

PERU – BAGUA

BLOODSHED IN THE CONTEXT OF AMAZON PROTEST

URGENT NEED FOR GOOD FAITH DIALOGUE

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security



INDEX

I. Introduction	4
II. General Context	6
III. Legal framework	13
A. General framework: constitutional changes and international obligations	
B. Trade Promotion Agreement between Peru and the United States and Legislative Decrees	
IV. Violation of the right to consultation of the indigenous people and conflict	19
A. The roots of the conflict	
B. The beginning of the protest	
Chronology	
C. Acts of violence and violation of human rights	
1. The day prior to confrontation (June 04)	
2. The days of confrontation (June 05 and 06)	
a) The operation in Curva del Diablo	
b) Violence in urban areas: Bagua y Bagua Grande	
c) Station No. 6 of Imazita	
3. Curfew and the subsequent days	
4. Humanitarian conditions of detainees and in emergency shelters	
5. Violation of detainees' rights. Torture. Violation of due process	
V. Reaction to the events.....	33
A. At national level	
1. Extensive national solidarity	
2. Acknowledgment of the subject of indigenous people's rights as a central present-day issue	
B. At international level	
VI. Urgent need to open a dialogue	36
A. Political implications	
B. Discrediting and criminalising	
VII. Report of the Office of the Ombudsman.....	41
VIII. Conclusions	43
IX. Recommendations	45
Annexes	49
Annex 1: Agenda of the mission	
Annex 2: FIDH's press release	
Annex 3: Legislative Decrees (extracts - only available in Spanish)	

I. Introduction

The International Federation for Human Rights (FIDH) is an international non governmental organisation, of recognised public utility. FIDH is a non-profit organisation, it is non-political non-confessional, its objectives are to promote the effective implementation of all rights enshrined in the Universal Declaration of Human Rights and in other international instruments protecting human rights.

Founded in 1922, FIDH currently brings together 155 Human Rights organizations in over 100 countries. FIDH coordinates and supports their actions, offering, especially, worldwide collaboration. In Peru, FIDH's member organizations are APRODEH (Asociación Pro Derechos Humanos – Association for Human Rights) and CEDAL (Centro de Asesoría Laboral del Perú - Center of the Labor Consultancy of Peru). FIDH benefits from a consultative status in the United Nations, the OAS (Organization of American States), UNESCO and the European Council. It is also Observer before the African Commission on Human and Peoples' Rights.

As part of its mandate, FIDH regularly carries out international fact-finding missions and judicial observation whose objective is to inform the public and the international community on human rights violations, to promote human rights and contribute to the improvement of protection standards, and support and protect human rights defenders.

FIDH had been alerted by its member organizations in Peru about the intense situation of social conflict in the Peruvian Amazon, in relation to the indigenous peoples' protest movements demanding the abolition of several Legislative Decrees reducing their right to consultation. FIDH has been closely following this situation since August 2008 (first mobilization of Amazon people) and, especially, since April 2009¹ (second mobilization).

In view of the incidents that took place between June 05 and 06 in the region of Bagua (area of northern Peru), which caused at least 33 deaths, (according to official figures), the different allegations of violence, and in view of the highly tense situation prevailing in Peru at this point, FIDH decided to send an urgent mission to the country.

In addition to the violations of the right to life, violations of the right to a fair trial, arbitrary arrests and attacks against free will and freedom of speech were also being perpetrated at this point. Various organizations had moreover reported that clinics in the area were inadequately equipped for the high number of casualties.

For these reasons, from June 16 to June 20, 2009, FIDH paid an observational visit to Peru, with the support and collaboration of APRODEH and CEDAL.

The members of this mission were Sister **Elsie Monge**, executive director of the CEDHU (Comisión Ecueménica de Derechos Humanos - Ecumenical Commission of Human Rights), member organization of FIDH in Ecuador, and **Rodolfo Stavenhagen**, member of the Board of Directors of the Inter-American Institute of Human Rights and former Special Rapporteur on Indigenous Peoples' Rights for the United Nations Organization.

1. See FIDH press release: Serious protests of Peruvian Indigenous Amazons: FIDH calls for the abolition of Legislative Decrees adopted in contradiction to the ILO's Agreement "169, May 11, 2009 (Annex 2).

The mission's objectives were the following:

- to obtain information about the violent incidents that took place in the Amazon region on June 05 and 06, 2009, which caused large numbers of deaths and injuries amongst indigenous people, non-indigenous civilians as well as police officials, and to shed light on allegations of disappearances;
- to determine the scale of human rights violations that took place in the context of these events;
- to acknowledge the responsibility of the different actors who intervened in the conflict.

During this mission, we had the opportunity to speak with different government authorities; amongst them, Prime Minister Yehude Simon and Defence Minister Antero Flores Aráoz, human rights organizations, local pastoral actors, indigenous organizations such as AIDSESEP (Asociación Interétnica de Desarrollo de la Selva Peruana - Interethnic Association of Peruvian Forest Development), and members of the Amazon Indigenous communities of Awajún. We visited the areas of Bagua Grande, Bagua and Jaén, and interviewed various people in the city of Lima (please see full list of interviews in Annex 1).

FIDH is grateful to all the people, institutions and organizations that welcomed those in charge of the mission, for their availability and support. FIDH also wishes to express its solidarity for the victims of the events narrated in this report, and for their respective families.

II. General Context

The economico-political conflict that triggered the tragic events of June 05 and 06, 2009 stems from the recent history of the Peruvian Amazon Region.

Peru covers over 75 million hectares of the Amazon, which represents over 60% of the territory, and 11% of the Amazon Basin. The Peruvian Amazon covers two different geographical areas, the High Forest (over 800 meters above sea-level) and the Lowland Forest (less than 800 meters). The regions of Peru which fully constitute the Amazon

area are San Martín, Amazonas, Loreto, Ucayali, and Madre de Dios; and those which constitute it partially (that is, some districts or provinces within) are the regions of Huánuco, Junín, Pasco, Cajamarca, La Libertad, Huancavelica, Cusco, Apurímac, Ayacucho and Puno. (Map: 'Instituto del Bien Común': Peruvian Amazon Map 2009)

The Amazon population is close to three and a half million inhabitants, which represents, approximately, 13% of the nation's population. According to reports from the INRENA (Instituto Nacional de Recursos Naturales - National Institute of Natural Resources), there are 106 hydrographic basins: 53 are located on the Pacific Ocean rim, 44 on the Atlantic Ocean rim, and 9 on the rim of Lake Titicaca. Nearly 98% of freshwater is collected in the basins that flow into the Amazon. The most important Amazon rivers are Amazonas, Ucayali, Marañón and Huallaga. The Amazon population is of 332,975 indigenous people assembled in 1,509 communities, of which 1,232 are registered. In these territories, there are a number of projects for the exploitation of natural resources, such as mines, oil, gas, and wood.



INDIGENOUS PEOPLES, NATURAL AREAS AND RESOURCE

Maps and Tables

Hidrocarbon blocks in the Peruvian Amazon Region

Name	Company	Status
1-AB	PLUSPETROL	Contract
8 (A-E)	PLUSPETROL	Contract
31 (B-E)	MAPLE	Contract
39	REPSOL	Contract
56	PLUSPETROL	Contract
57	REPSOL	Contract
58	PETROBRAS	Contract
64	TALISMAN	Contract
67 (A-B)	PERENCO	Contract
76	HUNT OIL	Contract
88	PLUSPETROL	Contract
95	HARKEN	Contract
100	CONSULTORA	Contract
101	TALISMAN	Contract
102	RAMSHORN SHONA	Contract
103	TALISMAN	Contract
104	BURLINGTON	Contract
106	PETROLIFERA	Contract
107 (A-B)	PETROLIFERA	Contract
108	PLUSPETROL	Contract
109	REPSOL	Contract
110	PETROBRAS	Contract
111	SAPET	Contract
113	SAPET	Contract
114	CEPSA	Contract
115	PLUSPETROL	Contract
116	HOCOL	Contract
117	PETROBRAS	Contract
121 (A-B)	PERENCO	Contract
122	GRAN TIERRA	Contract
123	BURLINGTON	Contract
124	BURLINGTON	Contract
125	PERENCO	Contract
126	TRUE ENERGY	Contract
127	CEPSA	Contract
128	GRAN TIERRA	Contract
129	BURLINGTON	Contract
130	CEPSA	Contract
131	CEPSA	Contract
132 (A-B)	GOLDEN OIL	Contract
133	PETROLIFERA	Contract
134	TALISMAN	Contract
135	PACIFIC	Contract
137	PACIFIC	Contract
138	PACIFIC	Contract
143	HUNT OIL	Contract
144	KEI (PERU 112) PTY	Contract
145	OLYMPIC	Contract
149		Negotiation
152		Negotiation
157		Subscription
158	TALISMAN-ECOPETROL	Contract
160	KEDCOM CO-CONSULTORA	Contract
161	PAN ANDEAN	Contract
162	PVEP PERU	Contract
163	ESMERALD ENERGY	Contract
AREA-I	PETRON RESOURCES	Non-Conventional Agreement
AREA-II	PETRON RESOURCES	Non-Conventional Agreement
AREA-III	PETRON RESOURCES	Non-Conventional Agreement
AREA-IV	PETRON RESOURCES	Non-Conventional Agreement
AREA-XXIX	PETROBRAS ENERGIA	Agreement
AREA-XXVI	PETROBRAS ENERGIA	Agreement
AREA-XXVII	PETROBRAS ENERGIA	Agreement
AREA-XXVIII	PETROBRAS ENERGIA	Agreement
AREA-XXX	PETROBRAS ENERGIA	Agreement
AREA-XXXI	PETROBRAS ENERGIA	Agreement

Source: Map of Peru, blocks of contracts for oil operations and sedimentary basins . In <http://mirror.perupetro.com.pe> [May 30, 2009, English version].

Territorial reserves for indigenous peoples living in isolation in the Peruvian Amazon Region

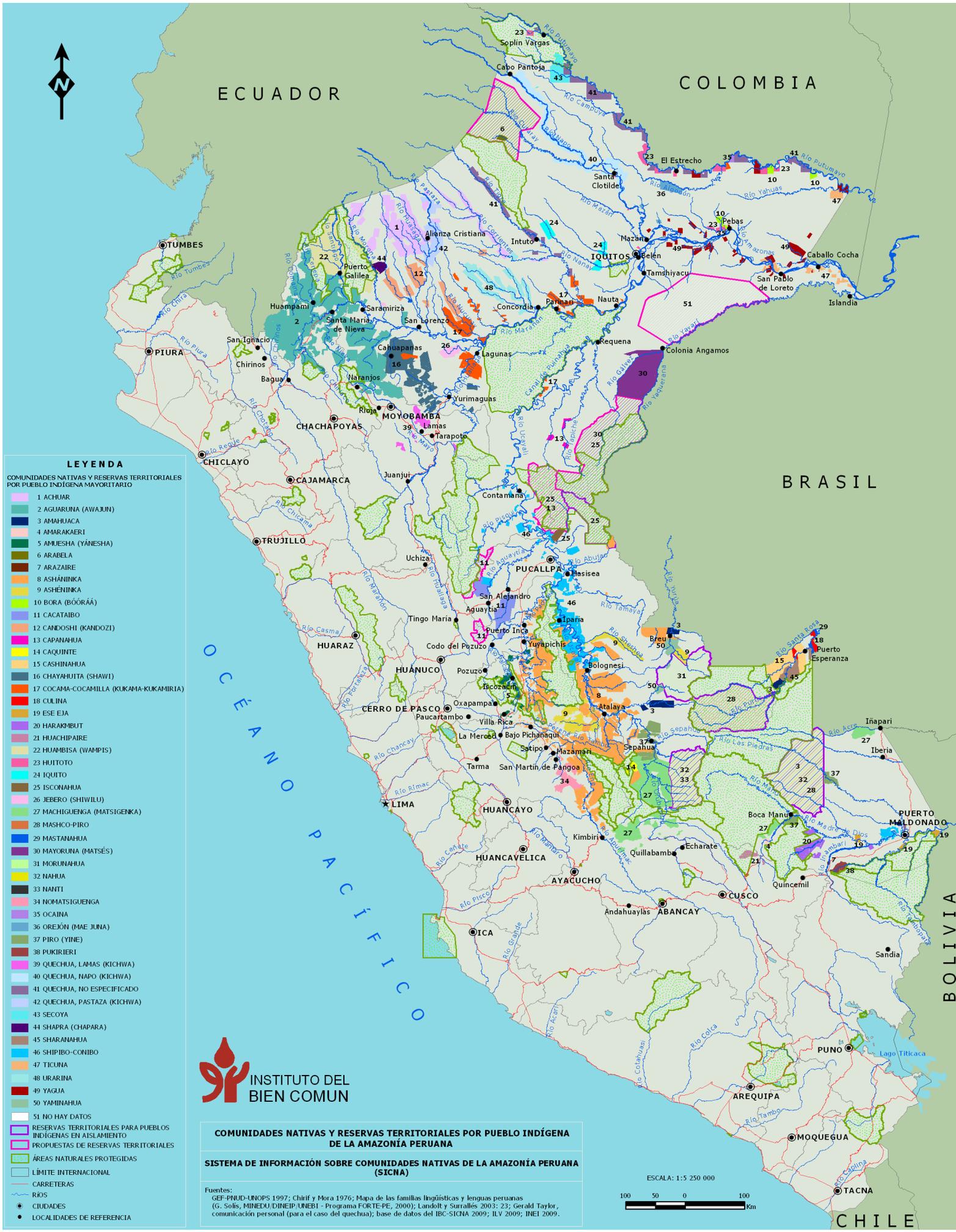
Name	Extension (ha)	Region	Date	Legal Basis
Murunahua	481 560	Ucayali	01.04.1997	R.D.R. No. 00189-97-CTARU/DRA
	(443 887)		14.02.1990	R.M. No. 0046-90-AG/DGRAAR
Kugapakori-Nahua-Nanti	(457 435)	Cusco/Ucayali	13.12.2002	Administrative file reorganization
	456 672		26.07.2006	D.S. 28-2003-AG
Isconahua	275 665	Ucayali	11.06.1998	R.D.R. No. 00201-98-CTARU/DRA-OAJ-T
Mashco-Piro	768 848	Ucayali	01.04.1997	R.D.R. No. 190-97-CTARU/DRA
Madre de Dios (Amahuaca, Mashco-Piro y Nahua)	829 941	Madre de Dios	22.04.2002	R.M. No. 0427-2002-AG
Total	2 812 686			

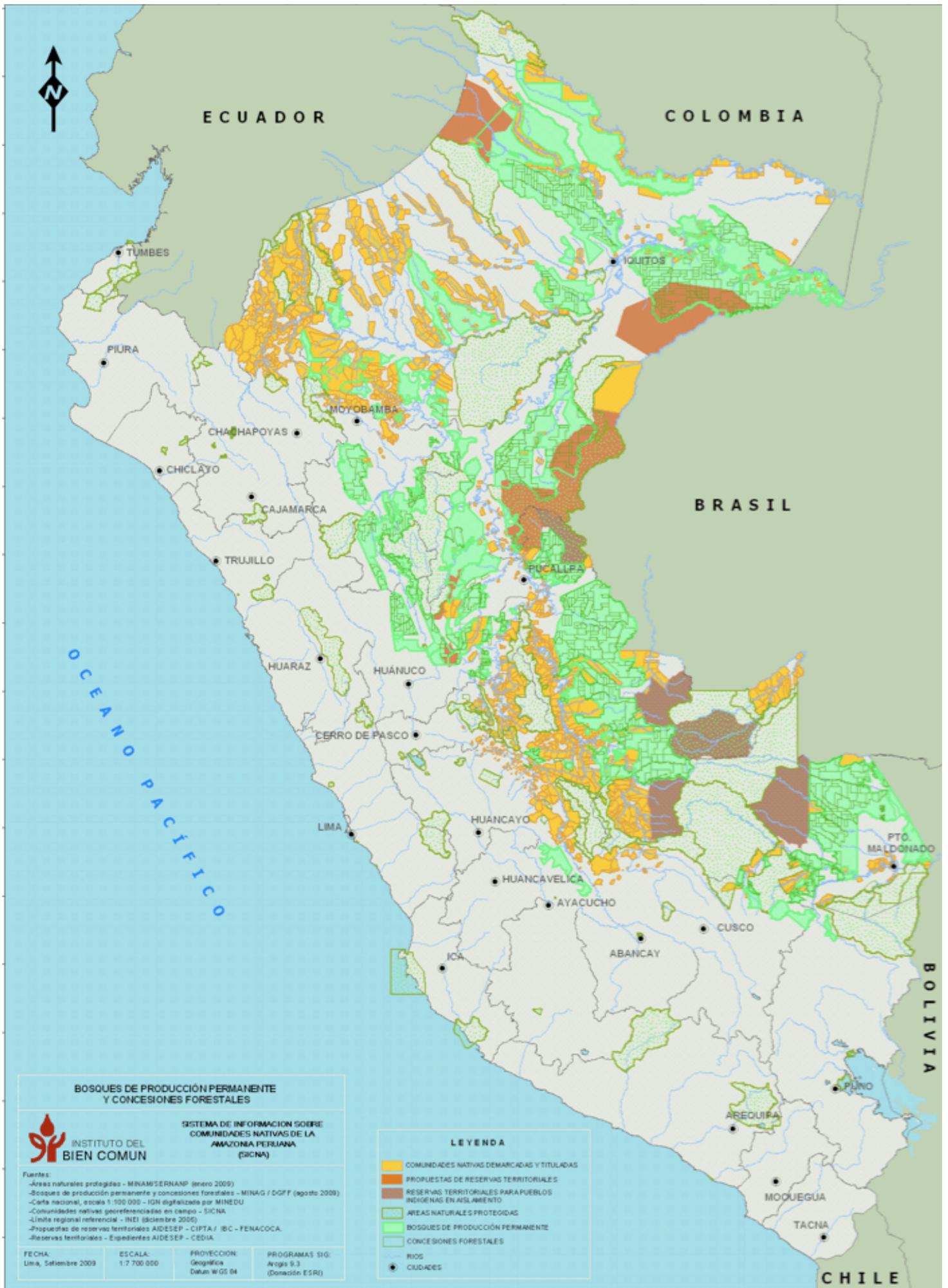
Natural Protected Areas of the Peruvian Amazon Region

