

# HUMAN RIGHTS COMMITTEE

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Alternative Report prepared by:

**Regional Organization AIDSESP Ucayali – ORAU**

**Law, Environment and Natural Resources – DAR**



D E R E C H O  
A M B I E N T E Y  
R E C U R S O S  
N A T U R A L E S

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## 1. Presentation of the organizations.

The Aidesep Ucayali Regional Organization (ORAU) is a third level organization within the structure of the Amazonian indigenous movement; Its purpose is to represent and promote economic, social, political and cultural development, and represents 15 indigenous peoples and 13 federative bases. It was founded on June 30, 1999 and its objectives are to defend the collective rights, territory, biodiversity, self-determination, bilingual intercultural education (EIB), as well as intercultural health, to indigenous peoples in isolation and initial contact. , and all those other rights recognized at the international and national level aimed at improving the standard of living of the indigenous peoples that comprise it. In recent years, the regions of Ucayali and Huánuco, where the ORAU bases are located, have suffered an increase in illegal activities, and with it threats to their rights. Thus, ORAU has become a benchmark for the protection of the rights of environmental defenders.

Web site: <https://www.orau.org.pe/>

**Law, Environment and Natural Resources (DAR)** is a non-profit civil organization that since its inception, in 2004, has carried out actions to contribute to the development of the country based on the management and sustainable use of its natural resources and the management of the environment in the Amazon. It focuses on environmental policy and legislation, forests, indigenous peoples, investments in infrastructure and extractives, climate change, and good governance, among others. In addition, it articulates and integrates the national scale with the local scale and the international scale through three transversal approaches: Sustainability, Governance and Human Rights.

Web site: <https://dar.org.pe/>

## **2. Introduction from the Peruvian context.**

Peru, according to data from the Ministry of Culture, identifies 55 indigenous peoples, 80% of them are in the Amazonian regions of the country. The largest extension of protected natural areas and biodiversity corridors are also found in the Amazon, for the most part, bordering on indigenous territories. In addition, the most important exploration and exploitation projects and expectations in the hydrocarbons sector (oil and gas) are also in the Amazon and on indigenous territories. These overlaps, and the centralist perspective that the development of the State has had in Peru, have hegemonically generated a vision of the Amazon as an empty space and pantry of resources. Thus, in what represents about 40% of the country's surface, there has not been a prioritized strategy to strengthen its presence, which has deepened an imaginary of isolation, that the Amazon is not connected. All this, despite the fact that the Amazon plays a fundamental role in the permanence of all kinds of life on the planet, and that its role in the face of climate change is vital. In fact, it is this same science that has shown that it is the indigenous territories that have the best conditions and capacities to protect forests.

In the context of the COVID-19 pandemic, these elements deepened the vulnerability of Amazonian indigenous populations. In this way, the solution from the Government was a series of economic reactivation policies focused on extractive activities as a generator of income, and on the promotion of infrastructure projects as a dynamizer of the economy. Without an active State presence due to the pandemic withdrawal, without a tradition of articulation of the Amazon with state authorities, the outcome was evident. Infrastructure initiatives were linked to the expectations of migrants (settlers) for new land for agriculture, but they were also linked to illegal activities. Thus, according to data from DEVIDA in September 2022, illegal crops have increased, reaching the figure of 80 thousand hectares. The illegal mining frontier has expanded its reach in the Amazon, in departments such as Loreto (Nanay and Napo river basin), in Amazonas (Santiago river), in Huánuco and Ucayali.

All this has increased, not only the extractive pressure, but, above all, the threats towards those who oppose these activities. In this way, Ucayali and Huánuco have become the focus of violence against environmental defenders, the majority of whom are indigenous. During the years 2020 and 2022 alone, 12 indigenous leaders have lost their lives due to territorial disputes associated with the growth of illegal activities.

