



**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)

ANNEX

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Annex

Introduction: In August of 2016, the International Human Rights Clinic of The University of Oklahoma College of Law (“IHRC-OU”) traveled to the Republic of Peru (“Peru”) for research purposes. The IHRC-OU was stationed in Lima. Clinic members visited and spoke with representatives from government, nongovernmental organizations, and ingenious communities and peoples.

Located in South America, Peru borders Colombia and Ecuador to the north, Brazil to the east, and the Plurinational State of Bolivia and Chili to the south.¹ Six geographic regions make up Peru: North, South, East, Central, Metropolitan Lima, and Lima Province.² Peru has a surface area of 1,285,216 km² and a population of 31,774,000.³ Lima, the capital of Peru, has a population of approximately 9,897,000.⁴

The economic system of Peru is a mixed, including both private freedoms as well as centralized control and regulations of markets.⁵ Peru is an economic member of the Andean Community, the Asia-Pacific Economic Cooperation, and the Trans-Pacific Partnership.⁶ As of 2011, Peru ranked 78th in quality of life according to the United Nations human development index, which measures various economic factors such as poverty and income.⁷

In 1993, Peru adopted a new constitution that established the President as the head of

¹ See United Nations, *Map of Peru*, OFFICE OF THE HIGH COMMISSIONER (2016), <http://www.ohchr.org/EN/countries/LACRegion/Pages/PEIndex.aspx>.

² HRI/CORE/PER/2010, at page 5.

³ United Nations, *Peru World Statistic Pocketbook* (2016), <http://data.un.org/CountryProfile.aspx?crName=Peru#Social>.

⁴ *Id.*

⁵ Global Edge, *Peru Memo*, UNITED STATES COMMERCIAL SERVICE (2016), <http://globaledge.msu.edu/countries/peru/memo>.

⁶ *Id.*

⁷ HRI/CORE/PER/2010, at page 9.

state and defined the role of the Legislature.⁸ The Judiciary was subsequently established by the Council of the Judiciary, which is nominated by the President and confirmed by the Legislature.⁹ The Constitution of Peru also established that international treaties are treated as domestic law.¹⁰ To that effect, Peru is a party to numerous international agreements that have binding implication, such as the Geneva Convention, the American Convention on Human Rights, and Declaration on the Rights of Indigenous People.¹¹

Indigenous people make up approximately seventy-five percent of the total population of Peru.¹² While the primary language of Peru is Spanish,¹³ various indigenous languages are still practiced within Peru, including Quechua, Aymara, Ashaninka, and many others.¹⁴ Despite representing the majority population, the indigenous communities remain disenfranchised.¹⁵

Mining

Best Practices or Achievements Made:

1. During the 2012 meeting with the HRC, Peru reported that the recently established Ministry of Environment was able to accomplish reorganization of environmental policy.

⁸ Global Edge, *Peru: Government*, MICHIGAN STATE UNIVERSITY (2016), <http://globaledge.msu.edu/countries/peru/government>.

⁹ *Id.*

¹⁰ Tania Elizabeth Arzapalo Villon, *Peru's National Committee for the Study and Implementation of International Humanitarian Law*, 96 INTERNATIONAL REVIEW OF THE RED CROSS 1062 (2014).

¹¹ Tania Elizabeth Arzapalo Villon, *supra* note 10; *see also* Inter-American Comm. on Human Rights, *IACHR Troubled by entry into Force of Law 30151 In Peru* (Jan. 23, 2014), http://www.oas.org/en/iachr/media_center/PReleases/2014/004.asp.

¹² A/HRC/WG.6/2/PER/2, at page 10 (“[T]he Indian and Mestizo populations . . . amount to over three quarters of Peru’s population.”)

¹³ United States Commercial Service, *supra* note 5.

¹⁴ HRI/CORE/PER/2010, at page 15.

¹⁵ A/HRC/WG.6/2/PER/2, at page 10.