Categories	Legal Basis	Date	Political Location	Extension (ha)	Categories (ha)
National Parks (10)					7 475 557,75
Cutervo	Law No. 28860	05.08.06	Cajamarca	8 214,23	
Tingo María	Law No. 15574	14.05.65	Huánuco	4 777,00	
Manu	D.S.No. 644-73-AG	29.05.73	Cusco and Madre de Dios	1 716 295,22	
Río Abiseo	D.S.No. 064-83-AG	11.08.83	San Martín	274 520,00	
Yanachaga-Chemillen	D.S.No. 068-86-AG	29.08.86	Pasco	122 000,00	
Bahuaja-Sonene	D.S.No. 048-2000-AG	04.09.00	Madre de Dios and Puno	1 091 416,00	
Cordillera Azul	D.S.No. 031-2001-AG	21.05.01	San Martín, Loreto, Ucayali and Huánuco	1 353 190,84	
Otishi	D.S No. 003-2003-AG	14.01.03	Junín and Cusco	305 973,05	
Alto Purús	D.S No. 040-2004-AG	20.11.04	Ucayali and Madre de Dios	2 510 694,41	
Ichigkat Muja-Cordillera del Condor	D.S No. 023-2007-AG	10.08.07	Amazonas	88 477,00	
National Sanctuaries (3)					249 004,46
Ampay	D.S.No. 042-87-AG	23.07.87	Apurímac	3 635,50	
Tabaconas-Namballe	D.S.No. 051-88-AG	20.05.88	Cajamarca	29 500,00	
Megantoni	D.S.No. 030-2004-AG	18.08.04	Cusco	215 868,96	
Historical Sanctuaries (1)					32 592,00
Machupicchu	D.S.No. 001-81-AA	08.01.81	Cusco	32 592,00	
National Reserves (3)					2 412 759,25
Pacaya Samiria	D.S.No. 016-82-AG	04.02.82	Loreto	2 080 000,00	
Tambopata	D.S.No. 048-2000-AG	04.09.00	Madre de Dios	274 690,00	
Allpahuayo-Mishana	D.S.No. 002-2004-AG	16.01.04	Loreto	58 069,25	
Community Reserves (7)					1 753 868,63
Yánesha	R.S.No. 0193-88-AG-DGFF	28.04.88	Pasco	34 744,70	
El Sira	D.S.No. 037-2001-AG	22.06.01	Huánuco, Pasco and Ucayali	616 413,41	
Amarakaeri	D.S.No. 031-2002-AG	09.05.02	Madre de Dios and Cusco	402 335,62	
Machiguenga	D.S No. 003-2003-AG	14.01.03	Cusco	218 905,63	
Asháninka	D.S No. 003-2003-AG	14.01.03	Junín and Cusco	184 468,38	
Purús	D.S No. 040-2004-AG	20.11.04	Ucayali and Madre de Dios	202 033,21	
Tuntanain	D.S No. 023-2007-AG	10.08.07	Amazonas	94 967,68	
Protected Rainforest (4)					389 896,38
Pui Pui	R.S.No. 0042-85-AG/DGFF	31.01.85	Junín	60 000,00	
San Matías-San Carlos	R.S.No. 0101-87-AG/DGFF	20.03.87	Pasco	145 818,00	
Pagaibamba	R.S.No. 0222-87-AG/DGFF	19.06.87	Cajamarca	2 078,38	
Alto Mayo	R.S.No. 0293-87-AG/DGFF	23.07.87	San Martín	182 000,00	
Reserved Areas (6)					3 214 340,46
Güepí	D.S.No. 003-97-AG	03.04.97	Loreto	625 971,00	
Santiago-Comaina	D.S No. 023-2007-AG	10.08.07	Amazonas and Loreto	398 449,44	
Cordillera de Colán	R.M.No. 0213-2002-AG	01.03.02	Amazonas	64 114,74	
Pampa Hermosa	R.M.No. 0275-2005-AG	12.03.05	Junín	9 575,09	
Pucacuro	R.M.No. 0411-2005-AG	21.04.05	Loreto	637 918,80	
Sierra del Divisor	R.M.No. 283-2006-AG	11.04.06	Loreto and Ucayali	1 478 311,39	
Protected Natural Areas (34)				15 528 018,93	15 528 018,93

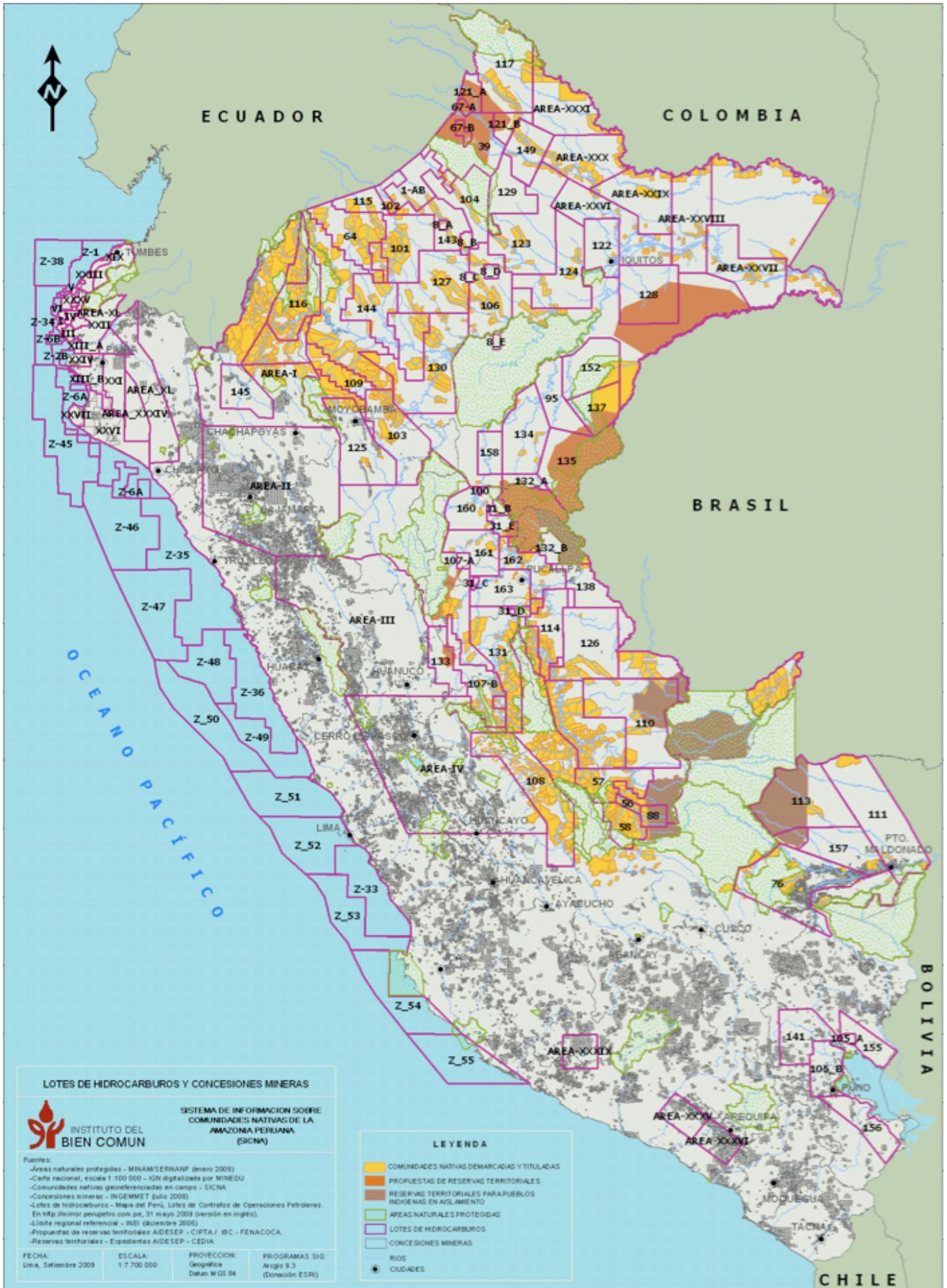
Source: SERNANP (January 2009)

INDIGENOUS COMMUNITIES AND INDIGENOUS PEOPLES' TERRITORIAL RESERVES OF THE PERUVIAN AMAZON REGION





HYDROCARBON BLOCKS AND MINING CONCESSIONS



III. Legal Framework

A. General Framework: Constitutional changes and international obligations

For a long period of time, regional indigenous communities lived practically in isolation from the rest of the country, although they had been affected by the cycle of the rubber economy in the XXth century and, previously, by various flows of colonization and migration from the Sierra and other regions. It was only with the Constitution of 1920 that, for the first time, the rights of Indigenous peoples were acknowledged: there was recognition of the “legal existence of Indigenous communities”² (Art. 58) and the imprescriptible nature of their land was confirmed (Art. 41). The Constitution of 1933 reiterated these rights, with the addition of the inalienable and non-seizable right to the communities’ lands (Art. 209), and establishing the possibility of granting land to Indigenous communities (Art. 211). In 1974 the government of President Juan Velasco Alvarado further developed these rights when he issued the first Law of Indigenous communities, which recognized the ancestral rights of Amazon Indigenous peoples to their land and resources. These important advances were recorded in the Constitution of 1979.

However, the introduction of favourable legislation towards Indigenous peoples has been slowed down, when not rendered ineffective, due to the lack of political will of subsequent governments, which are interested in exploiting the vast richness of this region, and most recently, by governmental economic politics, aimed at augmenting the inclusion of Peru in globalized economy.

Indeed, although the Political Constitution of 1979 defined the inalienable, non-seizable and imprescriptible nature of the communal land, the Constitution of 1993 abolished the inalienable and non-seizable nature of this region and reduced their imprescriptible status by introducing “abandonment” as a cause for exception. Thus began an increasing degradation of the legal security of the land during Fujimori³ administration, removing some of the guarantees that had been established since 1920.

With regard to regional and international human rights law, Peru has ratified the following international and regional instruments:

- the ICCPR (International Covenant on Civil and Political Rights).
- the ICESCR (International Covenant on Economic, Social and Cultural Rights)
- the International Convention on the Elimination of All Forms of Racial Discrimination. Peru has also recognized CERD’s (Committee on the Elimination of Racial Discrimination) competences, which can receive complaints in case of violation of rights protected by the Convention;
- International Labour Organization (ILO) Indigenous and Tribal Peoples Convention No.169 (ratified in 1993)⁴;
- the ACHR (American Convention on Human Rights). Peru acknowledges, moreover, the competence of the American Court of Human Rights;

2. However, this admission is limited to the peoples of Andean and coastal area, excluding the Amazon Indigenous peoples.

3. The Committee on the Elimination of Racial Discrimination (CERD), declared its concern with the subject, when it examined the situation in Peru in 1999: “The Committee is concerned with the information that indicates the Constitution of 1993 no longer fully guarantees the prevention of overtaking and utilizing the land of Indigenous peoples”(CERD, Final Observations, 13 April 1999, CERD/C/304/Add.69, §22).

4. With regard to the Agreement, the Ombudsman reminds us of the following: “The right to consultation, established in the aforementioned international agreement, applies to all legislative or administrative measures, capable of affecting Indigenous peoples, independently of sector or level of the government” (Ombudsman, Report No. 011-2009-DP/AMASPP/PP/PP, The Right to Consultation of Indigenous Peoples, May 2009).

-the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, “San Salvador Protocol”.

In Peru, the approved Constitution of 1993, during the administration of Alberto Fujimori, indicates in article 55, that “treaties concluded by the government and now in effect are part of national law”, and its fourth transitory disposition states that: “Norms relating to the rights and freedoms recognized by the Constitution are interpreted in accordance with the Universal Declaration of Human Rights and with international treaties and agreements on those rights that have been ratified by Peru”⁵.

It must be noted, also, that Peru sponsored the approval of the Declaration of the United Nations (UN) on Indigenous Peoples’ Rights, endorsed by the General Assembly on September 13, 2007.

B. Trade Promotion Agreement between Peru and the United States and Legislative Decrees

Since the start of Alan Garcia’s second administration in 2006, pressure on Amazon Indigenous communities has escalated, especially linked to the rapid increase of land parcelling of Indigenous territories to the petrochemical and mining industries. These land concessions to transnational companies (see map) cover 49 million hectares. They affect 72% of the Peruvian Amazon and are mostly located on Indigenous land. These concessions were granted without notification or prior discussion with Indigenous communities, thus violating ILO Convention No. 169, as well as the Declaration of the United Nations on Indigenous Peoples’ Rights, and the Inter-American Human Rights⁶ Law. Legislative Decrees (LD) issued in order to facilitate the application of the US-Peru Trade Promotion Agreement held on 12 April 2006 between Peru and the United States –generally known as the Free Trade Agreement (FTA)⁷ - are signed under the same circumstances.

By means of Law No. 29157 of 18 December 2007, Congress granted the use of legislative powers to the Executive branch for a period of 180 days, so that, “with the purpose of facilitating the execution of the Trade Promotion Agreement Peru-United States and its Amendment Protocol, and in order to support economic competitiveness for its use” (Art.1), it could legislate, among others, on the following matters (Art. 2):

“a) trade facilitation; b) improvement of the regulatory frame, institutional strengthening and administrative simplification and State modernization; c) improvement of the administration of justice in trade matters and administrative dispute; d) promotion of private investment; (...) g) institutional strengthening of environmental management; h) improvement of competitiveness of farming production”.

In protection of this law, in less than six months, the Executive issued 99 Legislative Decrees.

5. In opposition to the 1979 Constitution, it was indicated in Article 105: “The axioms contained in the legislative treaties on human rights have a constitutional hierarchy. They cannot be modified but for the procedure which administers to the Constitutional reform”. This means that there is a setback in regard to this issue.

6. With regard to this issue, see, especially, the Inter-American Court of Human Rights, Case of the Peoples Saramaka vs. Surinam, Sentence on 28 November 2007: in this sentence, the Court sanctioned the State of Surinam for violation of rights protected in articles 21 (right to property), 25 (right to judicial protection) and 3 (right to juridical personality); the Court considered that the rights to effective participation of the peoples of Saramaka (tribal community) were not respected, since the right to consultation was not afforded and due to the absence of consent from the peoples before mining and wood merchant concessions were given.

7. For more information about the FTA, please see: <http://www.ustr.gov/trade-agreements/free-trade-agreements/peru-tpa/final-text>

Many of these decrees directly affect the rights of indigenous communities in the Amazon region:

(1) Legislative Decree 994 addresses the Promotion of Private Investment in Irrigation Projects for the expansion of the Agricultural Border and endangers communal land that lacks title deeds, of over 1200 rural communities that could benefit the State. The latter, protected by the rule, could concede or sell the land to private investors. The same could happen with other indigenous communities. The Legislative Decree reduces their rights to consultation⁸, land and territory, identity, use of natural resources and development⁹. These rules extend the “wasteland” status in order to concede land to private investment; the package does not contemplate Indigenous territory title deed mechanisms, but it does mention other title deeds; furthermore, protection laws for Indigenous territory rights are suspended.

(2) Legislative Decree 1064 that approves the Legal Regime for the Use of Lands for Agricultural Means: this decree would render ineffective the previous agreement requisite and would have a direct impact on rural landowners. In accordance with Indigenous peoples, this law presents a grave and brutal crush to the right of property for communities and rural landowners, as it benefits private investors. This rule was withdrawn following June 2009 protests.

(3) Legislative Decrees 1081 and 1083 and Law No. 29338: Construction of National System of Water Resources and Promotion of Efficient Use and Preservation of Water Resources: control of water and forests is taken from the communities; there is intention of privatizing water in favour of large groups of economic power (namely, mines).

(4) Legislative Decree 1089: Extraordinary Temporal Regime of Rural Formalization and Deed of Title: a rule which eases the path to expropriation and exploitation of rural property at national level. Promotes individual property on the basis of collective impairment, thus undermining the right to consultation, to land and territory, to identity and the use of natural resources and development¹⁰.

(5) Legislative Decree 1079: Subordinates measures which assure the patrimony of natural, protected areas, for the Trade Promotion Agreement: weakens regulatory framework, provides administrative simplification, diminishes institutional strengthening of environmental management, and grants State modernization only in form and not in depth. This measure provides availability of natural areas, for the purpose of exploiting renewable and non-renewable resources (forest concessions, mines and oil tanks).

(6) Legislative Decree 1090, Forest and Wildlife Law: reduces the definition of forest patrimony excluding from administration around 45 million hectares of land with foresting capacities, that is, 64% of Peruvian forests including the valuable biodiversity that would be granted to transnational property; modified by Law No. 29317, aimed at privatizing forests and promoting change of land use in favour of bio-combustible production. Law later repealed on June 05, 2009.

(7) Legislative Decree 1085: creates a body of supervision of wild forest and fauna resources, as an active public body ascribed by the Presidency of the Council of Ministers, diminishing the right to consultation, to land and territory, to identity and the use of natural resources and development¹¹. This body is destined to determine the convenience, or lack thereof, of forest projects, when these matters should be determined through consultation with the Indigenous communities who would be affected.

(8) Legislative Decrees 1015 y 1073: promote private investment in indigenous people and rural communities' land, and would allow indigenous communities to decide on the sale of

8. For more information on the Duty to Consult, see Special Rapporteur's Report on the situation of human rights and fundamental freedom of Indigenous peoples, James Anaya, A/HRC/12/34, 15 July 2009.

9. See Amazon Center of Anthropology and Practical Application (CAAAP), Legislative Decrees that diminish the rights of Indigenous Peoples: Implementation of ILO's Expert Commission' recommendations, on the compliance of Agreement 169 in Peru, April 2009, [http://www.caaap.org.pe/archivos/Situaci%F3n_actual_de_los_D.L_que_vulneran_los_derechos_de_los_pp.II_\(abril,_2009\).pdf](http://www.caaap.org.pe/archivos/Situaci%F3n_actual_de_los_D.L_que_vulneran_los_derechos_de_los_pp.II_(abril,_2009).pdf) (only available in Spanish)

10. Ibid.

11. Ver CAAAP, prec.

their properties with a vote of 50% plus one, instead of demanding the agreement from the community's general assembly (two thirds in the Forest and Sierra)¹².

The Constitutionality of this entire legislative process has been questioned by numerous observers. The CAAAP (Centro Amazónico de Antropología y Aplicación Práctica – Amazon Centre of Anthropological and Practical Application) indicated that Legislative Decrees 994, 1081, 1015, 1064, 1079, 1089, 1090, 1085 are unconstitutional, since they violate the right to consultation of Indigenous peoples, as well as additional inherent rights¹³.

Many Legislative Decrees have been questioned for opposing the Constitution, and disrespecting binding agreements, such as ILO Convention No. 169 and the UN's Declaration on Indigenous People's Rights.

Trade Cooperation Agreement between Peru and the United States.

On December 07, 2005, Peru and the United States signed, a Trade Cooperation Agreement, generally known as the Free Trade Agreement. In addition to market access, the FTA deals with other trade related issues such as intellectual property, investments, trade competition policies, financial services, telecommunication, etc. The FTA was ratified by Peru in April 2006, but it was ratified by the North American Congress, due to various objections from Democrat members of the Congress, who had regained control of the two houses of the North American Congress towards the end of 2006. A Protocol of Amendment revisiting the Agreement was signed on 10 May 2007, which introduced some changes in the chapters concerning employment, environment and health related issues, among other matters. The TLC entered into force on February 01, 2009.

The preamble of the Agreement affirms that the Parties are resolved to “CREATE new employment opportunities and improve labor conditions and living standards in their respective territories”, “IMPLEMENT this Agreement in a manner consistent with environmental protection and conservation, promote sustainable development, and strengthen their cooperation on environmental matters” and “PRESERVE their ability to safeguard the public welfare”.

The FTA includes a whole chapter on the environment and its protection. Chapter 18 of the FTA states the following : “Recognizing the sovereign right of each Party to establish its own levels of domestic environmental protection and environmental development priorities, and to adopt or modify accordingly its environmental laws and policies, each Party shall strive to ensure that those laws and policies provide for and encourage high levels of environmental protection and shall strive to continue to improve its respective levels of environmental protection”. (Article 18.1: Levels of Protection)

In article 18.3, “The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in their respective environmental laws. Accordingly, a Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws in a manner affecting trade or investment between the Parties”.

This chapter also protects rights to access to justice and reparation, and provides for sanctions in case of a violation of environmental regulations.

