

Submission by Society for Threatened Peoples

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**a non-governmental organization in
special consultative status**

Language: English only
Universal Periodic Review
Twenty Eight Session

2017-08-11

PERU

The **Society for Threatened Peoples (STP)** is an international human rights organisation working for the protection of persecuted minorities and indigenous peoples. The STP documents human rights violations, raises public awareness and represents the interests of the affected communities before the authorities and policy-makers. It supports local initiatives aimed at strengthening the human rights of minorities and indigenous peoples, working nationally and internationally with other organisations and individuals pursuing similar goals. The STP has consultative status at both the United Nations Economic and Social Council (ECOSOC) and the Council of Europe.

A.Remark

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.

B.Implementation of the Free Prior and Informed Consent

2. As mentioned in the UPR on Peru in 2012, STP appraises the Law on Prior Consultation of Indigenous Peoples Law Nr. 29785 (*Ley de Derecho a la Consulta Previa a los Pueblos Indígenas u Originarios*¹) enacted in 2011 as did other organizations like CERD or UNO². Nevertheless, six years after the enactment, the implementation of the law remains insufficient in many aspects.
3. STP has followed closely the conflict around the Conga mining project of Yanacocha S.R.L. To a great extent, this conflict - which significantly added to the stop of the Conga Project, in the end - was generated and intensified due to a lack of proper process of free, prior and informed consent (FPIC), carried out by the company. This conflict induces STP to reiterate our request from UPR 2012 to the Peruvian Authorities to mention *private* investment projects explicitly in the law and associated directives given that most social conflicts with indigenous communities occur due to economic activities of private foreign and national companies.
4. With regard to concessions given on indigenous land without a proper FPIC, STP urges Peru to comply with the Law on Prior Consultation of Indigenous Peoples and the international convention of ILO 169 and the UNDRIP.
5. With regards to the construction of the road which is supposed to link Yurimaguas – Balsapuerto - Moyobamba, STP urges the Peruvian Authorities to carry out a process of FPIC as defined in article 6 of ILO Convention 169 and the Peruvian Law on Prior Consultation 29785, in order to avoid major conflict with indigenous peoples. STP also requests to respect the particularly vulnerable situation of the indigenous people living in voluntary isolation who are living in that region.
6. STP would like to raise its major concern about the precarious situation of the four Matsigenka communities in the Manu National Park. In line with the Special Rapporteur Tauli-Corpuz's report on violations of indigenous peoples' rights in the name of conservation³, STP observes grave existential difficulties in these communities such as the prohibition to bring seeds or livestock into the park, the prohibition to sell goods outside the park, the malnutrition due to these extreme restrictions and the insufficient sanitary and water facilities, among others⁴. Community members have never been consulted about the Manu National Park project, their devastating situation is also a result of the missing consultation process. In order to improve the communities' situation within this protection area, STP urges the Peruvian Government to carry out a subsequent consultation process with the

¹[https://www.presidencia.gob.pe/documentos/LEY%20DEL%20DERECHO%20A%20LA%20CONSULTA%20PREVIA%20A%20LOS%20PUEBLOS%20IND%20GENAS%20U%20ORIGINARIOS,%20RECONOCIDO%20EN%20EL%20CONVENIO%20169%20DE%20LA%20ORGANIZACION%20INTERNACIONAL%20DEL%20TRABAJO%20\(OIT\)%20.pdf](https://www.presidencia.gob.pe/documentos/LEY%20DEL%20DERECHO%20A%20LA%20CONSULTA%20PREVIA%20A%20LOS%20PUEBLOS%20IND%20GENAS%20U%20ORIGINARIOS,%20RECONOCIDO%20EN%20EL%20CONVENIO%20169%20DE%20LA%20ORGANIZACION%20INTERNACIONAL%20DEL%20TRABAJO%20(OIT)%20.pdf)

² Copilation of UN Information 2012: Paragraph 77; 78: https://www.upr-info.org/sites/default/files/document/peru/session_12_-_october_2011/ahrcwg.614per2e.pdf

³ <http://unsr.vtaulicorpuz.org/site/index.php/en/documents/annual-reports/149-report-ga-2016>

⁴ Field research of GfbV in communities in fall 2016

affected communities, in order to integrate them in the best possible way in the protection of the park and to turn them into real beneficiaries.