Faced with these scenarios, indigenous peoples in different parts of the world have been betting on the recovery of their territories within the framework of the right to self-determination. In the Amazon, experiences called autonomous prior consultation protocols point out a way to propose how they want the right to consultation to be applied, from their

worldviews, as a tool to protect their territories. In Peru, faced with the failure of legal physical sanitation policies for titling by native communities, and of titling projects linked to climate funds, the peoples have been demanding greater self-determination. Thus, the initiatives of the indigenous autonomous territorial governments are advancing as an alternative for the reconstruction of the so-called ancestral or integral territories. This represents not only a regulatory challenge, but also a political one, which should open bridges for the redefinition of the concept of territoriality, and therefore, the right to collective territory of indigenous peoples, and their relationship with the State.

For this reason, we present a brief analysis on the implementation of the rights to self-determination, collective territory, and to life. Specifically those linked to articles 1 on the right of self-determination and the guarantee and exercise of prior, free and informed consent. Along the same lines, in the same article 1 on the right to self-determination and the guarantee and exercise of the right to territory. And finally, those linked to article 6 related to the right to life of environmental defenders and the rights of indigenous peoples in a situation of isolation and in a situation of initial contact.

With this report, we hope to generate specific recommendations so that the Government of Peru can strengthen its stewardship in matters of indigenous rights. This, taking into account the importance that this presents for the entire country and the region.

### **3. Progress in Peru in the implementation of rights contained in the international covenant on civil and political rights.**

- a. *Article 1 on the right to self-determination and the guarantee and exercise of prior, free, and informed consent.*

#### **On consultation and prior, free, and informed consent.**

As has been pointed out in regional human rights organizations of which Peru is a part, such as the Inter-American Commission on Human Rights (IACHR), a constitutive element of the right to indigenous self-determination is free, prior, informed, and informed consultation. good faith<sup>1</sup>. On this, in its general observations the Committee on Economic, Social and Cultural Rights (ESCR Committee) pointed out that "States parties must also respect the principle of free, prior and informed consent of indigenous peoples in all aspects concerning the scope of application of their specific rights".<sup>2</sup>

In the same way, it indicates that one of the basic obligations of States is to "allow and promote the participation of persons belonging to minorities, indigenous peoples or other communities in the formulation and application of the laws and policies that concern them. In particular, States parties must obtain their free and prior informed consent when the preservation of their cultural resources is in danger, especially those associated with their way of life and cultural expression".<sup>3</sup> However, Peru is still far from fully guaranteeing the consultation and prior, free and informed consent of indigenous peoples.

The country has a prior consultation law promulgated in 2011 (Law 29785) and regulated<sup>4</sup> in the year 2012. Since then, more than 80 prior consultation processes have been carried out, 70 of them concluded<sup>5</sup>. For the most part, these processes have been carried out to submit administrative measures related to mining and hydrocarbon projects for consultation. This has installed a narrative that positions prior consultation only as a mechanism to grant rights to use natural resources over indigenous territories. Thus, the power to fully guarantee the consultation and prior, free and informed consent of indigenous peoples is weakened. Throughout the 10 years that the regulation of the Prior Consultation Law has been in place, although the existing legal framework and the processes implemented are recognized as progress, it is necessary to identify the critical points that can help bring us closer to full implementation. and in accordance with international standards of consent and prior consultation. In the first place, we can mention the fact that there is no consultation mechanism for legislative measures issued by the Congress of the Republic, therefore the laws that may affect indigenous peoples and PIACI have been approved without prior consultation, Most of them, in recent years, have been projects on road infrastructure. None of the bills that sought to regulate legislative consultation have been approved so far, in 10 years of regulatory development.

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<sup>1</sup> CIDH. (2021). Derecho a la libre determinación de los Pueblos Indígenas y Tribales. Disponible en: <https://www.oas.org/es/cidh/informes/pdfs/LibreDeterminacionES.pdf>

<sup>2</sup> Naciones Unidas. Comité de Derechos Económicos, Sociales y Culturales. (2009). Observación General N° 21.

<sup>3</sup> Naciones Unidas. Comité de Derechos Económicos, Sociales y Culturales. (2009). Observación General N° 21.

<sup>4</sup> Decreto Supremo N° 001-2012-MC. Publicado en el Diario Oficial El Peruano el 3 de abril de 2012.