12. On the basis of these Decrees, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), exhorted the Peruvian government to consult Indigenous peoples, in observation on Peru's fulfillment of ILO Convention No.169, published in February 2009 (see Observation, CEACR 2008/79a assembly, <http://webfusion.ilo.org/public/db/standards/rules/appl/appl-displaycomment.cfm?hdroff=1&ctry=0490&year=2008&type=O&conv=C169&lang=EN>)

13. See CAAAP, prec.

Additionally, the parties shall recognize the importance “of the conservation and sustainable use of biological diversity and their role in achieving sustainable development” (§1); “of respecting and preserving traditional knowledge and practices of indigenous and other communities that contribute to the conservation and sustainable use of biological diversity” (§3) ; and “of public participation and consultation, as provided by domestic law, on matters concerning the conservation and sustainable use of biological diversity” (§4).

However, it is of great concern that consultation of communities, despite its mandatory status under the ILO Convention 169 to which Peru is a Party and which is recognized as part of domestic law under article 55 of the Constitution - is not acknowledged as obligatory but only “recognized” as important, and that Indigenous peoples are referred to only in chapters concerning the environment, and not in those concerning investment. It must be born in mind that many areas with the potential for investment in Peru, are located in ancestral territories of Indigenous people (mining, forests, oil , tourism, etc.).

The Trade agreement also includes a specific chapter on Labour rights (Chapter 17) which reaffirms the obligations of the parties as members of the International Labour Organisation, and their commitments to respect the 1998 ILO Declaration on Fundamental Principles and Rights at Work.

However, it is worth noting that all obligations in the chapters on labour and the environment are subject to the same dispute settlement procedures and enforcement mechanisms as commercial obligations.. Nonetheless, the latter cannot under any circumstance exclude the possibility of introducing a complaint before human rights mechanisms, including, in particular, those of the Inter-American system.

The FTA extensively favours foreign investment and trade. With regard to agriculture, more than 2/3 of current US farm exports to Peru will become duty-free immediately. Tariffs on most remaining US farm products will be phased out within 15 years, and the rest within 17 year. The FTA is criticized for its lack of sufficient protective mechanisms for independent Peruvian farmers and for allowing agricultural “dumping” in the Peruvian market. Small Peruvian agricultural organizations have shown concern for the consequences of trade liberation and have protested against the FTA.

With regard to Intellectual property (Chapter 16), the FTA grants extensive protection to patent holders and requires establishment of procedures and remedies to prevent the marketing of pharmaceutical products that infringe on patents. However the parties expressed their understanding that the intellectual property chapter does not and should not prevent the parties from taking measures to protect public health by promoting access to medicines for all, in accordance in particular with 2001 Doha Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2) (article 10.6). Nevertheless it should be noted that the flexibility introduced by the Doha Agreement and following the 30 August 2003 decision on compulsory licences have proven to be extremely complex and difficult to use by States¹⁴.

The commercial agreement constitutes, also, an important incentive to attract foreign investment. Chapter 10 (investment) of the the FTA provides for different measures aimed at promoting and facilitating investment.

Peru has agreed to exceed its commitments made in the WTO and to dismantle significant services and investment barriers, such as measures that require US firms to hire

14. See Médecins sans frontières, *An unsolved problem: the August 30th Decision*, available at: <http://www.msfaccess.org/main/access-patents>

nationals rather than US professionals and measures requiring the purchase of local goods. Investors will benefit from greater protection under the FTA. US investors will enjoy in almost all circumstances the right to establish, acquire, and operate investments in Peru on an equal footing with local investors. The agreement also provides investors due process protections and the right to receive a fair market value for property in the event of an expropriation. However, Article 10.7 states that an exception to the prohibition of expropriation or nationalization includes “public purpose” referring to a concept in customary international law. Domestic law may express this or a similar concept using different terms, such as “public necessity,” “public interest,” or “public use”.

Chapter 10 of the Agreement states that it “shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures: (i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement ; (ii) necessary to protect human, animal, or plant life or health, or ; or (iii) related to the conservation of living or non-living exhaustible natural resources” (Article 10.9: Performance Requirements 3. c).

Chapter 10 predicts, moreover, that “in the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency” (Article 10.2: Relation to Other Chapters, 1), which should include, in particular, chapter 18 which concerns the environment.

Chapter 10 (part B) also informs that disputes should be brought before the ICSID (International Centre for Settlements of Investment Disputes). Despite the FTA anticipating a certain transparency of the arbitration procedures (it wishes, among others, for hearings to be public and anticipates the introduction of *amicus curiae*), it is worth stressing that the arbitration procedures of the ICSID, between private investors and States, are known both for conceding a higher level of protection to investors and for being reluctant to applying international human rights law.

To conclude, it is worth noting that the LDs questioned by Indigenous peoples, are not directly linked with what is formally documented in the FTA; that is to say, they reach beyond that. They deal with matters such as private property and natural resources, and by this means, the LDs facilitate the investments that FTA is involved with.

Generally, and especially following May 2007 re-negotiations that took place in the US, triggered by high public pressure and which lead to the inclusion of improved protection on access to medicine, environment, and labour rights, the FTA has security mechanisms that could allow the Peruvian State to maintain their obligations vis-à-vis the FTA, as well as their international human rights obligations. Nevertheless considering the wide scope of the trade agreement and its possible impacts on many sectors in Peru, FIDH considers that Parties to the Agreement should undertake human rights impact assessments¹⁵. Ideally such human rights impact assessments should take place prior and during the implementation of the trade agreement. However, in the current circumstances, it would be useful to conduct such human rights impacts assessments during the implementation phase of the present agreement.

15. Ver FIDH Position Paper, *Human Rights Impact Assessment of Trade and Investment Agreements concluded by the European Union*, February 2008. www.fidh.org

IV. Violation of the right to consultation of the indigenous people and conflict

A. The roots of the conflict

Indigenous communities have been mobilized in Peru for a few years as their concern about threats to their lands and harmful effects of oiling and mining activities in their territories raised.

According to reports from several NGOs and other environmental entities, such as “Red Ambiental Loreana”, ecosystem damages produced by oil exploitation in the past decades, have become alarming. In the nineties, for instance, the indigenous community of Kandoshi has been poisoned as a result of alleged waste in the Tigre river, according to survivors and witnesses. Some journalists denounced as well a mass contagion of Hepatitis B in oil extraction zones. Additionally, there are local conflicts that could generate serious confrontations (occupation of Puerto Maldonado in 2001 and 2008; taking of oil facilities along the Corrientes river on November 2006 and March 2008, among others), and to which the State should pay special attention.

The Indigenous organizations gathered in the Interethnic Development Association of the Peruvian Forest (AIDSESP)¹⁶ -which represents 1,350 indigenous communities, inhabited by 350,000 Indigenous Women and Men grouped into 57 federations and territorial organizations- carried out a strategy of permanent exchange with other organizations involved in the defence of natural resources, and encouraged a tripartite dialogue with companies and the government. This dialogue did not prove to be productive so it increased the indigenous peoples’ lack of confidence in State neutrality, as it resulted obvious to them the authorities had no serious intention of taking the respect for their rights into consideration.

As mentioned above, previously acquired constitutional and legal protections were diminished (under the Fujimori Constitution of 1993), and communities were deprived of their forests (which were eventually handed in use and non as property¹⁷). As for mining and oil exploitation, they were cause for serious confrontation in many Amazon districts. All this explains the growing reject of mining and oiling exploitation activities. Andean communities began to follow this movement, which quickly became the main worrying issue in the Amazon and Andean region.

In 2003 – 2007, a territorial agreement was signed in the Cenepa river (Amazon Region) between the INRENA and environmental organisations, so that part of the sacred territory of Ichigkat Muja turned into a National Park, in order to preserve this area of extreme environmental vulnerability. However, it has been raltered in 2008 by the INRENA, which changed its report, and excluded from the Park a large area of the region, in order to allow the entrance of mining companies. This issue deeply disturbed the region.

Within this context, the Legislative Decrees, aimed at allowing the implementation of the FTA and other institutions previously mentioned, is interpreted by the Indigenous communities as part of a strategy to displace them and prejudice their rights, in favour

16. The movement took place in the Peruvian Amazon in the early 1970s, and it was at the start of the 80s that the three Indigenous peoples at the centre of the movement founded the Inter-ethnic Association of Peruvian Forest Development (AIDSESP). For further information, see <http://www.aidesepp.org.pe/>

17. This issue appeared with the Law-Decree 22175, spread through the government by the military administration of Morales Bermúdez in 1978, as a result of tension caused by the economic power groups.

of other economic actors such as “colonos”¹⁸, or investors. In this regard, the Indigenous peoples accuse the government of exchanging the biodiversity market in Peru with a subscription to the FTA. In other words, at a point in which the full consolidation of Indigenous rights seemed to be reached, thanks to the ILO Convention No. 169 and the United Nations Declaration, the protection of their rights in Peru has been diminished to the point of regressing to conditions preceding 1974.

B. The beginning of the protest

Indigenous peoples report that the Peruvian government failed to fulfil ILO Convention No. 169 when it dictated rules which affect their conditions of existence without their previous consent and participation. Indeed, the ILO Convention No. 169 obliges governments to consult the Indigenous peoples concerned, “whenever consideration is being given to legislative or administrative measures which may affect them directly” (Art. 6), and before undertaking exploration or exploitation of the resources pertaining to their lands (Art. 15).

On August 09, 2008, Amazon Indigenous communities, led by the AIDSESEP, initiated the first national protest, demanding to withdraw the Legislative Decrees 1015 and 1073 which facilitated sale procedures and individualization of land ownership, which were indicated as being harmful for the Indigenous communities. The Office of the Ombudsman initiated a process of unconstitutionality of the contested decrees. After one day of protest, on 20 August, the Congress approved the report which suggested abolishing both rules on 22 August.

The protest was suspended after the President of the Republic’s commitment to initiate an evaluation of other decrees questioned by the AIDSESEP. In order to achieve this, the Special Multiparty Commission was declared responsible for evaluating the whole issue of indigenous communities, whose report, presented on 13 December, concluded by recommending to repeal 7 Legislative Decrees (994, 1064, 1020¹⁹, 1081, 1083, 1089 y 1090), which were being questioned for undermining article 55 of the Constitution, which dictates that “the treaties agreed on by the State and in application are part of national laws”. Also, the fourth and final transitory disposition indicates that “rules regarding rights and freedom recognized by the Constitution shall be interpreted in accordance with the Universal Human Rights Declaration and with international treaties and agreements regarding these matters ratified by Peru”. Also stressed was the abusive use of delegation of functions given by the Congress, when this power was used to issue general rules whose content was not necessarily within reach of the FTA, but which generally affects all activities and sectors. This report was presented and approved by the Congress on May 22, 2009, but the Congress did not accept to abide by the recommendation soliciting the withdrawal of aforementioned Legislative Decrees.

In February 2009, the ILO Committee of CEACR (Committee of Experts on the Application of Conventions and Recommendations) sanctioned an observation of the Peruvian State concerning the implementation of Indigenous and Tribal Peoples Convention No. 169²⁰. The CEACR found serious failures in the Peruvian State concerning Indigenous

18. Term used in Peru to refer to people that move from the Mountain range or Coast to Amazon areas. In the past there have been colonization campaigns activated by the government, and since the 1070s, internal migration towards Amazon areas is of individual impulse, mostly motivated by forest and agriculture activities.

19. This Decree has not been questioned by Amazon communities.

20. Observation, CEACR 2008/79a conference, <http://webfusion.ilo.org/public/db/standards/rules/appl/appl-displaycomment.cfm?hdroff=1&ctry=0490&year=2008&type=O&conv=C169&lang=EN>

peoples' consultation on legislation that may affect them on the one hand, and on the other, concerning their right to participate and be consulted on decisions regarding the use of natural resources in their traditional territories.

Regarding consultation and legislation (articles 6 and 17 of Convention No. 169), ***“The Committee urges the Government to take steps, without further delay, with the participation of the indigenous peoples, to establish appropriate consultation and participation mechanisms and to consult the indigenous peoples before the adoption of the measures referred to in Articles 6 and 17(2) of the Convention, and to provide information in this respect”.***

Regarding the information according to which two projects of law (draft Acts Nos 690 and 840) are being examined by Congress, relating to the promotion of private investment in the lands of Amazon indigenous peoples, without their consultation, ***“The Committee requests the Government to ensure that consultations are held with regard to these projects and to supply information on the consultations held”.***

Regarding participation, consultation and natural resources (articles 2, 6, 7, 15 and 33 Convention No. 169), the Committee indicated the following:

“Articles 2, 6, 7, 15 and 33. Participation, consultation and natural resources. The communications refer in detail to numerous serious situations of conflict connected with a dramatic increase in the exploitation of natural resources, without participation or consultation, on lands traditionally occupied by indigenous peoples. Mining accounted for less than 3 million hectares in 1992 but increased to 22 million hectares in 2000, and 3,326 out of 5,818 communities recognized in Peru were affected. (...) With regard to the 75 million hectares of oil and gas deposits in Peruvian Amazonia, more than 75 per cent are covered by oil and gas sites imposed on indigenous lands”.

The Committee's conclusion to the report was the following:

“The Committee notes from the Government's report that the Government has made some effort with regard to consultation and participation; however, it is concerned that from the communications, drawn up with full participation of the indigenous peoples, and the report from the Office of the People's Ombudsperson that these efforts appear to be isolated and sporadic and at times not in line with the Convention (for example, information meetings being held rather than consultations). There is a lack of participation and consultation for tackling the numerous disputes connected with the exploitation of resources in lands traditionally occupied by indigenous peoples. The Committee expresses its concern regarding the communications received and the lack of comments on them from the Government. ***The Committee urges the Government to adopt the necessary measures, with the participation and consultation of the indigenous peoples, to ensure (1) the participation and consultation of the indigenous peoples in a coordinated and systematic manner in the light of Articles 2, 6, 7, 15 and 33 of the Convention; (2) the identification of urgent situations connected with the exploitation of natural resources which endanger the persons, institutions, property, work, culture and environment of the peoples concerned and the prompt application of special measures necessary to safeguard them. The Committee requests the Government to supply information in this respect, together with its comments on the communications received”.***

[The Government is asked to reply in detail to the present comments in 2009.]

Resistance from Indigenous communities of the Peruvian Amazon is led by the AIDSESEP, which demands a constitutional reform to reinstate the inalienable, non-seizable, imprescriptible nature of their land. In addition, Indigenous communities demand recognition of collective land ownership of their territories, immediate land title deeds of territories within Natural Protected Areas, and the extension of the Muja National Park borders to cover Awajún peoples' ancestral land, an Indigenous community which has been excluded in order to benefit mining companies (amongst them, Canadian funded firm, Dorado) and hydrocarbon companies.

Furthermore, the government is urged to withdraw Legislative Decrees which, as part of the implementation of the Free Trade Agreement with the United States, directly affect Indigenous communities as they impact upon Indigenous territorial rights, intellectual property of collective knowledge, and jeopardize Amazon biodiversity.

It is worth stressing that, contrary to what might have been confirmed by the current government administration, AIDSESEP, as well as other Indigenous organizations, do not reject all commercial activities or development as such, but instead wish for a form of development that is respectful of nature and of their rights. AIDSESEP's position is very clear: "We do not promote anachronistic millenarianism doctrines; we are a modern organization that defend our identity, acknowledging its strengths and confronting its weaknesses. Thus, we seek to democratically establish ourselves as active subjects in the change and thus be a testimony to the kind of change that we want to see in the world"²¹.

One of many Peruvian Indigenous organizations has recently published the following statement:

Unitarian Coastal Amazon Andean Platform, "Movimiento Cumbre de los Pueblos", summoned in Pasco, 13 April 2009, demands, among other issues:

- To Repeal the US-Peru FTA legislative package and the 11 Legislative Decrees that criminalize social protest (currently 9, since, up to date, Legislative Decrees 105 and 1073 have been repealed).*
- Respect for peasants and indigenous communities: territories, water, forests, biodiversity and natural resources, protected by the UN and ILO and the Political Constitution of Peru.*
- To hold back criminalization of the exercise of rights: amnesty for over one thousand community members, who were arrested while defending their peoples.*
- To call a Constitutional Assembly to produce a new Magna Carta of community-based Multinational States.*

21. See AIDSESEP webpage: <http://www.aidesepe.org.pe/index.php?id=2>

Chronology

2008

August 9. First National day of social protest of Amazon Indigenous peoples.

August 18. The Government declares State of Emergency in the province of Bagua, Utcubamba of the Amazon Region, Datem del Marañón of the Loreto department and the district of Echarate of La Convención province, department of Cusco, to keep order during Indigenous protests. The government sends Armed Forces and National Police officials, including officials from the DINOES (Dirección Nacional de Operaciones Especiales - National Direction of Special Operations), which do not speak or understand Indigenous languages, which obstructs the possibility of communication with protesting individuals.

August 20. Day of social protest. Afternoon confrontation in the city of Bagua, which caused wounded people and arrests.

August 21. Minister of Agriculture, Mr. Benavides, charges NGOs with the title of “vultures of the XXI century” and accuses NGOs of wishing to maintain the level of poverty amongst Indigenous communities in order to receive “more foreign funding”. Also disqualifies Víctor Andrés García Belaunde, congressman of “Alianza Parlamentaria”, who had criticized the “Law of the Jungle”.

August 22. Peruvian Congress Assembly approves abolition of Legislative Decrees 1015 and 1073.

2009

April 9. Second national protest of Amazon Indigenous peoples mainly with peaceful occupation of roads and waterways. Continuous road blockage begins (sporadically lifted in order to allow flow of foods supplies and such) which lasted until 5 June, day in which Armed Forces and Peruvian Police officials carried out road clearance.

May 9. Government establishes State of Emergency and suspends constitutional rights related to the right of peaceful assembly and transit and respect of inviolability of private homes in nine Amazon jurisdictions. Districts included are Echarate, and Kimbiri, in the province of La Convencion, in Cusco; Sepahua, in the province of Atalaya, in Ucayali; Napo, in the province of Mayba, in Loreto; Andoas, Pastaza, Morona and Manseriche, in the province of Datem del Marañón, Loreto, and lastly, the district of Imaza, in the province of Bagua, Amazon.

May 14. All dialogue attempts with Amazon communities are closed.

May 15. AIDSESEP contacts the government and dialogue is resumed between the government and AIDSESEP as of May 20.

May 18. AIDSESEP receives a notification of arrest for Alberto Pizango Chota, president of the organization, reporting him for allegedly committing the offenses of “rebellion, conspiracy for possible rebellion, sedition or mutiny” and against the tranquility and public peace, public offense to the detriment of the Peruvian State. Another five Amazon peoples’ leaders are notified of the same offenses.

May 18. Executive authorizes Army intervention in various Amazon districts to “contribute and assure a smooth performance of essential public services, and to guard vital points for the continuation of rural activities of the population”.

May 22. Congress approval of Special Multiparty Report recommending to repeal the Legislative Decrees 994, 1064, 1081, 1090 and 1083 but without addressing recommendations to annul these Decrees.

June 4. New blockage in the Congress of LD examination 1090 and 1064 pointing to their withdrawal. Assembly of General Víctor Uribe on command of local Police, of Monsignor Santiago García de la Rasilla, bishop of Jaen, and Indigenous leaders: Police announce next road clearance, Indigenous leaders request a period of truce to withdraw.

C. Acts of violence and violation of human rights

1. The day prior to confrontation (June 04)

Despite strong pressure from citizens for the Congress to debate the withdrawal of LD 1090 and 1064, the “Bancada Aprista” decided to suspend, a third time, the reconsideration of the Decree. Following the debate’s adjournment, Indigenous communities that had assembled in Bagua, consider the possibility of retracting into their communities and in order to prevent the entrance of any governmental authority.