7. STP recommends to the Peruvian Government to apply FPIC not only in projects of mining and other extractive industries, but also when creating national protected areas, since they may have far-reaching impacts on indigenous peoples, as well.

C.Discrimination and Recognition of Indigenous Peoples' Rights

8. STP appraises the launch of the data base about indigenous communities by the Ministry of Culture⁵ and considers it as an important step for the recognition of indigenous peoples in the country. STP recommends that also communities that have not yet received their official land titles should be included in the database⁶.
9. STP welcomes the law nr. 29735 which protects the use, preservation and recuperation of all indigenous languages in Peru. This is a sign of recognition towards the indigenous peoples in Peru. It is now important to promote Intercultural Education in these languages.
10. STP welcomes the initiative of the Wampis nation to form the first autonomous indigenous government of Peru. It allows them to put into practice their right on self-determination, without affecting the national integrity of the State.
11. With regards to the compulsory sterilization on mostly indigenous peoples that has happened during the Fujimori government, STP is highly alarmed about the fact that the responsible persons have not been hold accountable nor have the victims received remedies despite distinctive demand from CESCR in the last UN Report⁷. Even if there has been a reopening of the cases, the according investigation has not been comprehensive; the cases have been collectively rejected. Therefore STP urgently reiterates this demand.
12. In the Review of the Working Group, Stakeholder Report and UN Report 2012 UNICEF, UNO and several countries pointed to the significant number of indigenous children without IDs⁸. During visits to different indigenous communities in the Madre de Dios region, STP noticed the extent of this problem: Many indigenous children in these communities do not have a birth certificate, since their parents didn't have one either. Moreover, the children cannot receive an ID, as long as their parents do not have one. According to a testimony, the authorities do not seem to take the issue very serious, since they forgot the necessary forms when visiting the community to proceed with registration. The lack of ID blocks the access to health facilities, education and mobility. Since the people who do not have IDs are mostly indigenous, they are very often deprived of health assistance and other basic services.
13. STP recommends improving the registration proceedings in rural areas, especially in indigenous communities. Otherwise, indigenous peoples continue being deprived of

⁵ <http://bdpi.cultura.gob.pe/>

⁶ The *Systema de Información sobre Comunidades Nativas de la Amazonía Peruana* (SICNA) already developed a database for the Amazon Region including information about communities that have not yet been titled.

⁷ Stakeholder Information 2012, Paragraph 38: https://www.upr-info.org/sites/default/files/document/peru/session_14_-_october_2012/ahrcwg.614per3e.pdf

⁸ Report Working Group 2012, Paragraph 30; 58; 116.69: https://www.upr-info.org/sites/default/files/document/peru/session_14_-_october_2012/ahrc2215perue.pdf

their right to formal citizenship, which on its part deprives them of a whole range of other rights.

