



Submission to UN CERD committee by Survival International (NGO in consultative status with ECOSOC), in consultation with FENAMAD (Indigenous Federation of Madre de Dios, Peru)

For consideration in the forthcoming 95 Session of the CERD committee (23 April 2018 - 11 May 2018)

Critical state of uncontacted tribes in Peru

The Peruvian government has systematically failed to protect the territories of uncontacted tribes from encroaching loggers, miners, oil companies and road building projects, resulting in forced contact with thousands of highly vulnerable isolated Indians, with catastrophic consequences.

Under international law - ILO Convention 169 - and Peru's law 28736, uncontacted tribes have the right to their land and way of life. History has shown that forced contact with isolated tribal peoples has resulted in violence, the spread of disease, and ultimately the death of between 50- 90% of a tribe following contact. If these communities are to continue to thrive, Peru must act immediately to protect their lands, and demarcate those territories still awaiting official recognition.

The Threats

In January 2018, the Peruvian government ratified law 30723¹, which declares a "national interest" in extensive road building within and around the state of Ucayali. The law was approved despite the expressed concern of the Ministries of Environment and Culture, and without the free, prior and informed consent of indigenous peoples who live in the region. The network of proposed roads cuts through the heart of highly biodiverse Amazon forest that is home to a significant and diverse population of uncontacted Indians, and evidence shows that construction of a number of these highways is already illegally underway.

One of the roads, MD-104, connecting the regions of Ucayali with Madre de Dios would run alongside the border region between Peru and Brazil that is home to more uncontacted tribes than anywhere else in the world. The 270km road would run from Puerto Esperanza to Iñapari and cut across the eastern delimitation of the

¹ <http://busquedas.elperuano.pe/normaslegales/ley-que-declara-de-prioridad-e-interes-nacional-la-construcc-ley-n-30723-1608601-10/>

² Global Witness, 'A Rocky Road', 2013

Alto Purus National Park, the Purus Community Reserve, and the Madre de Dios Territorial Reserve. Around 80% of the population in this remote area are indigenous, and there are several uncontacted tribes who use a large area of the forest, including Mashco Piro, Mastanahua, Chitonahua and Mastanahua Indians. A 2013 report found that around 20km of the road had already been illegally constructed, allegedly with funding from local government.²

A second road, PE-5S, runs alongside the eastern border of the Manu National Park and will soon extend to the Madre de Dios Uncontacted Indigenous Reserve. Illegal construction of the road is underway, and the road now extends just kilometres away from an area inhabited by uncontacted Mashco Piro Indians. The Mashco Piro are well known to the Peruvian authorities, yet despite global criticism of the uncontrolled contact of a number of the tribe in 2012, the government has failed to stop illegal road building next to the extremely vulnerable group. If a local government guard post is unable to prevent illegal road building, there is little hope that the government will prevent immigration into the area, placing the lives of the Mashco Piro and other uncontacted tribes in immediate danger.

Tragic History of Roads

Road building as a key driver to forest degradation has been well documented and is the main source of socio-environmental damage in the Amazon.³ Nearly 95% of all deforestation in the Amazon occurs within 5.5km of roads or 1km of navigable rivers.⁴

In Peru, the Interoceanic Highway is just one example of mass-deforestation as a direct result of road building. Even before completion, there was a 63.5% population increase in Madre de Dios.⁵ Today there are an estimated 30,000 gold miners working with devastating effect: mass-deforestation, a polluted river network that is the life-source of indigenous peoples, and, in 2016, a state of emergency caused by mercury poisoning⁶ of 41% of the population.⁷ Much of the forest around the road has turned into a desert. The affect this has had on uncontacted tribal peoples has not been investigated by the government.

² Global Witness, 'A Rocky Road', 2013

³ M. Dourojeanni et al., "Peruvian Amazon in 2021. Exploitation of natural resources and infrastructure: What is happening? What do they mean for the future?"

⁴ Barber et al., "Roads, deforestation, and the mitigating effect of protected areas in the Amazon." *Biological Conservation* 177 (2014) 203-209.