Because of these actions, 19 million hectares of forest, 15 percent of the national territory, was protected.¹⁶

2. Peru has made efforts in the extraction industry to prevent harm to the Indigenous population such as the Prior Consultations Act. The consultations bring the Indigenous and the Peasant communities to the table to voice their opinions of the mining in the areas that affect them.
3. In December of 2011, the government reallocated the authority to legislate illegal mining to the Executive branch because of this, many regulations and codes were put into place in the Criminal Code.¹⁷

Challenges or Obstacles:

4. Beginning in the 1990s, there has been a growing number of laws and policies that encourage and reward private investment in the mining and hydrocarbon industries. This type of law-making and policy has increased the number of licenses awarded in all areas of Peru, even in the Indigenous territories.
5. Peru has enacted the Consultation Act to consult the Indigenous with regards to their surface land rights. However, this process has turned out to be less effective in giving the Indigenous population a remedy to issues faced with extraction.
6. The bigger issue that arises from the extraction industry in the Indigenous population is the lack of safeguards against the pollution that results from the mining process. There are several polluted areas that have not been cleaned up yet. A lot of the pollution that is problematic was created several years ago before the environmental standards were created. According to HRC Report by James Anaya, Special Rapporteur on the rights of

¹⁶ A/HRC/WG.6/14/PER/1, at para. 74.

¹⁷ A/HRC/WG.6/14/PER/1, at para. 80.

indigenous peoples, there is still a 60,000 person strong informal and illegal mining industry that take place all over Peru that have devastating consequences for the environment.

7. In 2013, the Ministry of Environment declared a state of emergency in the basins of the Pastaza, Corrientes and Tigre rivers, which lasted 90 days. However, the Indigenous population in the area little to no progress in the cleanup in the 90 days and there were massive effects from the pollution. Water and food sources were polluted and rendered unusable.
8. The powers that the Ministry of Environment and the Ministry of Culture have in Peru are incomparable to the powers granted to the Ministry of Finance and the Ministry of Mining. Because of these inequalities in power amongst the ministries that, at times, have competent objectives, Indigenous people's interests are rarely considered and protected. The power inequality needs to be reconciled so that the Ministry of Culture and the Ministry of Environment may do their job and protect the Indigenous population and their lands.

Land Security:

Best Practices:

9. The Peruvian government established a Development Commission to propose concrete measures with regards to land titling. On March 10, 2015, as a result of this commission, the government was able to reach agreements with numerous native communities and sign an historic document that contains commitments to meet demands for land titles, among other things.
10. Additionally, the Government pledged to transfer S/. 3 million to the regional

government for the awarding of land titles to the native communities.

11. In recent years, 19 million hectares of forest, or about 15 percent of the national territory, has been protected by the National State-Protected Nature Reserves Service. This was made possible by an increase in funding in 2011 from S/. 16 million to S/. 40 million. 141,807.50 hectares of indigenous community forest areas were designated nature reserves in that same year.
12. The Peruvian government has passed laws such as the “Ley de Comunidades Campesinas (1987)” which, in Article 1, recognizes the autonomy of rural indigenous communities and “ensures the integrity of ownership of the territory of Rural communities.” Article 7 regards “The Communal Territory,” stating that “The lands of peasant communities are...indefeasible and imprescriptible. They are also inalienable.” Providing further that the lands “may be disposed of, with the agreement of at least two – thirds of the qualified members of the Community meeting in the general assembly convened expressly and solely for that purpose.” Art. 7 also established that the price must be paid in cash in advance.

Challenges and Obstacles:

13. The UN Committee on the Elimination of Racial Discrimination (CERD) expressed concern in 2014, that even with the measures adopted to guarantee protection for the rights of indigenous peoples, the concessions for the extraction of natural resources continue to infringe the rights of indigenous peoples over their lands. The Committee further expressed concern about the lack of effective implementation of the measures that have been adopted to mitigate the environmental impacts.
14. While taking some steps recently, the Peruvian government has not taken steps adequate

to ensure that these recommendations have been met. It is still incredibly difficult for indigenous peoples to gain titles to their lands. Indigenous peoples are also still very disadvantaged in the court system due to inherent bias against them by the non-indigenous citizens.