That evening, General Víctor Uribe, in charge of local Police, bishop Monsignor Santiago García de la Rasilla, and Indigenous leaders, conduct a meeting. For several weeks, three thousand Awajún and Wampis peoples were keeping the ‘Fernando Belaúnde’ road blocked in the areas between the village settlements “Siempre Viva” and “El Reposo”, with the support of the local “mestiza” or mixed population.

Leader Leoncio Calla of the Yutu (Condorcanqui) community, explained that they had organized a peaceful protest:

“For them to listen and withdraw the unconstitutional law package, which acts against biodiversity, wild fauna, and water use; they believed we are ignorant. This is why we have come out on the road”.

The General informed Indigenous peoples that he had received a mandate to unblock the road, and that if they did not comply, he would render the order effective the following morning. Salomón Awanash, president of the Regional Strife Committee, claims that he asked General Uribe to grant them a period of truce to withdraw until 10 a.m. of the following morning, but when the Indigenous peoples were getting ready to return to their villages, the attack on the Curva del Diablo took place.

ENFRENTAMIENTO EN
LA CURVA DEL DIABLO

2. The days of confrontation (June 05 and 06)

a) The operation in Curva del Diablo

On June 05, road Fernando Belaúnde Terry was cleared by the Police, on the stretch commonly referred to as Curva del Diablo. The actions began at 5.30 a.m. when a contingent of the DINOES (Dirección Nacional de Operaciones Especiales - National Direction of Special Operations) attempted to catch the indigenous people by surprise, triggering a confrontation in which indigenous peoples would disarm Police officers of their firearms. Shortly thereafter, at 7:30 a.m., a larger contingent of DINOES officials, with the support of helicopters, launched teargas bombs, small and large bullets, to urge hundreds of indigenous peoples on the road to scatter. According to many witnesses, the dispersion avoided many deaths in spite of the seriousness of this aerial attack.



SOBREVUELO DE HELICOPTEROS
DEL EJÉRCITO Y GAS
LACRIMÓGENO



N. Padilla, an indigenous people of Motupis, district of Puerto Galilea, part of the Wampis ethnic group, shares what he

saw at Curva del Diablo, near the Siempre Viva village, as he was in a lookout position. He tells that, on the small hill surrounding the edge of the road, there were two lookout positions, with ten people each. They would swap every three hours with groups from the five different basin communities that were present at this point, from rivers Santiago, Marañón, Nieva, Cenepa and Chiriaco.

Padilla was on guard in the morning of June 05 when, at around 4 a.m., he saw, to his surprise, a group of armed policemen approaching. It was a contingent of over 600 DINOES officers. A group of officials walked up to the small hill, and the vigilantes alerted people on the road.

“The policemen were insulting us and threatening to shed blood if we did not leave. They started to throw teargas bombs, and we threw rocks back. About 500 brothers came up and we managed to surround them because they were less. The shoot-out began at 5.30. We only had spears and we asked them not to shoot, but they were aiming at our bodies. When we started to leave, the helicopter arrived and began to sweep from the Curva del Diablo up to the Reposo. I hid away in a ditch and could see what they were flying. A helicopter landed three times on the roadside hills.

TRANSFER OF
INDIGENOUS PEOPLE
INJURED DURING THE
CONFRONTATION ON 5
JUNE

I saw quite a lot of dead brothers, around 20; there were also women and some 14 year old school pupils that I knew. When officers would find wounded people on the road, they would finish them off with AKM guns. Some of them were burnt one by one”.



After around three hours of confrontation, local indigenous peoples rescued four bodies belonging to Indigenous peoples; all presented chest and back bullet wounds, and one of them had burns on his stomach. The Police denied access to the office of the Ombudsman, to the Church and the press, to the upper part of the hill where confrontation had begun. A helicopter landed three times on the hill location, as if collecting something (some versions assure that they were collecting Indigenous bodies to throw them into the river).

Concerning this scenario, a Wawás indigenous people claims:

“Our group had decided to return to our community on the following Friday. We woke up according to that plan, but did not know what was to happen. When this tragedy began we were busy making something to eat. We saw that the police were coming up the hill and throwing teargas bombs. My friends asked for reinforcement, so I went up to help them. We had no weapons, only spears and rocks, and were trying to stop them. Soon after I saw my friends falling and I asked, ‘Why?’

A friend who was beside me also fell; I held him, he was covered with blood, killed by bullets. I was there watching my friends fall, it was sad, I even started to cry. I stopped and turned around, and at that moment I saw four of my friends lying dead. I suddenly realized I was on the ground and lost consciousness. When a friend was carrying me down the hill, I saw the helicopters throwing teargas bombs and shooting people. I saw how they were chasing and killing people. My friends would run, and the helicopter would chase them and shoot at them”.

A leader of the Yutupi community, of Río Santiago recalls:

“We never, under any circumstance, wished for confrontation. We did not want to

be shot and killed, nor to see our brothers, enraged by the attack, perform such excess of violence as is now being shown on television, and portraying us as savages.

When policemen wanted to evict us by shooting at us, two brothers fell. That is when brother Santiago Manuin (established leader of Indigenous peoples Alto Marañón), stood up and went with his hands in the air to ask them to stop the shooting, to say that this was a peaceful protest. They answered by shooting eight bullets into him, and that triggered everything.

I was walking up when I saw that my brothers were running further up, because the Police were surrounding the edges of the hill belonging to the “Siempre Viva” community. They were attacking from the sides. When more brothers were getting killed, everybody became enraged and all control was lost; it was kill or be killed. It was like a war, a massacre amongst Peruvians, which is something we never wanted.

The helicopters appeared at around 6:15 a.m. They would throw teargas bombs, we would run and the police would shoot at the waist. Later on, when locals and citizens from Bagua and Bagua Grande began to arrive, they stopped the shooting.

I saw tens of Indigenous people dead. There is no exact number, but the four persons identified are from the road. We demand for the police to return the corpses from the hill to us so that we can take them to our communities and bury them. Where are our dead? Tell us, Secretary Cabanillas, Why did you order for us to be shot?”

Sekut Díaz, an Awuaruna woman of 36, was also present at the Curva del Diablo confrontation. With pain clearly exhibited on her face, and trying to shake the fear off, she reports that she saw the Police finish off the dead that had been left behind because nobody could help them escape:

“We are very frightened to speak and tell the truth of what happened because after that comes retaliation. But somebody has to speak, because if no one makes its voice heard, the truth will never come out. We were attacked without compassion, as if we were the worst of enemies. I was hidden near the road and from there I saw the Police killing some brothers who were lying wounded. They shot them as they lay on the ground. I also saw how they burnt another brother. I watched his body burn; he was moving his arms and legs”.

Rafael Aquintish Bocato de Chiriaco points out that while the attack on the hill was going on, a tank was on the road from “Siempre Viva”, and in the air, helicopters were flying around. He did not know which way to escape.

“They took us back to the side of river Marañón. The helicopter flew for about an hour shooting at us, scattering us, and also burning many houses. Many wounded and also some dead were being carried down, but they could not be taken through the shoot-out on the road”.

“I started to walk down towards river Marañón , but two helicopters were gassing people who were trying to escape” ,

TRAGIC SCENE AFTER
THE CONFRONTATIONS



DETAINEE FROM THE AGUARUNA
INDIGENOUS COMMUNITY

explains a member of the Wachaplá community, *'I hid away with my wife and son in a forest near the river. A group that come down to the bank could not escape because the helicopter was shooting at them. I saw around 25 dead on the hill as well as on the road on the Marañón river bank.*

The advance of Police members through gunshots continued throughout the morning, along the “Fernando Belaúnde Terry” road, frightening and scattering Indigenous peoples who were retreating in the direction of ‘Reposo’. Throughout the confrontation, 12 policemen were killed by indigenous people.

According to the Office of the Ombudsman²², indigenous people dead on Curva del Diablo were, Romel Tenazoa Sánchez, David Jaucito Mashigkash, Gerardo Samecash Chamik, Jesús Carlos Timías (Awajún), as well as Florencio Pintado Castro (Cajamarca Quechua peasant). However, when the Mission paid its visit, none of the people here interviewed believed so few people had died.

On the list of deceased policemen are: Adán Higinio Dezar, Jorge Luis Calla, José Antonio Villela, Johnny Salcedo Meza, Francisco Martínez Tinoco, Néstor Núñez Choque, Melciades Díaz Villegas, Javier Campos Marín, José García Guzmán, Johnny Sánchez Cifuentes, Julio César Valera, William Niebles Cahuana and Raúl Mayhuasca Villaverde.

Reporters from different press and media attested that cadavers of indigenous people remained exposed to the elements, and that Police and Military forces were preventing the families from claiming the victims. One of the difficulties for specifying the exact number of victims is the fact that Armed and Police forces continued to shoot at all

BURNT VEHICLE



costs and prevented the collection of bodies from the scene. Local sources inform us of rumors concerning public forces officials. They say that they would have carried Indigenous bodies into barracks in “El Milagro”, in “Siempre Viva”, in order to burn them and disappear them. But neither the Ombudsman, nor this mission, could find clues on this matter.

b) Violence in urban areas: Bagua and Bagua Grande

When the events of Curva del Diablo became known, on the same June 05, social organizations from the cities of Bagua and Bagua Grande and Jaén, gathered in the city squares to manifest their anger about what

was happening. In Bagua and Bagua Grande, citizens set fire to departments related to the Judicial apparatus, the Subprefecture, the PRONAA (Programa Nacional de Asistencia Alimentaria - National Food Assisted Program), as well as government domains.

22. See office of the Ombudsman, Report n° 006-2009-DP/ADHPD, Humanitarian Acts performed by the Ombudsman with occasion of the events of 5 June 2009, in the provinces of Utcubamba and Bagua, Amazon region, in the context of Amazon Protest, Lima – Peru2009, <http://www.defensoria.gob.pe/modules/Downloads/informes/varios/2009/informe-adjuntia-006-2009-DP-DHPD.pdf>

Police acted as an occupational force, including snipers in their crew, who would shoot at civilians from the rooftops. On that day, Colonel Porfirio Jiménez and Alejandro Salazar Huamán, were killed in Bagua Grande, and Jorge Ángel Pozo Chipana, Abel Ticlla Sánchez and Felipe Sabio César Sánchez in Bagua.

The families of the two deceased in Bagua Grande claim that neither of the victims were involved in the protest. They also state that Mr. Coronel received several shots at point-blank range. It must be pointed out that over 100 people were wounded in both cities through Police intervention, amongst them, seven year old girl Leidy Luz.

POLICE SNIPERS IN BAGUA

While escaping the Curva del Diablo, indigenous peoples arrived at Bagua. There, “Mestizos” also joined the protest when they heard of the repression. Salomón Awananch, Apu (leader) of the community of Nazareth (province of Utcubamba) said:

“I saw a woman and a young girl in Bagua who had been shot. I don’t know what happened to them after. I also saw two dead: a fat “Mestizo” who had been shot in the chest and an Awajún brother (awuaruna), Felipe Sabio, whom the Police shot from a rooftop. The brother fell because he was shot in the leg and when he was down the snipers finished him off”.



The rights to information and freedom of speech have been violated through the harassment and censorship of the press and independent media. On June 12, the government cancelled the license of radio “La Voz”, of Utcubamba, which transmitted what had taken place in Bagua on Friday 5 of the same month. This station had been accused by several congressmen of the “bancada aprista” and by Secretary Cabanillas, of supporting violence. The radio station’s director, Carlos Flores, says that the alleged sin that his station committed was to broadcast the events of La Curva del Diablo.

c) Station No. 6 of Imazita

In the afternoon of June 05, 2009, the death of Johan Orlando Ordinola Ruiz, Rely Delgado Sánchez, Luis Miranda Vásquez, José Rosario Huamán Tume, Ronald Gerardo Elera Yanac, Germán Farroñán Morante, Michel Meza Gonzales, Marco Einsein Huanci Ramírez and Enrique Grei Castro Córdova, was announced. These police officers were withheld by indigenous peoples at Bombeo station (part of the Northern Peruvian pipeline), Imatiza, in the Amazon Region . Official Miguel Montenegro Castillo was found dead in the vicinity of the station, two days later. They were part of a crew of 38 -37 policemen and one high ranking official of PetroPerú– who had been chosen to guard Oil Station No. 6. Since April 26, 2009, Indigenous peoples had agreed a “non violence, non aggression” pact with the Police, so long as extraction on the station was stopped. They were even allowed to change shifts and even shared meals. There are several contradictory versions on the events that took place at this station. The official version –questioned by Indigenous witnesses and NGOs- claims that the unarmed policemen had been taken hostage by Indigenous individuals who had occupied the station, and that they proceeded to assassinate

the hostages in cold blood when they found out about the killings of Curva del Diablo.

Seemingly, in the afternoon of June 05, the Indigenous people received a message from Bagua: “They have betrayed us, they are killing all of us”, and at least some of them, driven by pain and rage, killed 10 of the withheld policemen, and seriously wounded another six. Eight people are being prosecuted for these homicides. Contrary to what is happening with the Curva del Diablo incidents, where multiple testimonies have been collected, while from Station No. 6, there is only one official version.

Salomón Awanash adds:

“We feel neglected, indignant after having lost so many lives of our Indigenous and Police brothers that have nothing to do with us. It is not their fault; the central government gave them the orders”.

In total, on June 05, there were 33 deaths, according to official numbers: 23 policemen and 10 civilians (5 Baguan villagers and 5 Indigenous peoples) and one policeman is still missing. 200 people were wounded. Amongst them, 82 had shotgun wound²³.

3. Curfew and subsequent days

On June 06, the government announced the curfew was effective from 3 p.m. to 6 a.m., prohibiting free transit of civilians, and filling State of Emergency areas with Police and Militia. The curfew was reduced (from 6 p.m.) on Monday June 08, and it was stopped on June 18. On following days the police was searching for people with Indigenous features, in order to capture them, according to witnesses. Rural and Urban population were terrified by the constant flight of helicopters in the area.

BURNT AREAS
AFTER THE
CONFRONTATIONS



According to the testimonies we have received, the area of the incidents was cordoned off by the Armed Forces and National Police, prohibiting access to the Office of the Prosecutor, the Office of the Ombudsman and any other civil authority or civilian, until June 10. The state of emergency calling curfew also hindered significantly the search for bodies and missing people. Civilians and Indigenous peoples of the area insist that those days were used to clear up all evidence of deaths and that an indefinite number of deaths have been covered up. On Curva del Diablo, 10 meters above the highway, anybody could confirm that on a hill with little vegetation there is approximately 1 square meter of visibly burnt ground.

The next day, 06 June, Vice-president of the FERIAAM (Federación Regional Indígena Awajún del Alto Mayo - Awajún Regional Indigenous Federation of Alto Mayo) Abel Tsajupat, indicated to the Press that:

“The government wants to hide the bodies of the dead, as well as evidence of their killings. They do not let in the Prosecutor, or doctors of the Health Ministry, or ESSALUD. The army and police have killed many brothers, both Awajún and Wampis. Numbers allegedly reach 70 deaths. No cars can go through because there are dead bodies and injured people along the road and hill, especially on the La Victoria hill. On Curva del Diablo there are many bodies. The whole city of Bagua is surrounded by military force and people are getting shot at from rooftops”.

23. See Ombudsman report, Ibid.

Doctors managed to rescue some of the Indigenous detained that had been seriously wounded, and took them to the Jaén hospital. Around 200 wounded – including 12 minors- were taken to local hospitals and to Chiclayo hospital. Policemen were taken to the Police Hospital in Lima. According to Ombudsman data, on 12 June, 150 Indigenous people had been released from hospital. However, some of them preferred to be sent to their communities to treat their own injuries, for fear of being arrested.

Originally, 185 people were arrested during the operation in Bagua and Utcubamba . On the day of FIDH’s visit, a group of 18 people²⁴ were hastily transferred to the prison of Chachapoyas, a distant and almost completely isolated city. This cuts them off from lawyers, interpreters and family members. Human rights lawyers also informed us that, as will be discussed below, detainees have been subject to various forms of physical and psychological abuse. A total of 84 people is being processed, charged with homicide, grave injuries, and public transport attack, among other charges.

A paradoxical proof of the disappearance of Indigenous peoples can be found in the case of Major Felipe Bazán, head of the Curva del Diablo contingent, whose body is still being searched for by his family. Indeed, the most probable hypothesis is that Bazán was killed by Awajún people that removed his clothes. Hours later, the police must have picked him up, and thus he suffered the same fate as that of other Indigenous bodies.

On 17 June, Salomón Awanash, president of “Comité de Lucha” (Fighting Committee) manifested:

“Although in my home community Nazareth, as well as in other such as Wawás and La Curva, everybody has returned, we are concerned about brothers from Santiago, Nieva and Cenepa, because 85 people are still to return. I know who is missing because 15 days before the event I made list of all of them. Of the five basins that I am leader to, 2.600 participated, as well as an additional 140 from the province of San Ignacio, of the region of Cajamarca, and 1.006 of the community of Paután, district of Nieva in the Amazon. In total, we were over 3.600”.

4. Humanitarian conditions of detainees and sin emergency shelters

Thousands of indigenous people who faced repression by the Police on the road found shelter in Bagua and Bagua Grande, as well as in nearby village settlements, taking refuge in family homes, schools, churches, and hospitals, and were helped by fellow civilians and members of religious institutions. They feared to go on the streets in case they would be arrested. Recently, from June 9, humanitarian help was allowed, with provisions and clothes to detainees.

The Catholic Church and the citizens of Bagua sheltered over 1,500 Indigenous

SEARCH SIGNS FOR MAJOR BAZAN WHO DISAPPEARED AT THE CURVA DEL DIABLO



Foto by Luis Cisneros Cabada

24. When this report was collected, 11 people remained under arrest.

people in their farm and family houses, during the 3 p.m. - 6 a.m. Curfew of the first few days. The Pastoral Centre of Bagua Grande sheltered 800 people.

Members of the Apostolic Vicariate of Jaén, report that on Monday 08 and Tuesday 09 of June, the Church, the Ombudsman, and the International Red Cross, devised with the Prosecutor's Office, a plan for assuring the safe transportation of Indigenous peoples back to their homes. This mission required an extraordinary deploy of food, hired trucks, fuel and boats. On Wednesday, they continued to search for scattered Indigenous people in forest areas, in order to help them return to their homes.

5. Violation of detainees' rights. Torture. Violation of due process.

During days 05 and 06 of June, 83 people were arrested. Most of them were taken to the "El Milagro" Police quarters; 17 people were moved to the State's High Security Unit in the city of Chiclayo, 350 km from the city of Bagua²⁵.

Detainees were subject to frequent physical abuse and torture by DINOES and local Police officers, according to a number of testimonies. Similarly, Dr. Juan José Quispe of APRODEH, received testimonies, which stated that some of the detainees were being injected the blood of dead policemen. He confirmed that some detainees had perforations on their arms and chests, where blood had allegedly been injected. On 10 June lawyers of different human rights organizations were allowed to visit detainees at Police stations and "El Milagro" Police quarters, where over 50 people were being held illegally. The missions of human rights organizations eventually managed to free most of the detainees. In total, according to the Ombudsman, 83 people had been initially arrested. Another 99 were also arrested on the first week for disobeying the Curfew, but were all released. However, information of the case of Ebelio Petsayit was later received: he died in his community as a result of the torture suffered while under arrest.