D.Criminalization of Protest and Use of Disproportionate Force

14. In the Report of the Working Group in the second cycle of the Universal Periodic Review, several States and NGOs made critical observations with regards to violence of different security forces (police, military, community patrols, etc.) against human rights defenders⁹. Towards these accusations, Peru held out that security forces would only make “proportionate and reasonable use of power”¹⁰.
15. Nevertheless, STP is alarmed by the ongoing violent action by National Police and private security guards against human rights defenders. For instance, recent infringements on the Chaupe family have repeatedly happened since 2011^{11 12}.
16. Like these attacks against the Chaupe Family, the repression against demonstrations against the Conga Project in Celedín and Bambamarca in 2012 by National Police and Military illustrate the disproportionate use of violence in order to oppress social protest¹³. Another example of escalation of violence by National Peruvian Police is the case of Alpamarca in November 2016, where National Police was employed as private security for the Consorcio Minero Horizonte¹⁴.
17. The trial of March 6th 2017 against 16 community leaders who defended the lagoons against the Conga mining project manifests the criminalization of protests in favour of human rights and environment, as well¹⁵. The Conga project would seriously threaten sensible ecosystems and water resources in the region. Communities have not been properly consulted beforehand. The defendants face up to 36 years of prison, which is equivalent to a penalty given to extremely dangerous criminals. STP repeats its recommendation to revoke law that criminalise peaceful social protests and calls upon the Peruvian Authorities to carry out fair trials as well as to refrain from convicting leaders of social protests like serious offenders.
18. STP expresses its deep concern about the State’s repressive answers - use of force and application of criminal law - to legitimate social manifestation to protect the environment and human rights.
19. STP therefore urgently calls upon Peru to comply with its duty to protect civilians according to the UNGP “State Duty to Protect” and to effectively implement the Interamerican Commission on Human Rights’ precautionary measures.

⁹ Stakeholder Information 2012, Paragraph 35; 43; 45: https://www.upr-info.org/sites/default/files/document/peru/session_14_-_october_2012/ahrcwg.614per3e.pdf

Report of the Working Group 2012, Paragraph: 54; 93: https://www.upr-info.org/sites/default/files/document/peru/session_14_-_october_2012/ahrc2215perue.pdf

¹⁰ Report of the Working Group 2012, Paragraph 74: https://www.upr-info.org/sites/default/files/document/peru/session_14_-_october_2012/ahrc2215perue.pdf

¹¹ <https://www.servindi.org/actualidad-noticias/17/02/2017/incomodar-y-atacar-la-familia-de-maxima-acuna-por-la-minera-yanacocha>

¹² <http://www.noticiasser.pe/14/12/2011/informe/conga-cronologia-de-un-conflicto>

¹³ <http://cooperaccion.org.pe/main/advanced-stuff/cooperaccion-informa/696-rechazamos-pedido-de-fiscalia-de-36-anos-de-prision-para-lideres-ambientalistas-en-celendin>

¹⁴ <http://www.telesurtv.net/english/news/2-Civilians-Die-in-New-Mining-Conflict-in-Peru-20161107-0007.html>

¹⁵ <http://www.grufides.org/content/comienza-el-juicio-los-defensores-de-las-lagunas-de-conga>

20. Against the backdrop of the occurrences that are mentioned above, it is especially worrying that human rights institution like the *Defensoría del Pueblo* or the IACHR are facing growing financial difficulties and thus shrinking influencing power. STP however welcomes that a new National Human Rights Plan (*Plan Nacional de Derechos Humanos*) will be elaborated and hopes that the Plan serves as a stringent guideline.

E.Contracts between private companies and National Police

21. In 2013, STP revealed contracts between the Peruvian National Police and seven mining companies. Thanks to financial incentives, the police was led to act in favour of the companies. Beginning of 2017, it became an important issue again, when the until then missing contracts between Xstrata Tinaya S.A., resp. Xstrata Las Bambas S.A. and the National Peruvian Police were made public¹⁶.

22. With regards to these contracts, STP recommends to Peru to publicly take a position these contracts between private companies and Peruvian National Police. Second, STP recommends to cancel current contracts and not to make new ones.

23. STP also calls upon Peru to revoke laws that allow these contracts and to comply with its duty to protect civilians according to the UNGP “State Duty to Protect”.

F.Access to Clean Water in Indigenous Communities in Madre de Dios Region

24. In its National Report 2012, Peru praised its then newly launched programme for water and sanitary facilities for rural population¹⁷. However, STP would like to take up the then expressed concern by CESCER about insufficient water, sanitary and health facilities especially in rural areas¹⁸ and point to the devastating situation in many indigenous communities.

25. STP is particularly concerned about the waste water and sanitary facilities and the clean water supply in indigenous communities in the Madre de Dios region. As we could observe on our visit in fall 2016, many of them lack clean drinking water and instead consume rain water or polluted water from the river. Very often, sanitary or waste water facilities are inexistent or insufficient.