15. Furthermore, Art. 7 of the Peruvian Constitution says that “The communal land may be expropriated because of necessity and public usefulness, upon payment of fair compensation in cash.” While there are some legal protections for Indigenous communities, many communities never get the opportunity to enjoy these protections. Especially after the passage of Law 30230, which provides for the “establishment of fiscal measures, the simplification of procedures and permits for the promotion and dynamism of investment in the country.” *Congreso de la Republica de Peru, Ley N° 30230*. This law simplifies the process for corporations to receive land concessions, which stands in direct contradiction to the intensive process that indigenous communities must go through in order to get a title to their land. ¹⁸

16. On the other hand, the land titling process for indigenous communities currently can take from 12 to 25 years, such as in the case of the Saweto community.¹⁹

Prior Consultation

Best Practices:

17. In 2014, The State highlighted the passage of Act No. 29785, on the Right of Indigenous or Aboriginal Peoples to Prior Consultation in September of 2011 and the later passage of regulations for implementation of the Act in April 2012.²⁰

¹⁸ *Peru at the Climate Crossroads*, Rainforest Foundation US, pg. 12, http://dev.rainforestfoundation.org/wp-content/uploads/2015/12/climate_crossroads_20pp_CMYK.pdf.

¹⁹ *Id.*

18. Following adoption of Act No. 29785, The State established an Official Database of Indigenous or Native Peoples, developed a Methodological Guide for Consultation with Indigenous Peoples, and offered training to officials and indigenous leaders.²¹

Challenges and Obstacles:

19. There have been reports that the government ignores outcomes of prior consultations and proceeded with projects.²² Additionally, the Ministry of Energy and Mines have not determined if the law requiring consultation before projects begin can be applied retroactively.²³ Strict restraints leave many communities in limbo and never consulted before activities begin.²⁴

20. In September of 2015, prior consultation over Lot 192 was completed, despite failure to reach an agreement. In a letter to President Olantha Humalla, indigenous leaders stated the consultation was not conducted in good faith. The failure to reach an agreement has allowed for the continuity of oil exploration in the region.²⁵

21. Additionally, to be included in prior consultation, indigenous peoples must be represented by a recognized organization. Many communities are not seen as indigenous as they were not included in the government database or do not meet the ILO criteria. The Ministry of Culture has failed to identify communities where indigenous people are clearly present, allowing for projects to commence without consultations. It has been suggested that a review process be implemented.²⁶

²⁰ CERD/C/PER/18-21, 64 and 65

²¹ *Ibid.*

²² CERD/C/SR.2301 para. 34

²³ CERD/C/PER/18-21 para 157

²⁴ CERD/C/PER/CO/18-21 para 14

²⁵ CERD/C/PER/CO/18-21/Add.1

²⁶ CERD/C/SR.2302 para 25

Criminalization of Indigenous Leaders:

Best Practices:

22. In 2010, Peru created the Ministry of Culture, which was meant to incorporate and value varying cultural perspectives within the Peruvian government. The Ministry of Culture was created with the intention of focusing its inclusionary methods on Peru's indigenous populations.

23. In December of 2011, Peru established the Ministry of Development and Social Integration. This ministry was specifically tasked with the creation of governmental programmes that would be inherently inclusive, in regards to Peru's different cultural groups. Peru created the Ministry of Development and Social Integration in order to "clos[e] the gaps in access to social services."

24. Peru created the National Commission Against Racial Discrimination in 2013.

Thereafter, the NCARD adopted of a program called, "Warning Against Racism."

Challenges and Obstacles:

25. Like many other countries, especially in South America, Peru is a nation of political polarizations. Meaning, the agenda of its national government does not always sync up well with the goals and aspirations of its citizens. Fortunately, or unfortunately (depending on who you are), Peru has become an ideal location for big business investment; whether it be tourism, agriculture, mining, etc. This pro-business stance has only been solidified by the presence of Peru's newest President, Pedro Pablo Kuczynski.²⁷ Although big business continues to affect the country as a whole, it seems as though the national government is the only entity/agency actually benefitting.