- During the first days, Awajún detainees were questioned without the presence of an interpreter. Equally, during trials, rights to a fair trial are violated, because they do not employ an interpreter, as mandated by the Constitution. In most cases, they are not allowed access to a lawyer of their choice.
- The Office of the Prosecutor has not investigated the homicides or grave injuries caused to indigenous people and non-indigenous people civilians. In several cases, victims have been deliberately hindered, even when reporting crimes.
- It has come to light that after receiving reports of homicide and of serious injuries from seven villagers for the incidents of June 05, the First Provincial Prosecutor Office of Utcubamba decided not to investigate the cases, and to file them provisionally. The First Criminal Court of Utcubamba, on the other hand, has processed 61 alleged suspects of the events of Bagua.
- There is a general intention to hide the events. This should not lead to the impunity of those responsible for these severe events.

Finally, the situation of leader Santiago Manuin is alarming, because, despite his critical condition, as a consequence of several shots to his abdomen, authorities have attempted to handcuff him to the hospital bed. Furthermore, the Criminal Court has released an arrest warrant against him.

On 01 September 2009, the decentralized Mixed Chamber of Utcubamba announced that Santiago Manuin was summoned to appear in Court rather than face immediate arrest.

25. See Ombudsman report, Ibid.

V. Reaction to the events

A. At National Level

1. Extensive national solidarity

The fight of Amazon peoples to defend their habitat has triggered significant solidarity in different sectors. Nationwide, Amazon bishops, and several Universities, have supported the cause. Also involved were CGTP (Confederación General de Trabajadores del Perú - General Confederation of Peruvian Workers), the “Junta Nacional del Café” (National Coffee Group), the “Convención Nacional del Agro Peruano” (National Convention of Peruvian Agricultures), etc.; many regional and municipal governments; many civil servants of organizations and innumerable NGOs; various professional associations and State organizations such as the Ombudsman.

People from neighboring cities, especially Bagua Grande, Bagua and Jaen, participated at all times, according to Jesuit priest of Jaen: “people from these villages have been very supportive of the indigenous people, providing shelter, medicine and food supplies. Even taxi drivers, risking their lives, were taking wounded people to nearby hospitals”. Many people also donated blood to the wounded.

Ecclesiastic solidarity played a major part at the location of June 05 incidents, as well as consecutive days, and in verdicts and bishops’ transactions, congregations and secular movements.

2. Acknowledgement of the subject of indigenous people’ rights as a central present-day issue

As Pilar Arroyo, from the Institute of Bartolome de las Casas affirms, the protest movement of Indigenous peoples has allowed the country, which was living in ignorance of the Amazon, to finally discover its importance, and to wonder how its inhabitants think, live, etc. It is interesting to highlight, in addition, that in the corporate sector, guilds have been assembled in benefit of dialogue and respect of Indigenous peoples’ rights in this context²⁶. It is to be expected that this awareness encourages society to overcome racist attitudes and acts, which are still very much prominent in the media and social sectors, as can be seen in a scandalous column published in the ‘El Correo’ paper of June 2009²⁷.

Amazon villages have shown a great organizational capacity and articulation which, as Peruvian political and former congressman of the Republic, Javier Diez Canseco stresses, their actions have allowed for contemplation of three issues: 1. The need for Peru to acknowledge its multinational nature (including identity, culture, education, language, legal administration, treatment of the land, and self-determination); 2. To restructure natural resources management, their relationship with the environment and how it may benefit

26. For instance, president of CONFIEP (Confederación Nacional de Instituciones Empresariales Privadas - National Confederation of Private Corporations), Ricardo Briceño, expressed the following: ‘We think that the parliaments must reflect and discuss and approve of laws and to allow for the exploitation of natural resources, but with the participation of indigenous peoples’. ANDINA, Confidep asks local and regional authorities to take up dialogue with indigenous peoples – Government acted correctly when it supported the abolishment of Decrees, 18 June 2009, <http://200.48.60.195/espanol/Noticia.aspx?Id=29ynkS+UYZQ=>

27. El Correo, column by Andrés Bedoya Ugarteche, ‘¡Poor ‘chunchos’! and other clumsiness’, 13 June 2009, http://www.correoperu.com.pe/correo/columnistas.php?txtEdi_id=4&txtSecci_parent=&txtSecci_id=84&txtNota_id=73466

peoples and the country; 3. A severe illegitimacy of a political system without transparency neither control by the people over its authorities.

This conflict also puts in evidence two struggling development models. For government, investment is central, while for Indigenous peoples, investment is important, but it is secondary. Leader Santiago Manuin expresses:

“We are not against development or investment (...). We need an adequately established investment system, based on prioritizing the forest while also benefiting Peru (...) there should be someone to help resolve this devastation, this irrational exploitation of natural resources, to create a new model of development for our forests, such as enriching wood work without completely abolishing trees, or using our resources without contaminating our rivers, to help us stay in our land without having to live somewhere else. There must be some people in Peru that do understand this. If there is, we will always support them”.

B. At international level

Internationally, Indigenous peoples’ struggle also received strong support and the violent facts were condemned unanimously. In addition, and among others, the World Council of Churches, the Canadian Union of Metallurgical Employees, and numerous NGOs, as well as a number of United Nations Organizations and the Inter-American Commission.

The Inter-American Commission on Human Rights condemned the violence that occurred in Bagua and, acknowledging the government’s state of emergency calling, the IACHR reminded that “Article 27 of the American Convention on Human Rights and Advisory Opinion 9/87 of the Inter-American Court of Human Rights specify the rights that cannot be suspended; these include, among others, the right to life, to physical integrity, and to the essential judicial guarantees necessary for these rights to be protected. In light of information received indicating that a number of people were arrested during the incidents with no report as to their identity or whereabouts, the IACHR calls on the w:st=”on”Peruvian State to respect their right to physical integrity and to judicial guarantees”.. (IACHR condemns acts of violence in Peru, 8 June 2009)

Likewise, United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, after an invitation from the Peruvian Authorities, paid a visit to Peru from 17 to 19 June. Aside from reiterating his concern about the incidents²⁸, Special Rapporteur confirmed in his report²⁹ “the need to uncover and investigate the facts, completely and objectively, so that all parties, as well as civilians, have a clear idea of what took place, and about the government’s answer before, during and after the confrontations”.

Finally, the CERD reiterated, in its Final Observations on 31 August 2009, its “concern about serious tensions in the country, including the chain of violence, triggered by the exploitation of earth resources on traditional Indigenous territories” (§14), and expressed its “serious concern, due to the conflicts caused by contradictions between exploitation of natural resources projects and Indigenous peoples’ rights, which have subsequently triggered

28. Special Rapporteur had already issued a Press Release on 10 June 2009.

29. Observations on the situation of Amazon Indigenous peoples and incidents of June 05, and following days in the provinces of Bagua and Utcubamba, Peru, 20 July 2009, <http://www.onu.org.pe/upload/documentos/Informe-Relator-Anaya-2009.pdf>

violence, for instance on June 05 and 06, 2009”(§15)³⁰. Consequently, the CERD “urges” Peru to follow, among others, the recommendations proposed by Mr. Anaya. In addition, the CERD “takes note of the fact that in some cases, the right of Indigenous peoples to be consulted and to grant their well-informed consent, prior to exploitation of natural resources, has not been respected”. Likewise, it expressed its concern about harmful repercussions for public health and the environment, caused by the activities of extraction that corporations carry out at the expense of Indigenous peoples’ right to their land and cultures”. Thus, the Committee “exhorts” the State to approve the Law of Consultation and Participation of Indigenous Peoples Concerning Environmental Issues, bearing in mind its general Recommendation No. 23 (section 4, inc. d) which urges “States to ensure that no decision which is in connection with the rights and interests of Indigenous peoples, is approved without their previous, well-informed consent”. In light of this general Recommendation, the Committee “exhorts the State to consult affected Indigenous communities on every step of the process and that their consent is given before the execution of any project of natural resource extraction” (§14).

30. CERD, the Elimination of All Forms of Racial Discrimination Committee’s- Peru, CERD/C/PER/CO/14-17, 31 August 2009.

VI. Urgent need to open a dialogue

A. Political implications

Following Indigenous protests, headed by the AIDSESEP, against the aforementioned Legislative Decrees, the Peruvian government offered to make room for dialogue with indigenous communities. Thus, on 23 March 2009, the President of the Republic signed a Supreme Decree to install a Permanent Dialogue Committee between the State and Amazon Indigenous communities. But despite numerous instances and assemblies, dialogue did not evolve, and thus organizations chose other ways to pressure the government, such as the protest in the Amazon and the occupation of Station No. 6 of Petroperu. Since negotiations were not moving forward, governmental authorities blame Indigenous organizations, accusing them of wanting to “step out of the box” (an expression that was born in different conversations between civil servants and was repeatedly mentioned in the press). Indigenous peoples, for their part, complained about political indifference and inefficiency of the authorities they were in dialogue with, accusing them, in turn, of failing to offer satisfactory solutions to Indigenous demands, in hope that they would eventually give up. This did happen, in fact, but in a manner maybe unexpected by some civil servants.

Following the incidents of June 05, national and international press gave thorough attention to Indigenous demand, and the government was forced to adopt a more pro-active position. Instead of slowly dissolving, the conflict activated numerous actors from all parties, thus triggering an increasing polarization of public opinion. Instead of alleviating the situation, speeches and announcements on all sides fuelled it.

B. Discrediting and criminalising

It should be recalled that the President of the Republic signed a public document dated 28 October 2007, named “síndrome del perro del hortelano” (“the syndrome of a dog in a manger”), which indicates that Indigenous culture and identity is demagogical, that it was a State error to provide poor and unproductive people with land, and that communities are part of the past and not of the future of the nation. It is not surprising then that these statements have caused general rejection amongst Indigenous peoples and their sympathizers –who are high in numbers- in Peruvian society. In other speeches, the President as well as other high-ranked officials, accused Indigenous organizations of being manipulated by foreign political interests, and insinuated that neighboring countries were behind Indigenous protest movements.

Based on this perception, which has been from time to time retrieved by the mass media, sometimes as a racist speech in which Indigenous peoples are portrayed as savages, barbarians, primitive and ignorant beings – which has been exposed by the CERD in its recent examination of Peru³¹ -, the government, while speaking of its willingness to negotiate,

31. The CERD expressed the following: “The Committee is concerned with racial discrimination towards Indigenous peoples and Afro-Peruvian communities in the media, including stereotyped and derogatory representations of Indigenous Afro-Peruvian communities, on television and the press” (CERD, Final Observations – Peru, 31 August 2009, §16).

chooses repression, a “firm” attitude that is supported more and more by economic groups³², whose interests lay in privatizing Indigenous land and exploiting resources of the Amazon Region.

In order to disassemble the Indigenous leadership and numerous organizations of civilians, the government proceeds to criminalize social protest (which has already been exposed by the Inter-American Commission on Human Rights, as we will discuss further on) accusing various Indigenous and social leaders of subversive activities and other offensive behavior.

Thus, as we have already discussed, on 18 May notification is received at AIDSESEP, accusing the president of the organization, Alberto Pizango Chota, for allegedly committing “rebellion, conspiracy for possible rebellion, sedition or mutiny” and against tranquility and public peace, public offense to the detriment of the Peruvian State, and summoning him to appear in Court on 20 May 2009 at Lima’s Provincial Office of the Prosecutor, on the same day that the dialogue between the government and the Indigenous organizations was scheduled to be renewed.

This notification arrived following a press conference given on 14 May, where Alberto Pizango, President of the AIDSESEP, stated: “prepare yourselves for the uprising of our peoples, in accordance with article 89 of the Constitution. This means that our ancestral laws will become mandatory laws in our territories and we will consider as an aggression all forces’ attempt to enter into our territories”. But the next day, Pizango met with the Ombudsman to sign an act of compromise, in which AIDSESEP retracted its statement³³.

Another five Amazon Indigenous leaders were notified for the same offenses: Saúl Puerta Peña, Secretary of AIDSESEP records, Marcial Mudarra Taki, Coordinator of San Lorenzo Indigenous People’s Regional Coordinating Committee, COREPI – SL, Cervando Puerta Peña, President of the Regional Organization of Amazon Indigenous Peoples of Northern Peru - ORPIAN -, Daniel Marzano Campos, President of the Regional Indigenous Organization of Atalaya - OIRA and Teresita Antazú López, President of the National Union of the Peoples of Ashaninkas and Yaneshas - UNAY.

It is worth noting, on the subject of Mrs. Antazú’s arrest warrant and investigation after the tragic events of June 05, that they are based solely on her presence during a press conference given on 14 May 2009 by the President of AIDSESEP, and where other national leaders were also present. Mrs. Antazú is leader of the Central region of the Amazon, hundreds of km from Bagua.

32. Concerning this, see National Confederation of Private Corporations, (CONFIEP), Let us Encourage the Governing and Developing of Peru Against Violence, Lima 05 June 2009, http://www.confiep.org.pe/index.php?fp_verpub=true&idpub=1958 : While CONFIEP regrets the loss of human lives “of locals as well as Police officials” and acknowledges the need to respect Indigenous peoples rights, it also asks the government to adopt a firm attitude: “Violent groups must not be allowed to continue to act with such impunity, while causing shortage of foods and by violently taking hold of communicating highways. Thus, a firm and coherent answer is required from the State, in order to ensure the rights of the other 28 million Peruvians”. It must also be pointed out that some of the “reactions” published by “El Comercio” newspaper on 26 June 2009: “Any minister who wants to negotiate from now on, will do so under strict guidelines [...], will discuss with organization to attend complaints under pressure”, Gonzalo Prialé, President of the AFIN (Asociación para el Fomento de la Infraestructura Nacional - Asociación for Encouraging National Infrastructure); and “Demand democratic mechanisms through which to protest without reaching such extremes [...], those who incite violence behind social protests are enemies of the country”, Óscar Rivera, President of ASBANC (Asociación de Bancos del Perú - Peruvian Bank Association) (Commerce, Long-term Time Bombs – Entrepreneurs inform: lack of stability will affect investment in Peru, 26 June 2009, <http://www.elcomercio.com.pe/imprensa/notas/empresarios-advierten-inestabilidad-afectara-inversion-peru/20090626/305986>)

33. See Agency of Peru, Regress, 16 May 2009, http://agenciaperu.tv/view_video.php?viewkey=623355c3dfc9f20aa2b5&category=§ion=12

The offenses the leaders are accused of are attached to a sentence of 5 to 10 years imprisonment.

Finally, we must remember Santiago Manuin's situation, previously discussed, who, despite his delicate health, is being prosecuted. Mr. Manuin is an important Indigenous leader. The Judiciary holds him responsible for the assassination of eight policemen in the Curva del Diablo, when at the time of the happenings, Santiago Manuin was unconscious and gravely injured, after being shot by the Police.

APRODEH
CAMPAIGN POSTER:
JUSTICE FOR
SANTIAGO MANUIN

JUSTICIA PARA SANTIAGO MANUIN



Santiago Manuin es un reconocido dirigente indígena que el pasado 5 de junio recibió ocho impactos de bala, cuando intentaba frenar la violencia durante los sucesos de Bagua.

Manuin salvó de morir, pero su estado de salud es muy delicado y su recuperación será lenta.

El Poder Judicial ha ordenado su detención, responsabilizándolo por las muertes ocurridas en el enfrentamiento en "La Curva del Diablo".

Porque los derechos de nuestros hermanos de la amazonía deben ser respetados y sus demandas deben ser escuchadas, súmate a esta campaña y exige también: JUSTICIA PARA SANTIAGO MANUIN.

¡NO A LA CRIMINALIZACIÓN DE LA PROTESTA SOCIAL!



Visita: www.aprodeh.org.pe/casomanuin.html
Envía tu adhesión a: justiciaparasantiago@aprodeh.org.pe

On 06 June, President Alan García, far from lamenting the death of Indigenous people, referred to the tragic day of violence in Bagua, in an official announcement, as a “subversive aggression against democracy and the National Police”. Through an official statement from the “Palacio de Gobierno”, García Pérez placed responsibility on “all politicians who preach extremist strategies” and who used Indigenous peoples “motivated by their own electoral hunger and taking sides with extremist savages”. “I am sure that all Peruvians, most of whom are aware that the country must continue on its way to development, employment, and investment, will support actions against subversive aggression and terrorism”, he concluded³⁴. The President himself³⁵, the Minister of Interior and other politicians of the governing party, insulted leaders, collaborators and Indigenous peoples, in previous speeches.

On 23 June, the arrests of more Indigenous leaders in Bagua were announced, while dialogue between authorities and indigenous peoples was being processed.

In view of incessant pressure, president of the AIDSESEP, Alberto Pizango Chota was obliged to find refuge in the Nicaraguan Embassy, a few days after the confrontations. Weeks later, Awajun brothers, also AIDSESEP leaders, Saúl and Cervando Puertas, left for Nicaragua. Before and after the events in Bagua, harassment from civil authorities continues. At the end of August 2009, Alberto Pizango, Cervando and Saúl Puertas; Teresita Antazú and Marcial Mudarra, all Indigenous leaders, were being prosecuted as a consequence of the Amazon protest.

In addition to expressing their concern about detention orders against so many Indigenous leaders, UN’s Special Rapporteur on Indigenous Peoples expressed: “These orders are clearly putting the process of dialogue in danger”.

On the other hand, the government publicly accuses some civil organizations to be receiving foreign aid for activities of detrimental national interest, and for supporting, and even “inventing”, the Indigenous movement. An example of this were Agriculture Minister Mr. Benavides’ allegations, during an interview with RPP News, published on 21 August 2008, where he accused the NGOs of wanting to keep Indigenous communities in a state of poverty in order to receive “more foreign funding” and declared, referring to NGOs, “I call them vultures of the XXI century”. These official statements came in after extensive support from some NGOs for the annulment of Decrees 1015 and 1073, which was approved the following day. The Minister also disqualified “Alianza Parlamentaria” congressman Víctor Andrés García Belaunde, who had criticized the “Law of the Jungle”. It must be mentioned that, after a press conference televised on 12 April 2006, during which members of CEDAL drew attention to negative impacts of the Free Trade Agreement between the US and Peru for human rights, the APCI (Agencia Peruana de Cooperación Internacional - International Peruvian Cooperation Agency), accused CEDAL of deviating foreign donations to fund a campaign against the FTA, and threatened to resort to article 96 of the Civil Code, in which it is stated that “the Public Ministry can solicit to legally dissolve associations whose ends or activities could potentially result against public order or accepted moral conventions”. On May 29, 2006, the Special Representative of the Secretary General on Human Rights Defenders, along with Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, called for the government’s attention to these matters. However, while reading his report on March 2007, the Special Representative had still not

34. See, among others, Perú.com, Alan García accuses conspiracy against Peru, 6 June 2009, <http://www.peru.com/noticias/sgc/portada/2009/06/06/detalle38074.aspx>).

35. See President of the Republic Alan Garcia’s speech, during the 129 anniversary of the battle of Arica and renewal of oath of allegiance, 7 June 2009, <http://www.presidencia.gob.pe/contenido1.asp?codigopubs=13582&idioma>

received any answer from the government³⁶. Now the government has put various civil and international organizations working in Peru under closer control and scrutiny. Perhaps hoping that funding of Indigenous organizations that are causing the government problems, will diminish.

