories thus remains insufficient.
19. STP is urging the Peruvian authorities to protect the indigenous peoples in voluntary isolation by not allowing any oil exploration, gold mining, logging or other form of

activity on their territory. The responsibility and the control mechanism for the existing territorial reserves have to be clearly defined to ensure that no illegal economic activities take place. The Peruvian government is urged to recognize the right of self-determination of the indigenous peoples in voluntary isolation in Peru and to take every possible measure to protect their culture and their well-being.

### ***Ley de Derecho a la Consulta Previa a los Pueblos Indígenas u Originarios*** **(Law on Prior Consultation of Indigenous Peoples)**

20. In 1994, Peru signed the ILO-Convention 169. According to the International Labor Organisation, one of the cornerstones of this convention lies in the indigenous and tribal peoples' right to be consulted on issues that affect them. It was only after many years of inaction that the new Peruvian government of Ollanta Humala took initial steps toward the implementation of this key requirement of the convention by enacting the Law on Prior Consultation of Indigenous Peoples in September 2011. In this regard, the Peruvian government could stand as an example for other governments in Latin-America. STP appraises this law as a step in the right direction, but wants to maintain that the law itself and especially the associated directives lack important aspects to fulfill the ILO-Convention 169.
21. STP considers the following aspects as important and urgently asks Peru to adapt the law accordingly:
  - a. The Law on Prior Consultation of Indigenous Peoples and the associated directives lack a clear definition of what is meant by "indigenous peoples". There seems to be no clear perception, if the indigenous peasant communities (*Comunidades Campesinas*) are included and could make use of the legislation. STP urges to incorporate the *Comunidades Campesinas* explicitly into the Law on Prior Consultation. Moreover, STP claims that not only communities directly affected by administrative or economic issues should be consulted, but also indirectly affected communities. Not only collective rights but also individual rights of indigenous peoples have to be protected.
  - b. At the moment, the directive only mentions legislative or administrative measures as well as national and regional development plans and programs as presupposing prior consultation. As most of the social conflicts with indigenous communities occur due to economic activities of foreign and national private companies, STP urges to mention private investment projects explicitly in the directive. The Law for Prior Consultation has to be implemented first and foremost in cases of major projects and mining and other extractive industries. The rights of the local population have to take prevalence over financial profits.
  - c. With regard to displacement and other projects, administrative or legislative measure having a substantial impact on the life of indigenous peoples, STP considers that consulting the population is not sufficient to make sure that international human rights agreements aren't violated. In cases like huge mining or infrastructure projects that impair the living conditions of indigenous peoples, the principle of "free, prior and informed consent" is indispensable. In these cases indigenous peoples must not only be informed but have to agree freely.
  - d. With regard to indigenous peoples in voluntary isolation, STP urges not to contact - and therefore not to consult - the concerned population, but to avoid and strictly prohibit projects affecting their environment and their lives in order to respect their choice of not having contact with the majority population.

## Human Rights Defenders

22. One of the recommendations of the Report of the Working Group in the first cycle of the Universal Periodic Review was that Peru should “ensure that human rights defenders [...] can carry out their human rights work freely and without fear of intimidation” and that Peru should “report back to the Human Rights Council about further concrete measure or actions taken in this regard”. Peru’s response to this recommendation is pending.
23. Events of the past four years, such as the clash in Bagua in June 2009 or the actual conflict in Cajamarca, make clear that the situation of human rights defenders in Peru has not improved in the last four years. On the pretext of “fighting terrorism”, human rights activists were hindered in their work. STP therefore repeats this recommendation.

## Summary of the recommendations

24. STP urges the Peruvian authorities to recognize the indigenous population as equal members of society. This implies, among others, to fight racism and discrimination towards indigenous peoples and to grant full citizens’ rights to them.
25. STP welcomes the current effort to include indigenous peoples in decision-making processes as in the Ley de Derecho a la Consulta Previa. This is an important step towards an open and transparent dialogue with the affected population. However, indigenous peoples’ participation has to become effective in all projects affecting their life. The development of policies and procedures and the implementation of this law shall guarantee the indigenous peoples’ free, prior and informed consent.
26. Concerning the indigenous population in voluntary isolation, STP demands the Peruvian government to recognize the special vulnerability of these indigenous groups and to take concrete steps to protect their lives. Protected areas and effective controls to prevent illegal activities are urgently needed.
27. Peru shall ensure that human rights defenders can carry out their human rights work freely and without fear of intimidation.
28. The Peruvian government shall counter adverse effects of economic activities such as oil production and mining on the full enjoyment of some economic and social rights of communities living in adjacent territories.
29. Regarding the conflicts relating to mining projects and water pollution, STP claims a prohibition of extractive industries with a high risk of pollution in headwater regions.