²⁷ <https://www.wsws.org/en/articles/2016/08/10/peru-a10.html>

26. Peru's indigenous communities (its *comunidades campesinas*) are, in fact, not benefitting at all.²⁸ Big business has decimated those communities' access to fresh water, healthcare, and cultural environment.²⁹ Most importantly, these enterprises have played an active role in eliminating these indigenous communities' human rights and civil liberties; in one way in particular: through the disproportionate criminalization of indigenous protesters.³⁰
27. Mining has been a historical, endemic problem in Peru. As is the case in the U.S., resources are often located directly under the physical, tangible locations of *comunidades campesinas*. Whether by contract or by illegal activity, mining corporations insert themselves into the natural and social environments of indigenous peoples to extract, and profit from, these resources. These appropriations disrupt the local environments and throw the local communities into actual chaos. Any/all resistance by indigenous communities is met with force and zealous prosecution.
28. Naturally, indigenous communities have consistently opposed both legal and illegal mining. These communities gather in peaceful resistance, patrol their own borders to keep out illegal mining activity, and have even started suing the mining enterprises via domestic and international court systems. No matter the enterprise and no matter the case, one thing is always the same: these indigenous communities do not go down without a fight. Peaceful protests have become a fact of life in *comunidades campesinas*. Unfortunately, the result is not so peaceful. To date, specifically in regards to the Conga crisis, 5 protesters have been allegedly killed and over 140 have been injured.³¹

²⁸ CERD/C/PER/CO/18-21/Add.1/Pg. 8/Paragraph 36

²⁹ <http://www.dw.com/en/all-that-glitters-is-not-gold-indigenous-communities-in-peru-protest-mining/a-19328199>

³⁰ *Id.*

³¹ *Id.*

29. Unfortunately, these peaceful protests are usually met with violence and aggression by the mining enterprises and sometimes, even, by the state. Indigenous leaders, specifically, are usually on the receiving end of state funded violence and, even more often, criminal prosecution. As a group, we met with leaders from all three of the Peruvian natural environments: the coast, the highlands, and the forest. All of these leaders, no matter their geography, have multiple criminal charges. Most are facing around ten (10) charges and some are facing upwards of sixty-five (65).³² In addition, these charges, which would carry maximum sentences of around five (5) years in the states, have the potential of imprisoning these leaders for up to thirty (30) years, and sometimes for life.
30. What's even more striking than this heightened prosecution of indigenous leaders is the country's lackadaisical attitude on the issue. The absence of legal framework that stipulate the due diligence and defense in the prosecution of indigenous leaders is a big challenge in Peru. This is obviously a terrible generalization and in no way answered our question about criminalization of indigenous leaders.
31. The lack of articulation between the institutions of the State in this topic is surprising. The Committee on the Elimination of Racial Discrimination recommended, in 2014, that Peru eliminate its structural discrimination—including excessive prosecution—but it is clear that the country has not taken this recommendation to heart. The Committee also recommended that the state conduct more investigation into human rights claims by indigenous peoples, but it is obvious from the Minister's overall lack of information, that the state has not done so.

Privatization of National Armed Forces

³² *Id.*

Achievements:

32. The Peruvian government has taken some measures to address the unregulated use of privatized armed forces by mining companies.³³ As previously stated, the National Office for Dialogue and Sustainability of the Office of the President of the Council of Ministers (NODS) was established to promote democratic dialogue and deter social conflicts.³⁴ One of the primary goals of NODS is to increase outreach to indigenous communities to prevent social conflicts.³⁵ To address social conflicts regarding mineral development specifically the NODS created an Early Warning and Response System (EWRS) to gather information, monitor, and respond.³⁶ EWRS is designed to align coordination between regional and national government agencies as well as provide guidance for local governments to address social conflicts.³⁷
33. Peru also purports to maintain negotiations with parties to avert social conflicts, which includes an anecdote about oil block 192.³⁸ The negotiations regarding oil block 192 resulted in a national commission that granted title to land and provided for sanitation as well as other environmental concerns.³⁹
34. 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

³³ *World Report 2015: Peru*, Human Rights Watch (2015), <https://www.hrw.org/world-report/2015/country-chapters/peru> (“The minister of the interior announced the suspension of the police chief responsible for the operation pending an investigation.”); *see generally* Comm. on the Elimination of Racial Discrimination, *Concluding Observations on the Eighteenth to Twenty-first Periodic Reports of Peru* notes that Peru, page 7-12 CERD/C/PER/CO/18-21/Add.1 (Mar. 4, 2016) [hereinafter CERD Concluding Observations].

³⁴ CERD Concluding Observations, *supra* note 1, at page 7-8.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at page 8.

³⁸ *Id.* at page 9.