All of these facts put in evidence the persecution of Amazon Indigenous leaders, who conduct protests in the Peruvian Amazon. FIDH regrets that the government has privileged criminalization over dialogue, because of protests whose objective was to reestablish respect for their rights to be consulted, according to international responsibilities of Peru, enshrined in ILO Convention No. 169. The facts contradict the Inter-American Commission on Human Rights which, when condemning the incidents in Bagua, expressed that, as it had manifested in the past, “Criminalizing legitimate social mobilization and social protest, whether through direct repression of the demonstrators or through an investigation and criminal prosecution, is incompatible with a democratic society in which persons have the right to express their opinion.”. FIDH also shares the Special Rapporteur on the Rights of Indigenous Peoples’ observation, according to which “one of the collateral effects of criminalizing protest, in unjustified cases, is the creation of a dynamic that could generate a lack of trust between Indigenous peoples and State authorities, with negative repercussions for coexistence and democratic legitimacy”.

However, in the government itself there are different opinions about Legislative Decrees, rights of the Indigenous peoples, the challenge that the development of the Eastern part of the country represents. Even within the Congress, opinions are divided and ties are continuously made and undone. The two Legislative Decrees most challenged by the Indigenous movement (LD 1015 and 1073) have been withdrawn but the others are still in effect. On 10 June 2009, the Congress indefinitely suspended Legislative Decrees 1090 and 1064. On 11 June 2009, several members of the Congress made a protest on political handling of Legislative Decrees here concerned, requesting the full withdrawal of these Decrees and alleging that the legal figure of “suspension” did not exist inside the constitutional context of Peru. But in view of this protest, Congress decided to sanction, for a total of 120 days, seven members of the Congress, amongst them, Coordinator of Indigenous Parliamentary Group, for “disrupting the established order” of Congress sessions, when in fact they had only tried to develop a symbolic act of solidarity for the deaths of indigenous peoples. The Indigenous movement insists that they will only negotiate with the government if the latter agrees to repeal all of the contested Legislative Decrees.

That’s in this context that the violence of Bagua produced itself. And while part of the public opinion supports a “firm decision” of the government, the other accuses the State of being perpetrating a “genocide” against indigenous communities of Eastern Peru. As this report indicates, the real situation is far more complex, and there are still many unclear elements that should be investigated. To overcome the crisis it is required, firstly, to unveil the truth behind the facts, through an independent Commission that investigates in depth, with transparency and courage. It is also necessary that all governmental policies recognize legitimate Indigenous peoples’ rights and design a development strategy that is respectful of human rights and the environment.

36. See Special Representative of the Secretary-General report on the situation of human rights defenders, Hina Jilani, Addendum, Summary of cases transmitted to Governments and replies received, A/HRC/4/37/Add.1, 27 March 2007

VII. Report of the Office of the Ombudsman

In early July, almost one month after the events, the Ombudsman published a report³⁷, which gathered information collected directly from different actors and witnesses. FIDH welcomes this report.

FIDH considers that the role and investigations accomplished by the Ombudsman throughout this conflict have been of the utmost importance and have contributed towards maintaining and abating strong tensions between Indigenous villages and the Peruvian authorities (in particular, the government).

“The Ombudsman intervened with urgent humanitarian acts in order to tend to immediate needs caused by the violent situation, and through supervising the conduct of state administration entities and gathering reports”.

“Following the clearance on Fernando Belaúnde Terry road, some media reported that there were people whose whereabouts were unknown to their families or to fellow members of the community. In response to this matter and in the face of people’s uncertainty, the Ombudsman organized an itinerant mission to the Indigenous communities located in the district of Imaza, as well as to the districts of El Cenepa, Nieva and Río Santiago, and the province of Condorcanqui”.

“It is important to indicate that in the meetings held by the commissioners of the Ombudsman Office, some of which included the participation of community members in general assembly, fear and tension were perceived among the Indigenous community due to the confusing and often contradictory information that gave account of the events of June 05 and subsequent days”.

“The information gathered in the 39 itinerant missions, and the interviews held with authorities from another 16 communities, lead to the conclusion that, in all cases, the authorities reported the return of the indigenous villagers, with the exception of those who remained hospitalized or detained in the Penal Establishment of Chachapoyas”.

“On 06 June, the Ombudsman received a manuscript compiled by a local journalist, with the names of 60 people who, up to that point, had not returned to their communities. Subsequently, information was cross checked with relations (or lists) made available by the institution, verifying that 40 of the missing people had been registered as returnees, two as held in the Penal Establishment of Huacas (Chachapoyas), and six as people released who were initially arrested in different police stations. Of the 12 remaining people, 6 were situated in their communities and there is no clear information on the pre-existence of the other 6. Demands for the whereabouts of these people have not been reiterated by their families or community members, either”.

Similarly, the Ombudsman informs that: “33 people were known to be deceased (23 police officers, five villagers and five indigenous people); 83 people were arrested; 200 people were injured and received medical care in hospitals; and 1,244 indigenous people returned to their indigenous communities, after having been registered as residents by the Office of the Prosecutor”.

37. See Ombudsman, Report n° 006-2009-DP/ADHPD, humanitarian acts accomplished by Ombudsman on the occasion of June 5th 2009 happenings, in the provinces of Utcubamba and Bagua, Amazon region, in the context of Amazon protest, Lima, Peru 2009, <http://www.defensoria.gob.pe/modules/Downloads/informes/variados/2009/informe-adjuntia-006-2009-DP-DHPD.pdf>

“Four criminal prosecutions were known: three of them against adults (84 prosecuted) and one for law infringement against two adolescents of 16 years of age. Out of a total of 84 accused, 41 have been under arrest warrant; 11 of them are currently being held in the Penitentiary Establishment of Huancas, Chachapoyas. Another 43 have been summoned to appear in court. As for the two adolescents, they were released, and one of them was transferred to the juvenile attention centre of Chiclayo – Lambayeque”.

The Ombudsman shows his particular concern with the situation of Major PNP Felipe Bazán Soles, whose whereabouts are unknown since last 05 June.

Despite the positive assessment that FIDH delivers in this report, concerns for the indigenous people persist, based on the fact that more than 300 communities are involved in the events and the Ombudsman has only worked in 181 thereof. In addition, it must be born in mind that the location where the events took place, was cordoned off by the police and by the army until 10 June, with no access being granted to the Office of the Prosecutor or the Ombudsman.



INJURED FAMILY MEMBERS

VIII. Conclusions

The information received by members of FIDH's mission was, at first, that Police officials had committed a genuine massacre that had caused numerous deaths and injuries, as well as missing people from amongst Indigenous members who were protesting on the road. The collected testimonies do not allow us to document without doubts, that this is indeed what happened. Information provided by different victims and witnesses of June 05 point, rather, towards a badly planned and badly executed official clearance (an opinion which has also been expressed by some government officials) which created confusion and attempts of self-defense and resistance amongst some Indigenous people and which left victims on both sides. The violence later extended from the road to some local and nearby neighborhoods of the city of Bagua, where there seems to have been civil disarmed victims as well.

Accounts of what actually happened on June 05 are differing and sometimes contradictory, and this mission can not endorse any version entirely. Ten days after the happenings, there was still no official version of the events. Neither Prime Minister, nor Defense Secretary - from whom we requested a report, if such report existed at all - had an official National Police (responsible for the operation) report. On August 31, our mission was still unable to see an official report from the Executive on the happenings.

When FIDH mission arrived in Peru, no government authority and no civil organization was equipped to provide us with full, documented, faithful information on the dead, injured and missing individuals. The Office of the Ombudsman, with whom we carried a work session, had barely begun to collect its own information from different sources. In early July, the Office of the Ombudsman published its report, whose principal lines have been reproduced in this document. Contrary to some civil organizations' accusations, government information and the Office of the Ombudsman information signal that there were more deaths among Police than among Indigenous civilians (The Office of the Ombudsman distinguishes between "villagers" and "indigenous people").

The most dramatic and, up to date, obscure case is the assassination of the ten Police officers that were held hostage by Indigenous people in Station No. 6 of PetroPeru, 3 hours away from the Curva del Diablo. News apparently arrived via national radio of a massacre of Indigenous people at the hands of the police, causing, as an act of revenge, the assassination of withheld officials. The mission did not find any more specific information about this case, but photographs of Indigenous (in Bagua) and of police (Station No. 6) deaths caused in atrocious ways were widely circulated in national and international media.

The Office of the Ombudsman report that 84 Indigenous people are currently being prosecuted for their alleged participation in Police officers deaths. At first, a number of rumors were circulating, to do with supposedly missing bodies. But, at least during our mission in the country, we could not find any reliable testimonies about these accusations. What we were able to observe, however, was the burnt area along Curva del Diablo. The Ombudsman inform us that they can confirm the number of missing people, who were actually taking refuge in different shelters after the violent incidents of June 05 and 06. It is practically impossible to determine whether any other people are missing, until any reports with names and identification are presented to the Ombudsman or competent authorities. The mission acknowledges that in the climate of fear that developed in the region, and the criminalization of leaders and activists of the Indigenous movement, it is possible that

people do not wish to present this type of information, at least for the time being. But this does not facilitate an independent mission either. Insecurity and hidden facts persist. The only thing that we know for certain to this date is that at least 33 people died, and 200 were wounded.

United Nations' Special Rapporteur on Indigenous Peoples' Human Rights indicates in his visit's report:

The mere fact that there have been so many deaths as a result of these incidents, and that information as to what drove these protests has not come to light, nor the whereabouts of all of those who participated in the confrontation, has given much cause for concern to the Special Rapporteur. Furthermore, the Special Rapporteur observes with great concern that, throughout his visit, numerous government representatives, including members of the Office of the Prosecutor, indicated that current investigations were principally and often exclusively focused on possible offenses caused by Indigenous individuals, and not on possible irregularities of police and other actors present in the Bagua incidents.

FIDH mission shares the observations of the Special Rapporteur. It also agrees with the Special Rapporteur in his advice to establish an independent commission for an exhaustive, objective and impartial investigation³⁸. The Special Rapporteur, likewise, recommends a revision of accusations made against Indigenous people and the completion of a consultation process in accord with international rules, which this mission endorses.

On 22 June, when the mission was ended, an agreement was launched to create a National Coordination Group for the Development of Amazon Peoples, consisting of four representatives of the Executive; Regional Government Presidents of Loreto, Ucayali, Amazonas, San Martin and Madre de Dios; and ten representatives of Amazon Indigenous communities, including representatives of AIDSESEP. As Special Rapporteur, Mr. Anaya, indicates in his report, "this National Coordination Group, has taken important measures", such as the following: "creating four working groups to investigate the incidents of June 05 in Bagua; analyzing Legislative Decrees that are being questioned by Indigenous communities and proposing new laws; developing a consulting mechanism and propose a plan for Amazon development, that includes an analysis of Indigenous land and territories". However, FIDH and its member organizations believe, currently, that the country lacks indispensable conditions for dialogue to lead to a consensual and lasting solution, since the primary leaders of the AIDSESEP are still being discredited and filed charges against. It is essential that a genuine, truthful dialogue is initiated, to allow confidence and trust to be reestablished between authorities and Indigenous peoples, and to take measures to find a long lasting solution for the conflict. This should most of all be achieved through establishing an independent commission of investigation, and through ensuring consultation with Indigenous peoples.

38. FIDH recommended this in the press conference at the end of its visit.

IX. Recommendations

FIDH and its member organizations, APRODEH and CEDAL, urge Peruvian authorities to:

1. Regarding human rights violations that took place in Bagua

- Create an Independent Commission of Investigation, so that the truth of the incidents of June 05, 2009 can be known. This Commission must consist of people with public recognition and who generate trust among civilians as well as other actors involved. It must include representatives from Indigenous communities, as well as international entities, in accordance with CERD's and Special Rapporteur's recommendations on Indigenous peoples' situation.
- Guarantee the right to truth, justice and reparation of victims and their families. All reported human rights violations must be investigated, without discrimination, and the victims must have equal access to justice. To compensate, individually and/or collectively, all civilian victims and their families, including those of deceased victims and wounded victims in the cities of Bagua and Bagua Grande, as well as wounded Police officers and families of deceased Police officers. Moreover the State must do its utmost to find Major PNP Felipe Bazán Soles' whereabouts.
- Assure true independence of the Judicial and the Office of the Prosecutor in trials related to June 05, offering magistrates and prosecutors the required protection and security in order to complete their assignment without intimidations or pressure of any kind. Additionally, all trials involving Indigenous people should be provided with translators and interpreters and any other instruments that ensure the right to a fair trial.
- Guarantee the exercise of freedom of expression of all Amazon actors, reestablishing media licenses in the area.
- Cease any type of harassment –be it legal, administrative or media related- against Indigenous organizations and leaders who were involved in the latest Amazon protest. Unless based on the proof of grave incidents, legal investigations and arrest warrants against leaders and/or members of Indigenous organizations should be canceled.
- Promote the already initiated dialogue between government and Indigenous organizations, which must reach an agreement to tackle the causes of conflict, for the solution of said conflict, and for finding the means required for reconciliation.
- Grant legal recognition to the working groups created on 22 June 2009. These must present their proposals within a reasonable time frame, for the purpose of executing their resolutions efficiently.

2. On a general level, to avoid repetition of these confrontations:

- Re-establish the inalienable, non-seizable and imprescriptible nature of the communal land of Indigenous Peoples, without any exception in the Constitution.
- Consult the Indigenous peoples, as stated in ILO Convention No.169 and through appropriate mechanisms, on the implementation of economical projects which affect

their territories. Consulting processes must be carried out in regard to exploitation and exploration. Furthermore, all interference with organizations must be avoided in order to ensure their autonomous activity.

– Withdraw all laws that affect Indigenous peoples' rights, which are: right to consultation; right to land and territory; right to identity; to the use of natural resources; to self-determination. To acquire, as recommended by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), the necessary procedures to guarantee participation and consultation of Indigenous peoples, in a coordinated and systematic manner.

– Create a legal framework in order to carry out efficiently the consultations that the ILO Convention No. 169 demands to the Peruvian State. For the moment, the law obliges the Peruvian State, but it does not exist any rule or law, which clarifies the specific procedure to be used for the implementation of this obligation.

– Suspend all oil, mine, gas and other concessions that have been granted within Amazon Indigenous peoples of Peru's land, without previous fulfilment of required consultation. To promote the completion of consultation processes to guarantee the right to free and well-informed consent of the affected peoples. In addition, if a company has knowingly benefited from a viciously processed concession, this company must be sanctioned and its concession suspended.

– Identify, as recommended by the CEACR, urgent situations related to exploitation of natural resources which may put people, institutions, goods, cultures and environment of affected peoples at risk, and to apply with urgency the necessary special measures required to safeguard them.

– Implement the United Nations Special Rapporteur James Anaya's recommendations concerning the human rights and fundamental freedom of Indigenous peoples' situation: "*criminal process should not be the usual process to end conflict and social protest; it should be the last resort (ultima ratio) and strictly limited to the principle of an imperious social need in a democratic society*". In this regard, we recommend the withdrawal of Legislative Decrees 982, 983, 988 and 989, as they present severe threats to the effectiveness of fundamental rights.

– The government, and especially President García, must retract the declarations that contribute to the criminalization of Indigenous leaders and encourage racism.

– Additionally, all pertinent legal and criminal measures must be taken in order to condemn people and media that spread racist information, in accordance with the United Nations Convention on the Elimination of All Forms of Racial Discrimination, ratified by Peru in 1971. The government should, on the other hand, promote tolerance and friendship among the different sectors of the Peruvian population, in its public speeches as well as in public and private media. It should, among others, promote the adoption of a code of deontology for these sectors, as recommended by CERD at the end of August.

– Invite the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression since he has as yet not received a positive answer since he presented his visit's request on 29 June 2004.

FIDH and its member organizations APRODEH and CEDAL, urge the United States and third parties to:

1. US:

- Publicly confirm that the Legislative Decrees cancellations do not contradict the obligations under the FTA (Free Trade Agreement) between Peru and the US.
- Publicly recognize Peru’s obligations to ensure respect for transparent and public processes of consultation, and to ensure prior, free and informed consent from Indigenous peoples when their territories/land or rights may be affected by the implementation of the FTA, as provided for by the ILO Convention No. 169, ratified by Peru.
- Ensure through the conduct of human rights impact assessments (HRIA) which are to be carried out throughout the period of implementation of the FTA that the latter does not violate human rights in Peru, and particularly, the rights of Indigenous peoples.

2. European Union:

- Confirm that respect for human rights and democratic principles are an “essential element” of the Trade Agreement currently being negotiated with Peru; Ensure that this essential element is consistently expressed within the three pillars of the agreement (political dialogue, cooperation and trade); And define the procedures of implementation of this clause.
- Conduct human rights impact assessments which go beyond the sustainability impact assessments conducted by the European Commission. HRIAs must look at the potential impacts of the agreement on all human rights which are protected by human rights instruments and which are binding on the EU, EU member States and on third party States.
- HRIAs must be conducted, not only before the signing of the agreement, in order to avoid potentially harmful measures but also after its effective implementation, in order to take adequate corrective measures , should they be necessary in order to protect human rights.
- Ensure that essential services are excluded from negotiations, so that Peru does not lose its power to regulate those services, which could affect human rights.
- Ensure that the right to participation is respected: introduce parliamentary debates and make sure all concerned groups are adequately consulted during the negotiations , including NGOs, trade unions, and particularly all Indigenous communities, in case their territories could be affected.
- Verify that the mechanisms provided by the agreement for dispute settlement do under no circumstances hinder the access to mechanisms that protect fundamental human rights, particularly the access to the Inter-American system.

3. Non-State actors:

- Businesses have the responsibility to respect human rights. Particularly, business enterprises cannot benefit, directly or indirectly, from human rights violations caused by other actors including law-enforcement actors at the national, regional or local level. In order to avoid being complicit in human rights abuses, the companies that benefit from a Free Trade Agreement or Treaty and from the Legislative Decrees should:
 - Ensure that they exercise a continuous “due diligence” in the conduct of their activities to prevent their activities from causing negative impacts on human rights. This process implies taking all necessary measures to identify, foresee, and act upon potential negative consequences on human rights, particularly through human rights impact assessments, before, during, and after the undertaking of their activities. Companies must also consult with Indigenous communities should their activities potentially affect them or their territories, without exercising pressure on these communities.
 - The companies involved must act with transparency and avoid putting pressure on the Peruvian government to approve legislation which benefit investors, but which may violate human rights. Furthermore they have to refrain from opposing the possibility that the Peruvian Congress may revoke the Legislative Decrees concerned.