⁵ INEI. "Censos Nacionales 2007, XI de Población y VI de Vivienda: Perfil Sociodemográfico del Perú. Lima: Instituto Nacional de Estadística e Informática." 2008.

⁶ In March 2016 Survival International wrote an emergency appeal to the UN Special Rapporteur for Health

⁷ See Supreme Decree N° 034-2016-PCM <http://busquedas.elperuano.com.pe/normaslegales/declaran-el-estado-de-emergencia-en-once-districtos-de-las-pr-decreto-supremo-n-034-2016-pcm-1383308-1/>

Peru's obligations under national and international law

Uncontacted tribes have rejected contact with mainstream society, and as a result they cannot be consulted, nor give their free, prior and informed consent to developments on their land. Because of the special status of these highly vulnerable peoples, development projects on or near their land cannot be legally approved.

Due to the mass-immigration and forest destruction that road building projects in the Amazon attract, the proposed law cannot be lawfully implemented.

In 1969 Peru signed the International Convention on the Elimination of All Forms of Racial Discrimination. Road building projects in or near areas inhabited by uncontacted tribes would violate articles 1.4; 2; & 5 of the Convention.

In 1991 Peru ratified ILO Convention 169 on Indigenous and Tribal Peoples.⁸ The law recognizes the right to consultation. As uncontacted Indians cannot be consulted, they cannot give their free, prior and informed consent and their rejection of the outside world should therefore be understood as their rejection of roads and any other development on their lands.

In 2006 Peru passed Law No. 28736: 'Law for the protection of indigenous peoples in isolation and initial contact'.⁹ The law guarantees the rights of uncontacted tribes to their land and calls for the creation of intangible reserves to protect them and their ways of life.

In 2007 the Inter-American Commission of Human Rights issued precautionary measures to the Peruvian State to adopt the necessary measures that guarantee the lives and integrity of uncontacted Mashco Piro, Yora and Amahuaca Indians.

In 2016, Peru signed the Organization of American States' (OAS) American Declaration on the Rights of Indigenous Peoples which calls for the special protection of uncontacted indigenous peoples. Article 26 of the Declaration establishes the right of uncontacted tribes to reject contact with outsiders and to live freely in accordance with their own cultures. It calls on states to adopt policies and measures to uphold these rights.

Conclusion

The ratification of Law 30723 violates the legal commitments Peru has made to protect its indigenous population.

The government has demonstrated a complete lack of political will in its failure to provide sufficient resources to curb mass-migration to land occupied and owned by

⁸ International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) Entry into force: 05 Sep 1991

⁹ Ley para la protección de pueblos indígenas u originarios en situación de aislamiento y en situación de contacto inicial No. 28736

uncontacted and isolated tribal communities. These highly vulnerable peoples simply cannot survive without the land and resources which are vital to their livelihood and to which they have the legal right. Any contact by outsiders with these peoples will expose them to lethal epidemics with fatal consequences for their health and survival. There is ample evidence that uncontacted Indians are subjected to violent attacks once their lands are opened up to the intrusion of outsiders.

Law 30723 is both unconstitutional and in stark violation of the rights of tribal peoples to their lands and lives. The Peruvian government must guarantee that the land inhabited by uncontacted tribes and surrounding areas are protected from the encroachment of outsiders and that no road building projects be permitted in these areas.

Recommendations

We call on the CERD committee to urgently request the Peruvian government to:

Halt the illegal construction of roads in areas inhabited by uncontacted Indians.

Consult with indigenous peoples and their representative organisations about plans to build roads or other projects that could affect their land.

Commit more resources to stop the invasion of miners, loggers, missionaries and other illegal intruders to indigenous peoples' land.

Take legal action against individuals and companies building illegal roads into and around uncontacted tribes' territories.

Stephen Corry, Director of Survival International
Julio Cusurichi Palacios, Director of FENAMAD
Marleni Canales, Legal Advisor to FENAMAD