

Convention on the Rights of the Child Shadow Report Submission: Indigenous Children's Rights Violations in Peru

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Submitted by Cultural Survival
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CRC Shadow Report Submission

I. Reporting Organization

Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC since 2005. 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.

II. Situation analysis

The contemporary human dependency on oil and other fossil fuels is leading to serious global human insecurities as well as environmental concerns. Indigenous Peoples living in remote, resource abundant areas of the world, such as the Amazon, are particularly prone to the consequences of our over-indulgence. In Peru, these consequences come in the form of serious health issues deriving from polluted land and water due to careless and systematic pollution by extraction companies. The state of Peru issued a State of Health Emergency in Loreto in January 2013, during which it was determined that there were many harmful contaminants in the water, ground, and sediment within the lands in concession 192 in Loreto. On December 14th 2014 several United Nations human rights experts expressed concern over the proposed relicensing of extraction companies in Loreto.¹ The Special Rapporteur for Human Rights and Hazardous Substances added that the extraction companies left a toxic mess, which completely disregarded the communities that would be affected by it.²

For 30 years, oil companies operating in Loreto illegally dumped over 9 billion barrels of industrial waste, containing toxic substances such as barium, lead, arsenic, mercury, aluminum, iron, and cadmium, directly into the Pastaza and other rivers, tributaries to the Amazon. Peru willingly allowed the company to continue practices that polluted at a rate of 30 times the levels allowed by national law.

Between 2010 and 2011 alone, the State of Peru reported 25 crude oil spills occurring in the Loreto concession 192, while local Indigenous monitors counted over 100 crude oil spills between 2008 and 2013. According to local reports this rate of crude oil spillage has continued with no signs of stopping, and spills are rarely, if ever, remediated. Rather, the communities have caught the company red-handed while attempting to illegally cover up spills instead of providing proper environmental remediation.

The contamination is slowly poisoning the Indigenous communities including the Quechua peoples. These health effects are especially seen in children.

High concentrations of heavy metals are known to lead to lung cancer, heart disease, kidney failure, and brain damage, among other diseases. But Indigenous people who depend on the land to survive must continue to fish, hunt, and grow food on these lands. They bathe, wash, and cook with, and drink the water knowing it means exposure to toxic contaminants.

¹ <http://www.un.org/apps/news/story.asp?NewsID=49607#.ViD6KbSqqko>

² <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15421&LangID=E>

The Quechua peoples depend heavily on fish for their local diet. Every time they consume fish, they ingest an accumulation of toxic metals that were part of that fish's food chain in its lifetime. A study conducted by the State showed that virtually the entire Quechua population has elevated levels of heavy metals in their bloodstreams. The Ministry of Health inspection in 2005 of 199 villagers within the concession area additionally found that 99.2 percent of adults have concentrations of lead in their blood exceeding the level that the human body can tolerate. In children, 99 and 66 percent were found to have dangerous levels of cadmium and lead, respectively.³

Elmer Hualinga, Quechua, lives with his family, less than a mile from the Lot 192 processing plant in in Nuevo Andoas, Loreto, and experiences this trauma firsthand: "Despite the fact that the government has declared an Environmental State of Emergency, we don't have water, we don't have food. How can we ensure the lives of our children? It's the saddest thing in the world. It makes me want to weep, to cry out, why are they doing this to us? But the reality is that they don't respond to that. My children are going to suffer the consequences. They won't experience a clean environment. That is a huge concern for us as Native peoples."

While billions of dollars worth of oil have been taken from their lands, Indigenous Quechua children still lack access to basic services, health care, and potable water, a jarring disjunction between their abject poverty and the value of the oil being extracted at a rate of 15,000 barrels per day.

The relicensing of extraction companies has been a contentious issue in many regions in Peru where there are populations of Indigenous Peoples. Several Indigenous Communities such as the Achuar community of Pampa Hermosa have been successful in receiving compensation for the land being used for extraction as well as for any pollution resulting from the extraction. However, dialogues between the state and other affected communities has continued to be halted when while the state fails to meet the needs of communities regarding clean water and clean environments, which are guaranteed to them.

Indigenous federations have demonstrated time and again with their demands. They reiterate that compensation and settlements are not enough to address the problem. Companies being forced to pay Indigenous Communities for destroying the land does not reverse the damage done to the land, nor does it remedy any effects that it has had on water and food sources. These effects are leading to sickness and death of Indigenous Peoples, especially children, as well as birth defects to pregnant mothers.