<sup>5</sup> Ministerio de Cultura: Procesos de consulta previa. <https://consultaprevia.cultura.gob.pe/proceso>

In addition, until recently the regulation of Law 29785 excluded prior consultation when it came to public services (construction and improvement of road infrastructure, health, education, among others) through its Fifteenth Complementary, Transitory and Final Provision and through Vice-Ministerial Resolution No. 013-2016-VMI-MC. These regulatory restrictions were annulled with retroactive effect with the publication of the Judgment A.P. 29126-2018<sup>6</sup> in 2022 issued by the Supreme Court as a result of a judicial process led by indigenous organizations such as the Inter-Ethnic Association for the Development of the Peruvian Jungle (AIDSESEP) with the support of DAR and other civil society organizations. This judgment not only corrects the Regulations of the Prior Consultation Law, but also underlines the responsibility of the State to respect 14 international standards of prior consultation. One of them urges the State to regulate prior legislative consultation.

However, it should be noted that the ruling took a year to be published in the official newspaper El Peruano. Although there was a ruling issued by the judicial authorities in January 2021, it was subject to a clarification measure proposed by the Ministry of Culture, under which clarity was requested on the implications and scope of the retroactivity expressed in the judgment. Said controversy was resolved in November 2021, noting that retroactivity not only refers to the date of issuance of this sentence, but also to the issuance of the Regulations of the Consultation Law, 10 years earlier in 2012. Likewise, there is still pending the challenge of applying this judgment in prior consultation processes on administrative measures related to public services. Another challenge is that, since it represents a substantial modification of the regulatory framework, since it includes 14 international consultation standards as an obligation of the State, it is urgent that the dissemination of the judgment be promoted. With this, not only reaching indigenous peoples as subjects of right, but that it reaches officials and justice agents in a pedagogical way, in favor of strengthening the right to consultation in Peru and its relationship with Convention 169 ratified by Peru in 1993 and in force since 1995.

Another limitation identified for monitoring and compliance with the agreements derived from the minutes of prior consultation. According to the Ministry of Culture itself, until 2022 only 20% of the prior consultation acts had been fulfilled. This represents a serious drawback for the legitimacy of the processes since it generates distrust and uncertainty. In addition, the perception is generated that there is no will on the part of the State to comply with the results of the process, and that only the signing of the minutes is prioritized. Thus, elements are still missing to have an updated public database on prior consultation agreements so that citizens, indigenous peoples, and civil society can adequately monitor their compliance in a transparent manner. It is necessary to have participatory and pedagogical mechanisms that help to have clear criteria to indicate when the agreements are fulfilled and when they are not, and measure their quality.

In the 10 years of prior consultation processes with indigenous peoples, it is necessary to call for an evaluation of the regulatory framework, and incorporate, above all, the learning of indigenous peoples. In this sense, the right to self-determination of indigenous peoples obliges the State to include their expectations and proposals in the implementation of their rights. Thus, Amazonian indigenous organizations such as the AIDSESEP Ucayali Regional Organization - ORAU, the Regional Organization of Indigenous Peoples of the East - ORPIO, have worked on the development of prior consultation protocols, as tools to strengthen the

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<sup>6</sup> Sentencia A.P. N° 29126-2018. Publicada en el Diario Oficial El Peruano el 14 de enero del 2022.

implementation of the right. Within the framework of the review and evaluation of the regulatory framework, it is urgent to have mechanisms that allow the inclusion of these indigenous proposals and recognition from the State.

The advancement of autonomous prior consultation protocols in Amazonian countries, such as Brazil, already has a long history. However, it is a recent debate and experience in Peru, and the bet is not to replace the Regulation of the existing Consultation Law. The objective is that from their worldviews, cultural particularities, in short, that from their self-determination, they have been building criteria to implement the right to consultation. For example, counting on indigenous wise men and women for the preparation of consultation plans (included in the Regulations of the Law), or increasing moments of internal debate among indigenous peoples, as part of recognizing their own forms of reaching agreements. and consensus. Finally, protocol proposals in Peru have been emerging with two criteria: the first is linked to the existence of permanent preparation on the right to consultation that helps to have participatory mechanisms in the design and planning of prior consultation cases. And a second criterion, linked to the post-consultation stage, which guarantees participatory and intercultural follow-up in compliance with prior consultation agreements.