ANNEXES

Annex 1: Agenda of the Mission

INTERVIEWS AND MEETINGS OF FIDH'S MISSION IN PERU

Lima, 16 - 20 June 2009

During their stay in Lima and Bagua, FIDH's (Fédération Internationale des Défense des Droits de l'Homme - International Federation of Human Rights) mission, carried out by Elsie Monge and Rodolfo Stavenhagen, with the intention of collecting the opinion of all sectors involved in the Amazon conflict, met with the following persons:*

1. Pedro García, José Barletti and Roger Rumrill, specialists in the situation of Amazon Indigenous peoples.
2. Dr. Yehude Simon, President of the Council of Ministers; Dr. Antero Flores Aráoz, Defense Minister; Carlos Leyton, Minister of Agriculture; Dr. María del Pilar Fernández, Minister of Justice; Dr. Erasmo Reyna, Vice-Minister of Justice; Dr. José Alarcón, Secretary General for the Human Rights Commission of the Ministry of Justice; Dr. Ana María Gonzáles del Valle, Vice-Minister of the Environment Ministry, and doctors Vanesa Vereau Ladd, César Ipenza, Cesar Villacorta, civil servants of the Environment Ministry.
3. Dr. Roger Nájjar, President of the Commission of the Republic's Amazon Congress; Dr. Daniel Abugattás, Congressman of the Working Group on Legislative Decrees – Sub-commission of the Republic's Congress of the Constitutional Affairs Commission; Dr. Manuel Sánchez Palacios, President of the Supreme Court.
4. The Office of the Ombudsman.
5. Monsignor Pedro Barreto Jimeno and Vicariate of Jaen.
6. AIDSESEP (Asociación Interétnica de Desarrollo de la Selva Peruana - Interethnic Association of Peruvian Forest Development); APRODEH (Asociación Pro Derechos Humanos - Association for Human Rights); CNDH (Coordinadora Nacional de Derechos Humanos - National Coordinator of Human Rights); CEAS (Abogados de la Comisión Episcopal de Acción Social - Attorneys of the Episcopal Commission of Social Action).
7. Public Prosecutors and civil servants of the Office of the Prosecutor, families of wounded victims, families of deceased victims, Indigenous leaders, trade union leaders and social leaders.

Annex 2: FIDH's Press Release

FIDH, Serious protests by Peruvian Amazon Indigenous people: FIDH calls to repeal the Legislative Decrees approved in contradiction with ILO Convention No. 169, on 11 May 2009 (Press Release).

Since early April, several thousands of people from over fifty Amazon ethnic groups, have been protesting for the withdrawal of the Legislative Decrees 994, 995, 1060, 1064, 1080, 1081, 1083 and 1089 and the Water Resources Law, which they believe undermine their rights, because of their impact on the environment as well as the lack of consultation prior to their enactment, in violation of Peru's International Obligations, stated in ILO Convention No. 169 on Indigenous and Tribal Peoples.

Amazon Indigenous people additionally request the government to consult the decisions that affect their territories and, especially, to suspend the concessions to oil, gas, mine, tourist and wood merchant companies, in Indigenous territories. They demand a constitutional reform to re-establish the inalienable, non-seizable, imprescriptible feature of their communal land.

Said reform, which was included in Peruvian constitutional texts between 1933 and 1993, would be more in accordance with the obligations of Convention No. 169, which compels governments to consult affected Indigenous people "whenever consideration is being given to legislative or administrative measures which may affect them directly" (Art. 6) "before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands" (Art. 15).

Thus, FIDH endorses the public announcement made by Amazon bishops, in which they express solidarity with the Indigenous people and also request that said Legislative Decrees be repealed.

FIDH urges the government to give a positive answer to Indigenous people's requests for dialogue, and to dismiss repressive solutions. For this reason, FIDH asks the Peruvian government to suspend the State of Emergency that has been established in several Amazon provinces. FIDH also asks the Congress to repeal all Legislative Decrees which have been established without prior consultation to the affected Indigenous people. FIDH reminds the government that it signed the United Nations Declaration on the Rights of Indigenous People, which compiles the international obligations of the State of Peru in this matter, and which recognizes:

"... the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources".

Annex 3: Legislative decrees (extracts)

LEGISLATIVE DECREE

N°994

DECRETO LEGISLATIVO QUE PROMUEVE LA INVERSIÓN PRIVADA EN PROYECTOS DE IRRIGACIÓN PARA LA AMPLIACIÓN DE LA FRONTERA AGRÍCOLA

TÍTULO I

DISPOSICIONES GENERALES

Artículo 1°.- Declaración de interés nacional y necesidad pública

Declárase de interés nacional y necesidad pública, el desarrollo de proyectos de inversión privada en irrigación de tierras eriazas con aptitud agrícola, con la finalidad de ampliar la frontera agrícola.

Artículo 2°.- Objeto

La presente norma regula el régimen especial para promover la inversión privada en proyectos de irrigación de tierras eriazas con aptitud agrícola de propiedad del Estado, estableciendo el marco normativo aplicable.

TÍTULO II

DE LAS TIERRAS ERIAZAS DE PROPIEDAD DEL ESTADO Y DE LAS IRRIGACIONES

Artículo 3°.- Tierras eriazas comprendidas dentro de los alcances de la norma

3.1. Son tierras eriazas con aptitud agrícola, las no explotadas por falta o exceso de agua.

3.2. Para los fines de esta norma, las tierras eriazas con aptitud agrícola son de dominio del Estado, salvo aquellas sobre las que exista título de propiedad privada o comunal inscrito en los Registros Públicos.

3.3. No se consideran tierras eriazas con aptitud agrícola:

a) Las tierras que se encuentran comprendidas dentro de las Áreas Naturales Protegidas.

b) Las tierras que constituyan patrimonio arqueológico de la Nación.

c) Las tierras destinadas a la defensa o seguridad nacional.

d) Las tierras que se encuentren dentro de los planos aprobados para fines de expansión urbana y las incluidas en el inventario de tierras con fines de vivienda, de conformidad con lo previsto en las normas de la materia.

e) Las tierras forestales y aquellas con capacidad de uso mayor forestal.

f) Las tierras ribereñas al mar que se rigen con arreglo a su normatividad; y,

g) Los cauces, riberas y fajas marginales de los ríos, arroyos, lagos, lagunas y vasos de almacenamiento.

Artículo 4°.- De los proyectos de irrigación

4.1. Los proyectos de irrigación a que se refiere esta norma serán los destinados a la ampliación de la frontera agrícola que aprovechen aguas de libre disponibilidad.

4.2. Las aguas de libre disponibilidad serán determinadas por la autoridad competente.

TÍTULO III

DE LOS MECANISMOS DE PROMOCIÓN

Artículo 5°.- De la transferencia de las tierras eriazas

El Estado promoverá la inversión privada para la ejecución de proyectos de irrigación en tierras eriazas mediante la transferencia de la propiedad de las tierras a cambio del pago de una contraprestación que el inversionista podrá realizar a través de una o más de las siguientes modalidades, conforme a lo que se establezca en el Reglamento de la presente norma:

- a) Pago en dinero del precio de la tierra.
- b) La transferencia al Estado de tierras eriazas habilitadas mediante el proyecto de irrigación.
- c) La transferencia en propiedad a favor del Estado de la infraestructura hidráulica construida.
- d) Cualquier otra modalidad que estructure el inversionista y que, conforme a lo previsto en el Reglamento de la presente norma, sea aprobada por el Organismo Promotor de la Inversión Privada.

La aplicación del presente artículo no demandará el uso de recursos públicos, ni obligaciones de parte del Estado, salvo la obligación que corresponda de transferir la propiedad de las tierras a favor del inversionista privado.

Artículo 6°.- De los compromisos del inversionista

6.1. Para asegurar la sostenibilidad del proyecto de inversión, el inversionista deberá garantizar al Estado y cumplir con los compromisos de inversión que se le fijen, de acuerdo a lo que se determine en el Reglamento.

6.2. En el caso de transferencia al Estado de tierras eriazas habilitadas mediante el proyecto de irrigación, los inversionistas estarán obligados, conforme lo determine el Reglamento, a prestar los siguientes servicios a quienes el Estado adjudique tales tierras:

- a) Servicios de asistencia técnica en agricultura de riego.
- b) Información agraria actualizada (clima, mercado y otros).

En los casos a que se refiere el presente numeral, una vez culminada la prestación de dichos servicios, el inversionista deberá hacer entrega de la información y/o documentación utilizada para la prestación de los mismos al organismo promotor de la inversión privada correspondiente.

LEGISLATIVE DECREE
N°1015

**DECRETO LEGISLATIVO QUE UNIFICA LOS
PROCEDIMIENTOS DE LAS COMUNIDADES
CAMPESINAS Y NATIVAS DE LA SIERRA Y DE LA
SELVA CON LAS DE LA COSTA, PARA MEJORAR SU
PRODUCCIÓN Y COMPETITIVIDAD AGROPECUARIA**

Artículo Único.- Modificación del artículo 10° de la Ley N° 26505, Ley de la inversión privada en el desarrollo de las actividades económicas en las tierras del territorio nacional y de las comunidades campesinas y nativas.

Modifícase el artículo 10° de la Ley N° 26505, Ley de la Inversión en el desarrollo de las actividades económicas en las tierras del territorio nacional y de las comunidades campesinas y nativas. en los siguientes términos:

“Artículo 10°.- Las Comunidades Campesinas y las Comunidades Nativas deberán regularizar su organización comunal de acuerdo con los preceptos Constitucionales y la presente Ley.

Tratándose de tierras de propiedad de las Comunidades Campesinas y Nativas, la regularización del derecho de propiedad se regirá por las siguientes normas:

a) Para la adquisición en propiedad por parte de poseedores comuneros sobre la tierra que poseen por más de un año, el acuerdo de Asamblea General de la Comunidad requerirá el voto a favor de no menos del cincuenta por ciento de los comuneros poseedores con más de un año. Para los efectos de la adquisición por el actual poseedor, la entrega de las parcelas se acredita con el documento extendido por la Comunidad a su favor.

b) Para la adquisición en propiedad por parte de miembros de la comunidad no poseedores o de terceros así como para gravar, arrendar o ejercer cualquier otro acto de disposición sobre las tierras comunales, se requerirá el voto a favor de no menos del cincuenta por ciento de los miembros asistentes a la Asamblea instalada con el quórum correspondiente”.

**DECRETO LEGISLATIVO
QUE APRUEBA EL RÉGIMEN JURÍDICO
PARA EL APROVECHAMIENTO
DE LAS TIERRAS DE USO AGRARIO**

TÍTULO I

Disposiciones Generales

Artículo I.- Declaración

Declárese de interés nacional y necesidad pública, el desarrollo integral, competitivo y sostenible del sector agrario así como la conservación y el aprovechamiento eficiente de las tierras de uso agrario.

Artículo II.- Objeto

El objeto de la presente norma es establecer el marco normativo sistematizado en materia de tierras de uso agrario con el fin de garantizar la seguridad jurídica sobre éstas.

Artículo III.- Del derecho de propiedad de las tierras

- 3.1. El Estado garantiza el libre acceso a la propiedad de las tierras, de conformidad con lo establecido en la Constitución Política del Perú, lo dispuesto en el presente Decreto Legislativo y las normas legales vigentes sobre la materia.
- 3.2. El Estado garantiza el derecho de propiedad sobre la tierra en todas sus modalidades. Se ejerce en armonía con el bien común y dentro de los límites de ley. El derecho de propiedad agraria es inviolable.

Artículo IV.- De las tierras de uso agrario

El concepto constitucional de tierras en el régimen agrario comprende a todo predio susceptible de tener uso agrario, el que incluye el uso agrícola, forestal o pecuario. Son tierras en el régimen agrario, entre otras, las tierras de pastoreo, las tierras destinadas al cultivo de forrajes, las tierras con recursos forestales y de fauna, las tierras eriazas, así como las riberas y márgenes de álveos y cauces de ríos y, en general, cualquier otra denominación legal que reciba el suelo del territorio peruano que sea susceptible de tener uso agrario.

El uso de las tierras con aptitud forestal se regirá por la legislación de la materia y supletoriamente por lo previsto en la presente norma.

El régimen jurídico de las tierras de uso agrario se rige por lo establecido en el presente Decreto Legislativo y supletoriamente por el Código Civil.

Artículo V.- De las tierras eriazas con aptitud de uso agrario

- 5.1. Se consideran tierras eriazas con aptitud de uso agrario las no explotadas por falta o exceso de agua y los demás terrenos improductivos, excepto:

- (i) Las lomas y praderas con pastos naturales dedicados a la ganadería, aun cuando su uso fuese de carácter temporal;
 - (ii) Las tierras de protección, entendiéndose por tales a las que no reúnan las condiciones ecológicas mínimas requeridas para cultivo, pastoreo o producción forestal;
 - (iii) Las que constituyan patrimonio arqueológico de la Nación; y,
 - (iv) Las tierras eriazas que se encuentran en proceso de habilitación agrícola respecto de las cuales no hayan vencido los plazos para su incorporación a la actividad agraria, o en las que el proceso de irrigación se encuentra limitado en su avance por las disponibilidades de agua.
- 5.2. Las tierras eriazas ubicadas dentro del área urbana o de expansión urbana están sujetas a la legislación de la materia.
- 5.3 El otorgamiento de tierras eriazas de propiedad del Estado con fines agrarios, se rige por lo establecido en el Decreto Legislativo N° 994 y el Reglamento de la presente norma.

Artículo VII.- Abandono

El abandono de tierras previsto en el segundo párrafo del artículo 88° de la Constitución Política del Perú se refiere al incumplimiento de las condiciones establecidas en los contratos de otorgamiento de tierras eriazas con la consiguiente reversión al dominio del Estado.

TÍTULO III

De las servidumbres y otras cargas

Artículo 8°.- De las servidumbres

- 8.1. Las tierras de uso agrario quedan sujetas a las siguientes servidumbres:
- (i) Servidumbres ordinarias;
 - (ii) Servidumbres de libre tránsito por los puentes, oroyas y caminos existentes y aquellos que se construyan en el futuro; y,
 - (iii) Servidumbres de libre paso de oleoductos, gaseoductos, mineroductos, instalaciones para la exploración y explotación minera y petrolera, instalaciones para el servicio público de telecomunicaciones, líneas de transmisión de energía, vías de comunicación de toda especie, obras para irrigación y drenaje establecidas o que sea necesario establecer, así como las que demande su operación y mantenimiento.
- 8.2. Asimismo, las tierras de uso agrario son susceptibles de sujetarse a las demás cargas y derechos previstos en el Código Civil.
- 8.3. El Reglamento establecerá los criterios para la valorización de la contraprestación por las servidumbres y otras cargas y derechos previstos por el presente artículo.

Artículo VI.- Capacidad de uso

- 6.1. El Ministerio de Agricultura determinará la capacidad de uso mayor o aptitud agrícola, pecuaria o forestal de conformidad con lo previsto en el Reclamo de la presente norma.

CAPÍTULO SEGUNDO

De los Predios Rurales Comunales

Artículo 3º.- Generalidades

- 3.1. Las Comunidades Campesinas y las Comunidades Nativas, en cuanto a su existencia, organización y derechos, se rigen por lo dispuesto en la Constitución y en la legislación de la materia.
- 3.2. El Estado garantiza la integridad de la propiedad territorial de las Comunidades Campesinas y de las Comunidades Nativas.
- 3.3. La propiedad territorial de las Comunidades Campesinas y de las Comunidades Nativas es imprescriptible.

Artículo 4º.- De los Predios Rurales Comunales

Para efectos del presente decreto legislativo, se considera Predio Rural Comunal a las tierras cuya propiedad corresponde a las Comunidades Campesinas y a las Comunidades Nativas, de conformidad con lo establecido en el presente decreto legislativo y en la legislación vigente.

Artículo 6º.- De la propiedad territorial de las Comunidades Campesinas

- 6.1. La propiedad territorial de las Comunidades Campesinas está integrada por las tierras originarias de la Comunidad Campesina, las tierras adquiridas de acuerdo al derecho común y agrario, y las adjudicadas dentro del proceso de Reforma Agraria.
- 6.2. Las tierras originarias comprenden las tierras que la Comunidad Campesina viene poseyendo así como aquellas respecto de las cuales cuenten con títulos.
- 6.3. Las Comunidades Campesinas que carezcan de tierras o las tengan en cantidad insuficiente tienen prioridad para la adjudicación de las tierras colindantes que hayan revertido al dominio del Estado por abandono.

Artículo 7º.- Excepciones a la propiedad comunal

No se consideran Predios Rurales Comunales:

- 7.1. Los predios de propiedad de terceros amparados en títulos legítimamente obtenidos.
- 7.2. Los predios que el Estado ha utilizado para servicios públicos, salvo convenios celebrados entre el Estado y la Comunidad.

- 7.3. Las tierras que la Comunidad transfiera a sus comuneros o a terceros de conformidad con lo establecido en la legislación vigente y en el Reglamento de la presente norma.
- 7.4. Las tierras de las Comunidades que sean declaradas en abandono, de conformidad con lo establecido en la Constitución Política del Perú.
- 7.5. Las tierras que se encuentren ocupadas por centros poblados o asentamientos humanos al 31 de diciembre de 2004, salvo aquellas sobre las que se haya interpuesto acciones de reivindicación hasta antes de esa fecha por parte de las Comunidades. Las entidades del Estado correspondientes procederán a formalizar y registrar las tierras ocupadas por los asentamientos humanos, con el fin de adjudicar y registrar la propiedad individual de los lotes a sus ocupantes. Se exceptúan las tierras de los centros poblados que estén formados, dirigidos y gobernados por la propia Comunidad.

LEGISLATIVE DECREE

N°1079

DECRETO LEGISLATIVO QUE ESTABLECE MEDIDAS QUE GARANTICEN EL PATRIMONIO DE LAS ÁREAS NATURALES PROTEGIDAS

Artículo 3°.- Principios que garantizan el Patrimonio de las Áreas Naturales Protegidas

El procedimiento administrativo sobre asuntos referidos a recursos naturales renovables ubicados en las Áreas Naturales Protegidas de nivel nacional se sustenta en los siguientes principios, a los cuales se les aplica supletoriamente aquellos señalados en la Ley N° 27444, Ley del Procedimiento Administrativo General:

1. **Principio de prevención.-** Toda persona tiene el deber de adoptar las previsiones necesarias con respecto a los riesgos que entraña la actividad que realizan.
2. **Principio del dominio eminencial.-** Los derechos para el aprovechamiento sostenible de los recursos naturales renovables se otorgan a los particulares mediante las modalidades que establecen las leyes especiales para cada uno de ellos. En cualquiera de los casos, el Estado conserva el dominio sobre estos, así como sobre los frutos, productos y subproductos, en tanto ellos no hayan sido obtenidos acorde con el título por los cuales fueron otorgados.

Artículo 4°.- Del tratamiento aplicable a los especímenes, productos y subproductos recuperados o encontrados abandonados en Áreas Naturales Protegidas

Los especímenes de fauna y flora silvestre recuperados o encontrados abandonados en áreas naturales protegidas por la autoridad correspondiente, no serán objeto de remate, subasta o comercio. Se incluyen en esta disposición los productos y subproductos desarrollados a partir de tales especímenes o recursos.

Las actividades de recolección y caza con fines de subsistencia y autoconsumo en dicha áreas se exceptúan de la presente disposición, siempre que no contravengan las disposiciones legales vigentes y sean compatibles con la sostenibilidad ambiental.

**LEGISLATIVE DECREE
N°1081**

**DECRETO LEGISLATIVO QUE CREA EL SISTEMA
NACIONAL DE RECURSOS HÍDRICOS**

TÍTULO I

Disposiciones Generales

Artículo 1.- Declaratoria de interés nacional y necesidad pública

Declárese de interés nacional y necesidad pública la gestión integrada de los recursos hídricos con el propósito de lograr eficiencia y sostenibilidad en el manejo de las cuencas hidrográficas y los acuíferos para la conservación e incremento del agua, así como asegurar su calidad fomentando una nueva cultura del agua, para garantizar la satisfacción de la demanda de las actuales y futuras generaciones.

Artículo 2.- Objeto de la norma

La presente norma tiene por objeto articular el accionar del Estado para la gestión integrada y multisectorial de los recursos hídricos que comprende entre otras actividades la evaluación, valoración, disposición, asignación del uso y aprovechamiento multisectorial eficiente y sostenible del recurso agua, creando para tal efecto el Sistema Nacional de Recursos Hídricos.