26. STP therefore urgently asks Peru to provide at least some shared water main connection in each of the indigenous communities in Madre de Dios region and continue its efforts to enhance clean water supply in rural areas, especially in indigenous communities.

27. With respect to access to clean water of indigenous communities in Madre de Dios region, the situation is exacerbated due to heavy pollution of rivers caused by illegal mining activities in the region. The gravity reached such a high level that the

16 <https://ia601906.us.archive.org/21/items/ConvenioTintaya/Convenio%20Tintaya.pdf>
<https://ia601906.us.archive.org/24/items/ConveniosLasBambas/Convenios%20las%20Bambas.pdf>

17 National Report 2012, Paragraph 104: https://www.upr-info.org/sites/default/files/document/peru/session_14_-_october_2012/ahrcwg.614per1e.pdf

18 Copliation of UN Information 2012, Paragraph 62: https://www.upr-info.org/sites/default/files/document/peru/session_12_-_october_2011/ahrcwg.614per2e.pdf

authorities declared an environmental state of emergency¹⁹. STP calls upon Peru to take effective measures to control illegal mining activities, especially in protected areas and on indigenous territories, and to guarantee the indigenous peoples' right to a clean environment.

G.Environmental Pollution in Loreto and Amazonas due to petroleum

28. Peru suffered more than 150 oil leaks during the last seven years²⁰. Indigenous communities are the ones that suffer most from these environmental catastrophes²¹: Due to a leak in Cunicio, Loreto, in 2014, the water continues to be contaminated and the community members still exhibit mercury and cadmium in their urine. More recent leaks in Amazonas and Loreto in 2016 have seriously harmed water resources, agriculture, fish and livestock and have heavily affected the health of the local indigenous communities.
29. Against this backdrop, STP calls upon the Peruvian Government to carry out stricter environmental assessments, to monitor projects more closely once they are implemented and to develop stricter sanctions if private or state run companies do not comply with stringent conditions (as in the case of Petroperú). STP reminds Peru of its duty to protect its citizens and to provide remedies according to the UNGP.
30. STP clearly welcomes the agreement of Saramurillo of December 2016, between authorities and the different communities to enhance the situation of the communities that are affected by negative consequences of oil extraction. STP especially appraises the participative and multisectoral approach which pays attention to the particularities of the different communities. If the outcomes of this agreement are truly beneficial for the affected communities, the agreement could serve as a precedent and hopefully contribute to the prevention of such incidents in the future.

H.Water Pollution due to the Yanacocha Mine

31. In the National Report 2012, Peru admits that deteriorating water qualities due to mining activities are a serious problem to be addressed²². However, water samples taken in 2014 prove that mining waste from Yanacocha still pollutes the groundwater in San José. Until today, the mining company still owes the OEFA a clean-up strategy. Last summer, during a period of drought, residents protested against Yanacocha's high use of water. These incidents indicate that Peru values water rights

19 <https://www.servindi.org/PERU-ACTUALIDAD-NOTICIAS/01/08/2016/MADRE-DE-DIOS-DEFORESTACION-SUPERA-LAS-350-HECTAREAS-EN-RESERVA>

20 <https://www.servindi.org/actualidad-opinion/12/08/2016/la-importancia-de-la-vigilancia-indigena-ambiental>

<http://www.numero-zero.net/2016/06/30/peru-mas-de-150-derrames-de-petroleo-en-los-ultimos-siete-anos/>

21 <http://www.vigilanteamazonico.pe/vigilancia-y-comunicacion/galeria-multimedia/noticias/704-peru-el-nuevo-y-previsible-derrame.html>

HTTP://WWW.SERVINDI.ORG/ACTUALIDAD-OPINION/17/02/2016/DERRAMES-QUE-DUELEN?UTM_SOURCE=FEEDBURNER&UTM_MEDIUM=EMAIL&UTM_CAMPAIGN=FEED%3A+SERVINDI+%28SERVICIO+DE+INFORMACION%3B3N+INDIGENA%29

22 National Report 2012, Paragraph 84: https://www.upr-info.org/sites/default/files/document/peru/session_14_-_october_2012/ahrcwg.614per1e.pdf

of companies higher than those of the citizens. This problem is not limited to the Yanacocha mine, but also applies also to many other mines.