*b. Article 1 on the right to self-determination and the guarantee and exercise of the right to the territory.*

### **On the non-recognition of autonomous governments**

International instruments and jurisprudence on the rights of indigenous peoples have recognized that the right to territory of indigenous peoples is a pre-existing right of the State. Well, for indigenous peoples, the territory they occupy is theirs by ancestral heritage. The way in which they use their territory and the way in which they control their territorial spaces is often very different from that of Western culture. Despite the impositions, it has been occupied and defended by past generations, and it is hoped that those to come will continue as well. It is thus the territorial base that allows the exercise of self-determination<sup>7</sup>, and whose main characteristic is the collective management of the territory.

In this sense, the right to self-determination not only supposes the recognition of collective property, but also implies the right to self-manage or self-govern their territories, through their own authorities. The right to autonomy or self-government was expressly recognized by the American States in article XXI of the American Declaration on indigenous peoples and by the international community in general, in article 4 of the UN Declaration on indigenous peoples. The exercise of territorial governance is one of the most relevant expressions of indigenous self-determination. This supposes the recognition of the self-government systems that assume the control, management and administration of the ancestral or traditional territory.

Territorial governance covers the determination of the type of ownership with which they will exercise their territorial rights, based on their own law. In Peru, one of the main problems is that there are cases in which the titling does not reflect the conception of the territory itself. By

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<sup>7</sup> Derecho a la libre determinación de los Pueblos Indígenas y Tribales. Aprobado por la Comisión Interamericana de Derechos Humanos el 28 de diciembre de 2021. Comisión Interamericana de Derechos Humanos.



granting the State property titles by communities, fundamental areas for the life of the peoples may be excluded. The communities are thus reduced to fractions or territorial islands that separate the indigenous peoples from their integral relationship with the traditional territory, and seriously hinder the exercise of autonomy.

As the Inter-American Commission and Inter-American Court have pointed out, the territorial right of indigenous and tribal peoples comes from the continued possession of the territory and not from its legalization through the titling procedure. For this reason, this right is not subject to prior state recognition, since it is a right that is already enshrined and in full exercise that the State is obliged to consolidate through a legal recognition procedure. Both the communal property that the State has legalized, and the ancestral possession acquired due to its traditional ownership and current use, comprise a single territorial space that has belonged to them since time immemorial.

Article 89 of the Constitution of Peru recognizes that "peasant and native communities" are autonomous in their organization, in the use and disposition of their lands, as well as economically and administratively. It should be noted that the recognition of legal status is only given through the figures of peasant and native communities, which does not include the concept of peoples, which is why the status of those indigenous peoples or nations that want to be recognized as such. However, there are already experiences such as that of the Wampís Nation, which in November 2015 proclaimed itself as a nation and promulgated its Autonomous Territorial Government Statute, this within the framework of consolidating its ancestral territory and autonomy due to the limitations of the legislation. national that is limited to individualized titling under the figure of native communities.

In the Amazon of Peru, at this moment, there are more than 15 initiatives of Indigenous Autonomous Territorial Governments. The main point of this constitution is the recomposition of the indigenous ancestral territory. This is subject to recognizing as part of an ancestral territory, not only the titled communities, but also the places of origin, the sacred areas or where the ancestors rest, or the hunting and fishing areas, which generally They are not included in the titling by communities. These initiatives have been generating a series of proposals on how they want to relate to the State and its authorities. The main one is to generate a legal technical debate that allows identifying a path for the recognition not only of ancestral territories, but also of Autonomous Governments as subjects. In this sense, the call to ensure the exercise of the right to autonomy that indigenous peoples have, and the call to the State to open the channels of intercultural dialogue, necessary for this purpose.