The Peruvian government has been dangerously neglectful its obligation to ensure basic health and safety for Indigenous children. , and without serious change to how they conduct business with extraction companies, this issue will only get worse.

Yet rather than enforce existing environmental contamination laws or tighten these laws, in June 2014 Peru actually lowered maximum fines for environmental crimes by 50% to welcome oil and gas investors, and barred the environment ministry from sole authority over nominating nature protection areas.⁴

³ http://www.phmed.umu.se/digitalAssets/30/30112_2009-17-cynthia-antica.pdf

⁴ <http://www.theguardian.com/environment/2014/dec/09/the-amazon-oil-spills-overlooked-by-environmental-leaders-in-lima>

Peru must comply with its own Law of Prior Consultation (Ley de Consulta Previa) and it must comply with its “March 10th” contract signed in dialogue between the state and Indigenous Federations, in which it promises to respond to the March 10 contract made by the State to respond to the State of Health and Environmental Emergencies that were declared in 2013 and 2014, by providing land titles, environmental remediation, and health services to communities affected by toxic environmental contaminants resulting from the oil industry.⁵

Peru cannot continue to willfully sacrifice the wellbeing of Indigenous Peoples, especially, children, in the Peruvian Amazon in the name of oil extraction.

III. Concluding Observations

The Committee considered the second periodic report of Peru (CRC/C/65/Add.8), submitted on 25 March 1998, at its 605th and 606th meetings (see CRC/C/SR.605 and 606), held on 21 January 2000, and adopted the following concluding observations:*

Several large issues were discussed during the second period review, namely health and education, but issues regarding the exploitation or destruction of Indigenous land was not discussed.

The Committee considered the third periodic report of Peru (CRC/C/125/Add.6) at its 1087th and 1089th meetings (see CRC/C/SR.1087 and 1089), held on 12 January 2005 and adopted at the 1120th meeting held on 27 January 2006 the following concluding observations:

The same issues were discussed in the third review as in the second review.

IV. Peruvian Report

The Peruvian government noted its progress to give more Indigenous children access to proper education, which is another issue that strongly affects the Indigenous communities in Peru. However, there was no mention of the environmental concerns that are having a catastrophic effect on Indigenous communities.

V. Legal Framework

*CRC Article 17(d), **Article 24**, Article 29(d), Article 30*

VI. CRC General Comments

General Comment No. 11 (2009) Indigenous children and their rights under the Convention.

Health

“49.States parties shall ensure that all children enjoy the highest attainable standard of health and have access to health-care service. Indigenous children frequently suffer poorer health than non-Indigenous children due to inter alia inferior or inaccessible health services. The Committee notes with concern, on the basis of its reviews of States parties’ reports, that this applies both to developing and developed countries.

51.States parties should take the necessary steps to ensure ease of access to health-care services for Indigenous children. Health services should to the extent possible be community based and planned and administered in cooperation with the peoples concerned. Special consideration should be given to ensure that health-care services are culturally sensitive and that information about these is available in Indigenous languages.

⁵ <https://www.culturalsurvival.org/news/peru-Indigenous-federations-close-oil-wells-12-days-protest-failed-consultation>

Particular attention should be given to ensuring access to health care for Indigenous peoples who reside in rural and remote areas or in areas of armed conflict or who are migrant workers, refugees or displaced. States parties should furthermore pay special attention to the needs of Indigenous children with disabilities and ensure that relevant programmes and policies are culturally sensitive.”

VII. Other UN Body Recommendations

United Nations General Assembly Resolution 64/292⁶ : The human right to water and sanitation:

- “1. Recognizes the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights;
2. Calls upon States and international organizations to provide financial resources, capacity-building and technology transfer, through international assistance and cooperation, in particular to developing countries, in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all;
3. Welcomes the decision by the Human Rights Council to request that the independent expert on human rights obligations related to access to safe drinking water and sanitation submit an annual report to the General Assembly,¹³ and encourages her to continue working on all aspects of her mandate and, in consultation with all relevant United Nations agencies, funds and programmes, to include in her report to the Assembly, at its sixty-sixth session, the principal challenges related to the realization of the human right to safe and clean drinking water and sanitation and their impact on the achievement of the Millennium Development Goals.”