Artículo 3.- Ámbito de aplicación de la norma

La norma es de aplicación a toda las personas naturales y jurídicas, públicas y privadas de ámbito nacional, regional y local relacionadas con la gestión de recursos hídricos continentales superficiales y subterráneos; y en lo que corresponda, al agua marítima y al agua atmosférica, las que se rigen por su legislación especial siempre que no se oponga a la presente norma.

Artículo 4.- Principios para la gestión integrada de los recursos hídricos

Son principios para la gestión integrada de los recursos hídricos los siguientes:

4.1 Principio de Prioridad en el acceso al agua

El acceso al agua para la satisfacción de las necesidades primarias de la persona humana es prioritario sobre cualquier otro uso. En situación de escasez de agua, se destina prioritariamente el uso de este recurso para la satisfacción de las necesidades poblacionales.

4.2 Principio precautorio

La ausencia de certeza absoluta sobre el peligro de daño grave o irreversible, que amenace las fuentes de agua, no constituye impedimento para adoptar medidas que impidan su degradación o extinción.

4.3 Principio de Sostenibilidad

El Estado promueve y controla el aprovechamiento y conservación sostenible de los recursos hídricos previniendo la afectación de su calidad ambiental y de las condiciones naturales de su entorno, como parte del ecosistema donde se encuentran; regula su asignación en función de objetivos sociales, ambientales y económicos; y promueve la inversión y participación del sector privado en el aprovechamiento sostenible del recurso.

4.4 Principio de seguridad jurídica

El Estado consagra un régimen de derechos administrativos para el uso de los recursos hídricos y garantiza su ejercicio, otorgando seguridad jurídica a sus titulares para la inversión relacionada con el manejo del agua sea pública o privada o en coparticipación.

4.5 Principio de respeto de los usos del agua por las Comunidades Campesinas y Comunidades Nativas

El Estado respeta los usos y costumbres de las Comunidades Campesinas y Comunidades Nativas, así como su derecho de utilizar las aguas que discurren por sus tierras, en tanto no se oponga a la Ley. Promueve el conocimiento y tecnología ancestral del agua.

4.6 Principio de valoración y cultura del agua

El agua tiene valor económico, social, ambiental y cultural, por lo que su uso debe basarse en el equilibrio adecuado entre éstos.

El estado desarrolla y promueve programas de educación, difusión y sensibilización, generando conciencia y aptitudes que propicien el buen uso y valoración del agua.

4.7 Principio de eficiencia

La gestión integrada de los recursos hídricos se sustenta en el aprovechamiento eficiente y la conservación de los recursos hídricos, incentivando el desarrollo de una cultura de uso eficiente de dichos recursos entre todos los usuarios y operadores de infraestructura hidráulica, pública o privada.

4.8 Principio ecosistémico

La gestión del agua se basa en el manejo integral de las cuencas hidrográficas y los acuíferos, el uso múltiple de las aguas y la interrelación que existe entre este recurso y el aire, el suelo, los bosques y la biodiversidad conforme al ciclo hidrológico.

4.9 Principio de transparencia de la información

La información referente a la gestión integrada de los recursos hídricos que incluye entre otros, el estado, uso, conservación, preservación, calidad, fuentes de contaminación de los recursos hídricos, así como la información real y pronosticada acerca de los fenómenos que están vinculadas con el ciclo hidrológico es de carácter público.

**DECRETO LEGISLATIVO QUE PROMUEVE
EL APROVECHAMIENTO EFICIENTE Y LA
CONSERVACIÓN DE LOS RECURSOS HÍDRICOS**

TÍTULO 1

Artículo 1°.- Declaración de Interés Público

Declárese de necesidad pública e interés nacional la conservación de los recursos hídricos así como su aprovechamiento eficiente.

Artículo 2°.- Objeto de la Ley

El presente decreto legislativo tiene por objeto establecer el marco normativo para promover el aprovechamiento eficiente y la conservación de los recursos hídricos, incentivando el desarrollo de una cultura de uso eficiente de dichos recursos entre todos los usuarios y operadores de infraestructura hidráulica, pública o privada.

Artículo 3°.- Parámetros de Eficiencia para el aprovechamiento de los recursos hídricos

La Autoridad Nacional del Agua, en su calidad de ente rector del Sistema Nacional de Recursos Hídricos, establece los Parámetros de Eficiencia aplicables al aprovechamiento de dichos recursos, en concordancia con la Política Nacional del Ambiente.

Los Parámetros de Eficiencia establecen los requerimientos mínimos y máximos aplicables a cada forma y tipo de uso de los recursos hídricos. La determinación de los Parámetros de Eficiencia se realizará de conformidad con los lineamientos establecidos en el Reglamento de la presente norma.

Artículo 4°.- Certificación de Aprovechamiento Eficiente

4.1. El Certificado de Eficiencia es el instrumento mediante el cual la Autoridad Nacional del Agua certifica el aprovechamiento eficiente de los recursos hídricos por parte de los usuarios y operadores de infraestructura hidráulica, pública o privada.

4.2. La Autoridad Nacional del Agua otorga "Certificados de Eficiencia" a los usuarios y operadores de infraestructura hidráulica, pública o privada, que cumplan con los Parámetros de Eficiencia.

4.3 La Autoridad Nacional del Agua otorga "Certificados de Creatividad, Innovación e Implementación para la Eficiencia del Uso del Agua" a los usuarios y operadores de infraestructura hidráulica, pública o privada que diseñen, desarrollen o implementen equipos, procedimientos o tecnologías que incrementen la eficiencia en el aprovechamiento de los recursos hídricos así como la conservación de bienes naturales y el mantenimiento adecuado y oportuno de la infraestructura hidráulica.

Artículo 5°.- Incentivos Institucionales

A fin de promover el aprovechamiento eficiente y la conservación de los recursos hídricos, la Autoridad Nacional del Agua podrá organizar concursos de mejores prácticas, realizar pasantías, otorgar premios, difundir experiencias exitosas y promover el uso de equipos y tecnologías innovadoras.

Podrán ser beneficiarios de los incentivos mencionados en el párrafo precedente, los usuarios y operadores de infraestructura hidráulica, pública o privada, que cuenten con uno de los certificados señalados en el artículo 4° de la presente norma.

**DECRETO LEGISLATIVO
N° 1083**

EL PRESIDENTE DE LA REPÚBLICA

POR CUANTO:

Que, el Congreso de la República, mediante Ley N° 29157, ha delegado en el Poder Ejecutivo la facultad de legislar sobre determinadas materias, con la finalidad de facilitar la implementación del Acuerdo de Promoción Comercial Perú – Estados Unidos y apoyar la competitividad económica para su aprovechamiento, encontrándose dentro de las materias comprendidas en dicha delegación la mejora del marco regulatorio, así como la mejora de la competitividad de la producción agropecuaria;

Que, el incremento de la demanda de agua es cada vez mayor y las disponibilidades de tal recurso resulta deficitario para atender todos los requerimientos de los distintos sectores de usuarios, situación que constituye un serio obstáculo para la implementación del Acuerdo de Promoción Comercial Perú – Estados Unidos, que tiene, entre otros, como objetivos, garantizar el acceso preferencial permanente de las exportaciones peruanas a los Estados Unidos de Norteamérica;

Que por tal razón resulta necesario, crear un marco normativo que promueva el aprovechamiento eficiente

y la conservación de los recursos hídricos, incentivando el desarrollo de una cultura de uso eficiente de dichos recursos entre todos los usuarios y operadores de infraestructura hidráulica, pública o privada

De conformidad con lo establecido en el artículo 104° de la Constitución Política del Perú;

Con el voto aprobatorio del Consejo de Ministros; y

Con cargo de dar cuenta al Congreso de la República;

Ha dado el Decreto Legislativo siguiente:

**LEGISLATIVE DECREE
N°1085**

**LEY QUE CREA EL ORGANISMO DE
SUPERVISIÓN DE LOS RECURSOS
FORESTALES Y DE FAUNA SILVESTRE**

**TÍTULO I
Disposiciones Generales**

Artículo 1°.- Creación y Finalidad

Créase el Organismo de Supervisión de los Recursos Forestales y de Fauna Silvestre, OSINFOR, como Organismo Público Ejecutor, con personería jurídica de derecho público interno, encargado de la supervisión y fiscalización del aprovechamiento sostenible y la conservación de los recursos forestales y de fauna silvestre, así como de los servicios ambientales provenientes del bosque, otorgados por el Estado a través de las diversas modalidades de aprovechamiento reconocidas en la Ley N° 27308, Ley Forestal y de Fauna Silvestre, de acuerdo a las definiciones precisadas en el artículo 2° de dicha norma.

El OSINFOR está adscrito a la Presidencia del Consejo de Ministros y constituye un Pliego Presupuestal.

Artículo 2°.- Competencia

El OSINFOR es la entidad encargada, a nivel nacional, de supervisar y fiscalizar el aprovechamiento y la conservación de los recursos forestales y de fauna silvestre, así como de los servicios ambientales provenientes del bosque, para su sostenibilidad, de acuerdo con la política y estrategia nacional de gestión integrada de recursos naturales y las políticas que sobre servicios ambientales establezca el Ministerio del Ambiente, en el ámbito de su competencia.

Las competencias de OSINFOR no involucran a las Áreas Naturales Protegidas las cuales se rigen por su propia Ley

TÍTULO II

**CAPÍTULO I
Funciones de OSINFOR**

Artículo 3°.- De las Funciones

El OSINFOR, tendrá las siguientes funciones:

- 3.1 Supervisar y fiscalizar el cumplimiento de los títulos habilitantes otorgados por el Estado, así como las obligaciones y condiciones contenidas en ellos y en los planes de manejo respectivos. Considérese títulos habilitantes para efectos de esta Ley, los contratos de concesión, permisos, autorizaciones y otros, que tengan como objetivo el aprovechamiento sostenible y la conservación de los recursos forestales y de fauna silvestre; así como los servicios ambientales provenientes del bosque.
El OSINFOR podrá ejercer sus funciones de supervisión y fiscalización a través de personas naturales o jurídicas de derecho privado, especializadas en la materia, pudiendo recurrir a herramientas tecnológicas. Para ello implementará un Registro Administrativo de personas naturales y jurídicas de derecho privado que se encuentren debidamente acreditadas para llevar adelante estas funciones. El Reglamento establecerá los requisitos para esta acreditación.

DECRETO LEGISLATIVO QUE ESTABLECE EL RÉGIMEN TEMPORAL EXTRAORDINARIO DE FORMALIZACIÓN Y TITULACIÓN DE PREDIOS RURALES

Artículo 1.- Objeto

Declárese de interés público nacional la formalización y titulación de predios rústicos y tierras eriazas habilitadas, a nivel nacional, por un periodo de cuatro (4) años contados a partir de la vigencia del presente Decreto Legislativo.

Artículo 2.- Del Régimen Temporal Extraordinario de Formalización y Titulación

Créase un Régimen Temporal Extraordinario de Formalización y Titulación de predios rústicos y tierras eriazas habilitadas, a nivel nacional, por el plazo dispuesto en el artículo 1 del presente Decreto Legislativo.

Artículo 3.- De la entidad competente

El Organismo de Formalización de la Propiedad Informal - COFOPRI asumirá de manera temporal y excepcional, las competencias para la formalización y titulación de predios rústicos y tierras eriazas habilitadas a que se contrae el presente Decreto Legislativo.

Las acciones de formalización de la propiedad se iniciarán de oficio y de manera progresiva sobre las jurisdicciones que el COFOPRI determine.

Para la adecuada ejecución de las acciones de formalización y titulación, el COFOPRI en su calidad de entidad generadora de catastro, se ejecutará las acciones necesarias para la generación, modernización, consolidación, conservación y actualización del catastro rural del país.

Artículo 4.- Instancias administrativas

Las Oficinas Zonales del COFOPRI resolverán en primera instancia los procedimientos administrativos referidos a predios rurales a su cargo, así como las oposiciones que se presenten durante el desarrollo de dichos procedimientos.

El Tribunal Administrativo de la Propiedad del COFOPRI conocerá en segunda y última instancia los procedimientos mencionados en el párrafo precedente, siendo de aplicación, en lo que fuera pertinente, el Reglamento de Normas que Regulan la Organización y Funciones de los Órganos de COFOPRI Responsables del Conocimiento y Solución de Medios Impugnatorios, aprobado por Decreto Supremo N° 039-2000-MTC.

Artículo 5.- Regularización de poseedores de tierras eriazas habilitadas

Los poseedores de tierras eriazas de propiedad del Estado que hayan habilitado y destinado íntegramente las mismas a alguna actividad agropecuaria con anterioridad al 31 de diciembre del 2004, cuya posesión sea directa, continua, pacífica y pública, podrán solicitar al COFOPRI la regularización de su situación jurídica, mediante el procedimiento de adjudicación directa, previo pago del valor del terreno.

Están excluidos de los alcances del presente artículo los predios que se encuentren comprendidos en procesos de inversión privada y los declarados de interés nacional.

Artículo 6.- Instrumentos de Formalización de la Propiedad Rural

Los títulos de propiedad y otros instrumentos de formalización, serán aprobados por el COFOPRI y tendrán mérito suficiente para su inscripción en el Registro de Predios.

LEGISLATIVE DECREE

N°1090

Artículo 2.- Definición de recursos forestales, de fauna silvestre y de servicios ambientales.

2.1 Son recursos forestales los bosques naturales y las tierras cuya capacidad de uso mayor sea de protección forestal y los demás componentes silvestres de la flora terrestre y acuática emergente, cualquiera sea su ubicación en el territorio nacional.

2.2 Son recursos de fauna silvestre las especies animales no domesticadas que viven libremente y los ejemplares de especies domesticadas que por abandono u otras causas se asimilen en sus hábitos a la vida silvestre, excepto las especies diferentes a los anfibios que nacen en las aguas marinas y continentales que se rigen por sus propias leyes.

2.3 Son servicios ambientales del bosque los que tienen por objeto la protección del suelo, regulación del agua, conservación de la diversidad biológica, conservación de ecosistemas y de la belleza escénica, absorción de dióxido de carbono y en general el mantenimiento de los procesos ecológicos esenciales.

Título II

Ordenamiento de la Superficie Forestal

Artículo 7°.- Ordenamiento de la superficie forestal

El ordenamiento de la superficie forestal del país comprende:

7.1 Bosques de producción.- Son superficies boscosas que por sus características bióticas y abióticas son aptas para la producción permanente y sostenible de madera y otros recursos y servicios forestales. Se subdividen en:

a. Bosques de producción permanente.- Son áreas con bosques naturales primarios calificadas mediante resolución ministerial del Ministerio de Agricultura, cuyo aprovechamiento preferente de la madera y otros recursos y servicios forestales podrán ser otorgados a los particulares.

b. Bosques de producción en reserva.- Son bosques naturales primarios de propiedad del Estado destinados a la producción preferente de madera y otros recursos y servicios forestales, que el Estado mantiene en reserva para su futura habilitación mediante concesiones. En estas áreas pueden otorgarse adicionalmente derechos para el aprovechamiento de otros recursos forestales diferentes de la madera, de servicios forestales y de fauna silvestre, en tanto que no afecten el potencial aprovechable de dichos recursos.

7.2 Bosques para aprovechamiento futuro.-

Son superficies que por sus características bióticas y abióticas se encuentran en proceso de desarrollo para ser puestas en producción permanente de madera y de otros recursos y servicios forestales. Se subdividen en:

a. Plantaciones forestales.- Son aquellas logradas mediante el establecimiento de cobertura arbórea y arbustiva en áreas de capacidad de uso mayor forestal.

b. Bosques secundarios.- Son superficies boscosas pobladas por especies pioneras, formadas por pérdida del bosque primario como consecuencia de fenómenos naturales o actividad humana.

c. Áreas de recuperación forestal.- Son tierras sin cubierta vegetal o con escasa cobertura arbórea o de bajo valor comercial, que requieren forestación y reforestación, para reincorporarlas a la producción de madera, otros recursos y servicios forestales.

7.3 Bosques de protección.- Son superficies que por sus características bióticas y abióticas sirven fundamentalmente para preservar los suelos, mantener el equilibrio hídrico, conservar y proteger los bosques ribereños orientados al manejo de cuencas para proteger la diversidad biológica y la conservación del ambiente.

Dentro de estas áreas se promueve el ecoturismo, la recuperación de la flora y de la fauna silvestre en vías de extinción y el aprovechamiento de productos forestales no maderables.

7.4 Áreas naturales protegidas.- Se consideran áreas naturales protegidas las superficies necesarias para la conservación de la diversidad biológica y demás valores asociados de interés ambiental, cultural, paisajístico y científico, de conformidad con lo establecido en la Ley N° 26834.

7.5 Bosques en comunidades nativas y campesinas.- Son aquellas que se encuentran dentro del territorio de dichas comunidades, con la garantía que les reconoce el Artículo 89° de la Constitución Política del Perú.

7.6 Bosques locales.- Son aquellas que se otorgan a las poblaciones rurales y centros poblados para el aprovechamiento sostenible de los recursos forestales y de la fauna silvestre.

Artículo 15°.- Aprovechamiento de los recursos forestales y de la fauna silvestre en tierras de Comunidades

Las comunidades nativas y campesinas, previo al aprovechamiento de sus recursos forestales y de fauna silvestre, con fines industriales y comerciales, deberán contar con su Plan de Manejo aprobado por la autoridad competente, de acuerdo a los requisitos que señale el Reglamento, a fin de garantizar el aprovechamiento sostenible de dichos recursos.

La autoridad competente asesorará y asistirá, con carácter prioritario, a las Comunidades Nativas y Campesinas para el fin antes señalado.

Título IV

Disposiciones generales aplicables al aprovechamiento de los recursos forestales y de la fauna silvestre

Artículo 16°.- Garantía de fiel cumplimiento

El aprovechamiento de los recursos forestales y de la fauna silvestre, que se realice bajo cualquiera de las modalidades reguladas por la presente Ley, deberá estar debidamente respaldado durante toda su vigencia y ejecución.

En el caso de las concesiones forestales con fin maderable otorgadas mediante la modalidad de subasta pública, la garantía de fiel cumplimiento será una carta fianza o instrumento similar.

Para todos los otros casos, las características y demás requisitos de las garantías serán definidos en el Reglamento.

FIDH represents **155** human rights organisations on **5** continents

Keep your eyes open

Establishing the facts

investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

Supporting civil society

training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

Mobilising the international community

permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

Informing and reporting

mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

FIDH - International Federation for Human Rights

17, passage de la Main-d'Or - 75011 Paris - France
CCP Paris: 76 76 Z
Tel: (33-1) 43 55 25 18 / Fax: (33-1) 43 55 18 80
www.fidh.org

Director of the publication : Souhayr Belhassen
Editor : Antoine Bernard
Authors : Rodolfo Stavenhagen y Elsie Monge
Coordination : Miguel Jugo y Delphine Raynal
Design : Céline Ballereau-Tetu / Fotos : APRODEH
Maps and pictures : Instituto del Bien Común

FIDH represents 155 human rights organisations on 5 continents



of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be

ABOUT FIDH

- FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

- A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

- An universal movement

FIDH was established in 1922, and today unites 155 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

- An independent organisation

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

fidh

International Federation for Human Rights

Find information concerning FIDH 155 member organisations on www.fidh.org