### **Regarding the pending indigenous territorial claim and the loans for titling**

As of 2017, at the national level, according to figures collected by the Ombudsman of Peru, 1,139 peasant communities are pending titling. In the case of native communities, 631 are still waiting to be titled. Likewise, regarding those that have property title, 61.5% of peasant communities lack georeferencing; while the native communities amount to 93.3%. This has caused various conflicts with settlers (migrants), state entities and private entities that carry

out formal and informal economic activities, whose interests come into tension with the communities that hope to enjoy certainty about their rights.<sup>8</sup>

A permanent concern for the attention to the recognition and titling of peasant and native communities is the provision of the necessary budgetary resources to close the historical gap that affects them. Given the lack of resources and the murder of four members of the Alto Tamaya Saweto native community, who waited 12 years for the titling of their lands, serious events that shocked the country and the international community, the State committed resources from cooperation and the Central Government to address this deficiency, in order to significantly increase the number of recognized and titled communities. As of 2017, around 500 million soles had been committed for the recognition and titling of peasant and native communities. These resources have been allocated to the recognition and titling of native communities in nine regions of the country (Amazonas, Cusco, Huánuco, Junín, Madre de Dios, Loreto, Pasco, San Martín and Ucayali).<sup>9</sup>

Specifically, the Peruvian State between 2011-2020 promised to title 719 communities. All of these within the framework of projects linked to climate funds, loans and other sources. However, only 147 communities were titled, which represents 20% of the total goal<sup>10</sup>. This represents a serious problem in land management, taking into account the increase in illegal activities, and the consequences of the COVID-19 pandemic, which increase the gaps in access to services. For this reason, it is essential that the Peruvian Government be recommended to review its legal physical sanitation goals, make the available funds transparent, and create permanent spaces with the indigenous peoples to advance participatively in closing the gap due to demand for Title.

*c. Article 6 related to the right to life of environmental defenders and the rights of indigenous peoples in isolation and in a situation of initial contact.*

In its interpretation of Article 6 of the ICCPR, the Human Rights Committee has indicated that the expression "the right to life is inherent to the human person" cannot be understood in a restrictive sense of "not doing", but rather involves actions positive oriented to avoid conditions of existence that deprive or limit this right. This positive dimension also covers the means of survival, such as inhabited territorial spaces and their peace and sustainability.

### **About environmental defenders**

The Peruvian State under the framework of its National Human Rights Plan 2018-2021<sup>11</sup>, led by the Ministry of Justice and Human Rights (MINJUSDH), has developed tools aimed at the

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<sup>8</sup> Defensoría del Pueblo (2018). El largo camino hacia la titulación de las comunidades campesinas y nativas.

<sup>9</sup> Defensoría del Pueblo (2018). El largo camino hacia la titulación de las comunidades campesinas y nativas.

<sup>10</sup> Ver: <https://dar.org.pe/dar-presento-estudio-sobre-la-situacion-de-la-titulacion-de-tierras-de-comunidades-nativas-financiado-con-fondos-de-cooperacion-internacional-y-publicos-2/>

<sup>11</sup> Decreto Supremo N° 002-2018-JUS, publicado en el Diario Oficial El Peruano el 1 de febrero de 2018.

protection of human rights defenders (PDDH), such as the Protocol to guarantee the protection of PPDDH<sup>12</sup>, the Registry on risk situations against PDDH, and the Intersectoral Mechanism for the protection of PDDH<sup>13</sup>. The focus that has been prioritized is prevention, protection and access to justice through coordination between 9 sectors of the Executive Power, headed by the MINJUSDH: Ministry of the Interior, Culture, Environment, Women and Vulnerable Populations, Energy and Mines, Agrarian Development and Irrigation, Foreign Relations, and the National Commission for Development and Life without Drugs (DEVIDA).

Despite this, indigenous organizations such as ORAU and civil society institutions such as DAR have been denouncing the limitations in the coordination of the aforementioned entities, the lack of effectiveness of protection measures, in the midst of a latent context of violence in territories indigenous peoples in the regions of Ucayali and Huánuco, who are related to illegal activities and road infrastructure projects that promote them, to the detriment of biodiversity, and the tranquility and life of different leaders and members of the communities, who They are encouraged to avoid denouncing the presence of invaders in their territories.

The consequences of a state tool with little use in practice worry the organizations that subscribe to this report, especially considering the wave of violence in indigenous territories. The registry of risk situations managed by the MINJUSDH, up to November 2022, reports 101 risk situations involving 288 human rights defenders, of which the largest number (33) correspond to indigenous defenders in the region. Ucayali.