ICESCR General Comment 15 (2002) : The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)⁷

“16. Whereas the right to water applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, Indigenous peoples, refugees, asylum seekers, internally displaced persons, migrant workers, prisoners and detainees...”

Human Rights Committee

Concluding observations on the fifth periodic report of Peru , adopted by the Committee at its 107th session (11–28 March 2013):

“The State party should ensure that the existing legal framework providing for informed prior consultations with Indigenous communities for decisions relating to projects that affect their rights is implemented in a manner compliant with article 27 of the Covenant, including by ensuring that all affected Indigenous communities are involved in the relevant consultation processes and that their views are duly taken into account. The State party should also ensure that free, prior and informed consent of Indigenous communities is obtained before adopting measures which substantially compromise or interfere with their culturally significant economic activities.”⁸

⁶ <http://www.un.org/es/comun/docs/?symbol=A/RES/64/292&lang=E>

⁷ [http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/\\$FILE/G0340229.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94/$FILE/G0340229.pdf)

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<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsg3%2fP07L6ZZiTIIfqu6cHLZHXLSvAJ7%2fJ5XTVDGh%2bRWp8Uj67CrRsKtJBP2sKGYyFK8rgJ6sL9BDdd8DT3ov9DUPjr1aO6rkuu%2fd3udu%2bEcj>

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*Concluding observations on the eighteenth to twenty-first periodic reports of Peru, adopted by the Committee at its 2315th and 2316th*⁹

Implementation of the Right to Prior Consultation Act

“The Committee recommends that the State party should:

- (a) Adopt an appropriate methodology for conducting prior consultation procedures in conformity with international standards and ensure the allocation of sufficient resources;
- (b) Ensure that all projects on the development and exploitation of natural resources, including mining operations, are submitted to the consultation process with a view to obtaining the free, prior and informed consent of communities that may be affected;
- (c) Guarantee that all Indigenous communities, either from the Andean or the Amazonian region, that may be affected, directly or indirectly, by the adoption of a legislative or administrative measure should be duly consulted.”

Indigenous peoples and exploitation of natural resources

In the light of general recommendation No. 23 (1997) on the rights of Indigenous Peoples and the recommendations of the Special Rapporteur on the rights of Indigenous Peoples in his report on the situation of Indigenous peoples’ rights in Peru with regard to the extractive industries (A/HRC/27/52/Add.3), the Committee urges the State party to:

- “(a) Redouble its efforts to strengthen the legislative and administrative framework for the protection of Indigenous peoples with regard to the exploitation of natural resources;
- (b) 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;
- (c) Ensure the effective implementation of protection measures and safeguards against environmental impacts;
- (d) 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.”

Universal Periodic Review

Accepted recommendations from second cycle:

116.112. 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);¹⁰

VIII. Questions

1. How has the government of Peru improved access to healthcare for Indigenous children in areas affected by natural resources extraction?
2. Has the government of Peru ensured the consent of each affected Indigenous community within lot 192 before approving the license for Pacific Stratus Energy to operate it?
3. How has the government of Peru addressed issues that led to the declaration of a State of Health Emergency in Loreto in 2013?

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<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsnn5icKBJKh ip8GXehiFBIInvMyvW8kdmo5mEYaq8JWbPHhHXF90VSso9l4VsXdHGWleY%2fJAAcWHR2Pg6jdMDIHl 8pnWtOzRo5nvl23kl0MmzdwyrZrO6NdFIFQRKA%2fihw%3d%3d>

¹⁰ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/190/40/PDF/G1219040.pdf?OpenElement>

4. How has the government of Peru addressed issues that led to the declaration of a State of Environmental Emergency in Loreto in 2014?

IX. Recommendations

Cultural Survival urges the government of Peru to:

1. Implement the March 10th accords signed between the State and Indigenous federations, including
 - a) The titling of Indigenous lands.
 - b) Remediation and compensation for damages or loss suffered by Indigenous communities affected by natural resource extraction.
 - c) Immediate provision of health care services to Indigenous children and their parents who are currently suffering the consequences of toxic waste contamination.
 2. Take steps to ensure the freedom of expression and physical safety of Indigenous human rights defenders seeking to protect the health of their children and their children's environment.
 3. Enact stricter laws for environmental crimes and enforce existing laws by sanctioning any companies who violate these laws.
 4. Take steps to reform the Law of Prior Consultation to include the Free, Prior, Informed Consent, rather than just consultation.
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http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/HND/INT_CRC_COC_HND_20800_E.pdf