³⁹ *Id.* at page 9-10.

members of the national police.⁴⁰ To continue to improve the oversight of national police, the Ministry of the Interior entered into an agreement with the International Committee of the Red Cross in February 2015 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.⁴¹

Challenges:

35. Numerous news outlets and non-government organizations (NGOs) have examined the private use of national armed forces by mining companies within Peru, noting that there have been at least thirty-four (34) people were killed during protests from 2011-2014.⁴² More recent suppression by armed forces at mining protests have resulted in at least fifteen (15) injuries and several deaths.⁴³
36. These incidents occur despite the fact that “[t]he United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials require law enforcement officials, in carrying out their duty, as far as possible to apply non-lethal force before resorting to firearms in violent protests.”⁴⁴ Currently, at least thirteen (13) armed force contracts have been uncovered where “the police conduct routine patrols aimed at ‘preventing, detecting and neutralizing’ threats.”⁴⁵

⁴⁰ *Id.* at page 12.

⁴¹ *Id.*

⁴² *World Report 2015: Peru*, *supra* note 1.

⁴³ *Peru: Police Open Fire on Protestors*, Human Rights Watch (2015), <https://www.hrw.org/news/2015/10/06/peru-police-open-fire-protesters> (“The three protesters who died were Exaltación Huamaní Mío, 32; Alberto Cárdenas Chaco, 24; and Beto Chahuayllo Huilca, 39.”).

⁴⁴ *Peru: Police Open Fire on Protestors*, *supra* note 11, at page 2.

⁴⁵ Derechos Humanos Sin Fronteras, et al., *Police in the Pay of Mining Companies The responsibility of Switzerland and Peru for human rights violations in mining disputes* 4 (2013), http://assets.gfbv.ch/downloads/report_english_def_2_12_13.pdf.

37. There are two primary issues involved with the private use of national armed force by mining companies that lead to human rights violations. First, the companies that secure the use of national police and military provide massive financial and logistical support to the armed forces they employ, which creates an incentive for opposition to the mining operations to be removed by any means necessary.⁴⁶ Second, is the enactment of Act No. 30151, which provides immunity to “armed forces and police personnel who in fulfillment of their duty and using their weapons or other means of defense, cause injury or death.”⁴⁷ This law eliminated the requirement that officers may only use lethal force in compliance with regulations, resulting in a gross omission of oversight.⁴⁸ Moreover, Inter-American Commission on Human Rights voiced concern over Act No. 30151, stating that: Peru, as a state party to the American Convention on Human Rights, has a duty to effectively investigate any deprivation of the right to life or violation of the right to physical integrity and, as appropriate, punish all those responsible, particularly where agents of the State may be involved. Such duties safeguard the rights of victims or their next of kin to judicial protection and a fair trial. Failure to do so would create a climate of impunity and the conditions for violations of that nature to be repeated, which runs counter to the duty to observe and ensure the right to life and the physical integrity of persons.⁴⁹

⁴⁶ Derechos Humanos Sin Fronteras, *supra* note 13, at page 4-5.

⁴⁷ *World Report 2015: Peru*, *supra* note, at page 1.

⁴⁸ *Id.*

⁴⁹ Inter-American Comm. on Human Rights, *IACHR Troubled by entry into Force of Law 30151 In Peru* (Jan. 23, 2014), http://www.oas.org/en/iachr/media_center/PReleases/2014/004.asp

38. The recommendations above conform with the Commission on the Elimination of Racial Discrimination recommendations found within Concluding Observations on the Eighteenth to Twenty-first Periodic Reports of Peru notes that Peru.⁵⁰

⁵⁰ CERD Concluding Observations, *supra* note 1 (“(a) Strengthen mechanisms to prevent social conflict by promoting the effective participation of members or representatives of indigenous peoples to enable them to express freely their opposition to projects involving natural resource exploitation; (b) Conduct an exhaustive inquiry into violations of human rights that arise out of opposition to extractive projects; (c) Adopt the necessary measures to guarantee respect for the principle of proportionality and strict necessity in the recourse to force against persons belonging to indigenous peoples; (d) Consider repealing Act No. 30151 and ensure that those responsible for the excessive use of force, to the detriment of members of indigenous peoples, are brought to trial.”)