Beyond the alarm that this situation represents for defenders, the underreporting of cases is worrisome, as shown by a study by ORAU, DAR and PROPURUS<sup>14</sup> that, with updated figures up to January 2022, it indicates that there are at least 113 communities in the entire Ucayali region whose lands or forests are at risk and that there is at least one person who opposes or works specifically to reduce or eliminate said threat. Assuming that these people are carrying out actions to defend collective rights, the number of defenders that would need to be incorporated into the National Registry on risk situations is 80 new members, almost triple the official figure.

The same report also indicates that there is a pattern in which while a community is in the process of regularization, the regional authorities grant individual titles in spaces that overlap, or simply third parties come by force and use violence to take possession of the land. communal territory. This often has the participation of organized crime networks that involve

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<sup>12</sup> Resolución Ministerial N° 059-2019-JUS, publicado en el Diario Oficial El Peruano el 27 de abril de 2019.

<sup>13</sup> Decreto Supremo N° 004-2021-JUS, publicado en el Diario Oficial El Peruano el 22 de abril de 2021.

<sup>14</sup> ORAU, DAR y PROPURUS (2022). *Situación de los Defensores Indígenas en Ucayali*. Informe Final. Disponible en el siguiente enlace: <https://repositorio.dar.org.pe/handle/20.500.13095/196?show=full>

regional authorities and explains the increase in deforestation figures associated with illegal activities such as the illicit cultivation of coca leaf by the drug trafficking network, favored by the granting of individual titles in favor of settlers, or inaction in the face of invasions of land traffickers in the territory of native communities. Thus, there are 56 clandestine landing strips, 7 more than in 2020, with a greater concentration in the southern area of Ucayali, especially in the province of Atalaya, which would have materialized in the loss of approximately 7,432.96 hectares as a result. of drug trafficking.

The foregoing reveals that the pressures on the territories of indigenous peoples are increasing, and that this conditions the survival of their members. Likewise, although the creation of an intersectoral mechanism that seeks the articulation of 9 sectors of the Executive Power is an advance, it is insufficient if it does not have an adequate budget for its implementation, as well as if the officials in charge are not sufficiently aware of its importance, as reflected in the limited intervention of the Ministry of the Interior, which coordinates with the National Police, when a threat is identified or in the approval of an Action Protocol that guides its work in the implementation of protection measures or urgent protection approved by the MINJUSDH<sup>15</sup>.

Finally, two aspects that should not be lost sight of have to do, on the one hand, with the fact that the survival of indigenous peoples is closely related to the security they have over their territories, therefore, the guarantee of their rights basics goes hand in hand with ensuring the protection of the collective dimension. On the other hand, in relation to the growing presence of illegal activities, it is important that they adopt measures in the face of the existence of criminal organizations that involve regional authorities that grant permits to third parties that invade indigenous territories. In this regard, political will is required that is reflected in a larger budget for the teams of the Specialized Prosecutors for Environmental Matters and Organized Crime, awareness-raising and capacity-building of judicial authorities and police officers. Likewise, it is necessary an effective supervision by the Comptroller General of the Republic towards the regional authorities and the Ministry of Agrarian Development in relation to the execution of the funds destined for the physical-legal sanitation of the native communities, which has clearly failed after not meeting his goals.

***On the rights of indigenous peoples in a situation of isolation and in a situation of initial contact (PIACI).***

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<sup>15</sup> La Segunda Disposición Complementaria Final del Mecanismo Intersectorial (Decreto Supremo N° 004-2021-JUS, fijó un plazo de 30 días hábiles desde su publicación oficial para que se apruebe el referido protocolo de Actuación. El plazo venció el 21 de mayo de 2021, sin embargo, hasta el momento de presentación de este informe, enero de 2023, aún no se ha cumplido con dicha tarea.

Indigenous Peoples in Situation of Isolation and in Situation of Initial Contact live and move in the regions of Cusco, Loreto, Ucayali, Huánuco and Madre de Dios. According to the Ministry of Culture, there are approximately 7,000 people, and the main threats to their survival are related to contact with external agents, as indicated by the Inter-American Commission on Human Rights itself.<sup>16</sup> Since they have a high vulnerability situation, mainly immunological. According to anthropologist Beatriz Huertas: "indigenous populations that in the past have been sensitive to exogenous viral diseases would require three to five generations (90 to 150 years) to stabilize their response to a certain infectious agent"<sup>17</sup>.