32. STP welcomes the limits for liquid mining waste appraised by Peru its National Report 2012²³. But the case of Yanacocha and the above-mentioned cases in Loreto and Madre de Dios show that: First, liquid mining wastes are not the only cause of water contamination and second, implementation and control of these limits still need to be improved. In this context, the shrinking sanctionary capacities of the *Organismo de Evaluación y Fiscalización Ambiental* (OEFA) are particularly worrying.

I. Decree 1333 and Continuing Deforestation in Protected Areas

33. STP expresses its concerns about a bunch of Decrees adopted by the Peruvian President without consulting the parliament. STP is especially worried about Decree 1333 which allows the State to acquire territories for infrastructure projects in the name of national interest. Since Decree 1333 does not mention the special rights of indigenous communities regarding land rights, there is a high risk for recognized indigenous communities that do not yet possess an official land title of being expropriated. This applies to more than 20 million ha of indigenous territories, as out of 10,524 *Comunidades Campesinas y Nativas* only 4023 have land titles²⁴.
34. STP also heavily criticises the fact that the Decree was adopted without any consultation of indigenous peoples and that it furthermore allows expropriation without FPIC. Therefore, Decree 1333 clearly violates the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples. In sum, Decree 1333 seriously threatens indigenous peoples' rights in Peru and must be considered a step backwards in the Peruvian history of protection of indigenous peoples' rights.
35. In its National Report 2012, Peru stressed its National Action Plan for Environment (*Plan Nacional de Acción Ambiental 2011-2021*) and additional efforts to protect the forests by indigenous communities²⁵. These measures are particularly urgent, since in 2015 only, 56 mil. ha of Amazonian forests were lost²⁶. However, the adoption of the above-mentioned Decrees 1333, runs counter these efforts for environmental protection.
36. With regards to deforestation, STP is particularly concerned about the fact that logging does not halt in protected areas - which are very often the living environments of indigenous peoples - but continues. This can be seen for example in the National Reserve Tambopata, due to illegal mining activities and its effect is even accelerated by concessions given in the National Park Sierra del Divisor, where uncontacted indigenous peoples live²⁷.
37. Given the immediate threat that deforestation poses to indigenous communities – in particular to the uncontacted ones – , STP urges to take measures to effectively control illegal mining activities in protected areas and on indigenous territories and to

²³ *ibid*

²⁴ [HTTPS://WWW.SERVINDI.ORG/ACTUALIDAD-NOTICIAS/28/02/2017/PPK-Y-LA-NEOLATIFUNDIZACION-DE-LA-AMAZONIA](https://www.servindi.org/actualidad-noticias/28/02/2017/PPK-Y-LA-NEOLATIFUNDIZACION-DE-LA-AMAZONIA)

²⁵ National Report 2012, Paragraph . 76: https://www.upr-info.org/sites/default/files/document/peru/session_14_-_october_2012/ahrcwg.614per1e.pdf

²⁶ <https://www.servindi.org/actualidad-noticias/26/01/2017/la-perdida-de-bosques-humedos-amazonicos-peruanos-en-el-2015-fue-de>

²⁷ <https://www.servindi.org/peru-actualidad-noticias/01/08/2016/madre-de-dios-deforestacion-supera-las-350-hectareas-en-reserva>

immediately cease to give concessions in areas that have been delimited as protected.

38. STP calls upon the State of Peru to respect the territories of *Comunidades Campesinas y Nativas* and to push on the issuing of formal land titles of communities where they are still lacking. STP urges the Peruvian Authorities to fully comply with the Peruvian Constitution, the UN Declaration on the Rights of Indigenous Peoples, the ILO Convention 169 and the Peruvian Law on Prior Consultation of Indigenous Peoples which all guarantee a free, prior and informed consent for affected communities.