The state entity in charge of its protection is the Vice Ministry of Interculturality of the Ministry of Culture, which has a PIACI Directorate in its organic structure, and which is part of the "Régimen Especial Transsectorial" created by Law No. 28736, PIACI Law<sup>18</sup>, with the objective of guaranteeing the protection and survival of the PIACI. Thus, intangible territorial spaces have been created where the PIACI live or move, free of third-party intervention, except for the cases provided for in the PIACI Law itself. These spaces have received the name of Indigenous Reserves<sup>19</sup>.

Despite the indicated institutionality, there are serious limitations to manage the 7 existing Reserves and meet the request for the creation of 4 that are at the request level. This is reflected in the fact that, of the 7 existing Indigenous and Territorial Reserves, only one has a current Protection Management Committee<sup>20</sup>, and that on more than one occasion indigenous organizations have questioned the absence or insufficiency of protection agents or the lack of infrastructure at checkpoints. This is even more serious because there are reports of the existence of drug trafficking landing strips within the area or close to Indigenous Reserves such as Kakataibo, Murunahua and Isconahua.

Despite the above, there is an adverse context that has been gaining strength and that denies the existence of the PIACI, attributing it to the interests of NGOs and groups opposed to development. The materialization of these legislative initiatives, supported by the Regional Government of Loreto and congressional authorities, has been reflected in Bill No. 3518/2022-CR, presented in November 2022, which seeks to modify the PIACI Law, under arguments

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<sup>16</sup> Comisión Interamericana de Derechos Humanos, CIDH (2013). *Pueblos indígenas en aislamiento voluntario y contacto inicial en las Américas*. OEA/Ser.L/V/II. Doc. 47/13.

<sup>17</sup> Huertas, B. (ed.) (2007). *El derecho a la salud de los pueblos indígenas en aislamiento y en contacto inicial*. Copenhague: IWGIA, pág. 11.

<sup>18</sup> Ley 28736, Ley para la protección de pueblos indígenas u originarios en situación de aislamiento y en situación de contacto inicial. Publicada en el Diario Oficial El Peruano en mayo de 2006.

<sup>19</sup> Existen dos (2) Reservas Territoriales, que es la denominación utilizada antes de la entrada en vigor de la Ley PIACI que incorpora el término Reserva Indígena.

<sup>20</sup> Conforme Memorando N° 000042-2022-DACI/MC, del 16 de mayo de 2022. Al cual pudimos acceder mediante una solicitud de acceso a la información Pública.

that They are unaware of the current institutionality and regulations, as well as international obligations to which the Peruvian State is subject.

The main risk that this bill entails is that it intends to include the creation and maintenance of existing Indigenous Reserves, and those that are at the request level, in the functions of Regional Governments. Ignoring that the rectory exercised by the Vice Ministry of Interculturality realizes the importance of having a technical and impartial entity, different from a scenario in which the Regional Governments that have evident interests in the economic development of their region above the protection of the PIACI, promote initiatives in this line and undermine the creation, management and existence of the PIACI Reserves<sup>21</sup>.

The second most worrying aspect of Bill No. 3518/2022-CR is that its Fifth Final Provision establishes the suspension of "any action related to the recognition of the existence of the PIACI, as well as the granting of the category of indigenous reserves ". That is, the suspension of the processes of creation of Indigenous Reserves in progress, which precisely present overlapping rights of third parties, according to the following detail:

- Yavarí Mirim (66 concesiones forestales superpuestas que representan 472,965.96 ha);
- Kapanawa (2 overlapping forest concessions representing 11,153.22 ha);
- Napo Tigre (Lot 39, overlapping area is 79,163.94 ha, and, Lot 67, overlapping area is 101,931.01 ha);
- Atacuari (overlapping forest concessions representing 108,326.96 ha).

The bill proposes "adding economic analysis within the additional detailed study", which is in line with allowing the State to develop "social public investment and connectivity projects within the framework of development plans, in such a way that it manages to have competitive options". It is clear that the aforementioned textual mentions show an irresolvable tension between the guarantee of PIACI rights and the promotion of economic activities in the same territorial areas. Legally, the promoters of this proposal must not lose sight of the international binding and referential sources that position the guarantee of the principles of non-contact and self-determination as essential elements to avoid the extinction of the PIACI. Nor should it be

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<sup>21</sup> Esto ha sido establecido por el Tribunal Constitucional peruano en la sentencia recaída en el Exp. N° 04968-2014-PHC/TC, cuando ha señalado que "[e]xiste imparcialidad cuando no hay razones suficientes para sostener que el órgano decisor tiene un interés subjetivo con el asunto que está llamado a heterocomponer o resolver, o que no guarda equidistancia respecto de las partes en oposición" (párr. 71). De ese modo, resulta evidente que, en aras de salvaguardar la supervivencia e integridad física, psicológica y cultural de los PIACI, y sus medios de vida, las decisiones que impacten directamente en sus derechos no pueden ser adoptadas por instituciones con claros intereses en el desarrollo de actividades económicas.

forgotten that Article 59 of the Peruvian Political Constitution recognizes free private initiative, but also recognizes that it must be exercised without detriment to health, in this case, associated with the PIACI's own right to life.<sup>22</sup>.

#### 4. Conclusions.

- The right to prior consultation is a fundamental right of indigenous peoples. To this extent, the Peruvian State should be recommended to adapt the national regulations in this matter to the international standards mentioned in Popular Action Judgment 29126-2018 of the Supreme Court of Justice of the Republic, Permanent Constitutional and Social Law Chamber
- Implement and disseminate Popular Action Judgment 29126-2018 of the Supreme Court of Justice of the Republic, Chamber of Permanent Constitutional and Social Law. To this end, it is important that there is a road map drawn up between the State and the indigenous peoples, which includes dissemination processes and training for State officials and Justice operators.
- The right to self-determination has as one of its main expressions the right to consultation. To this extent, the prior consultation protocols prepared by indigenous peoples, as samples of their contribution to the exercise of the right, must be recognized and incorporated into the current legal framework. This as an exercise of your free determination.
- The Peruvian State must carry out an evaluation of its policies, plans and programs for the physical and legal sanitation of indigenous territories. It must promote a broad and participatory space to identify the problems and propose solutions to address the gap in the indigenous territorial demand.
- The State must initiate a dialogue with the experiences of Indigenous Autonomous Territorial Governments to identify paths that allow the recognition of ancestral territories, strengthening collective management, and guaranteeing their protection.
- The Peruvian State must understand that the threats and murders of environmental defenders have a direct relationship with the legal insecurity over their territories, and that their attention must transcend from an individual perspective, to move to a collective one. In the same way, it must be understood that for effective protection and access to justice, the intervention of state institutions beyond the Executive Branch is required, such as the Specialized Prosecutors for Human Rights, Environmental Rights, and Organized Crime, as well as provide sufficient budget for the development of research.
- The Peruvian State must ensure the protection of the PIACI against forced contacts that may be generated as a result of initiatives of extractive economic activities and infrastructure projects, or favored by legislative initiatives such as PL 3518/2022-CR previously analyzed. It is necessary for the Vice Ministry of Interculturality to lead a technical and objective response that contributes to the protection and non-regression of PIACI rights. In the same way, the existing PIACI Reserves must be monitored, as well as those geographical spaces requested for the creation of new Reserves, in the

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<sup>22</sup> Mayor detalle puede encontrarse en el *Análisis Técnico-Legal del Proyecto de Ley N° 3518/2022-CR, que modifica la Ley 28736, Ley PIACI*. Elaborado por DAR, ORAU y PROPURUS. Disponible en el siguiente enlace: [https://dar.org.pe/wp-content/uploads/2023/01/Analisis-de-PL-3518\\_PIACI-2.pdf](https://dar.org.pe/wp-content/uploads/2023/01/Analisis-de-PL-3518_PIACI-2.pdf)

face of repeated complaints from indigenous organizations such as ORAU about the presence of activities related to drug trafficking within them, or in their spheres of influence.

## **5. Questions.**

- What is the strategy for the implementation of sentence 29126-2018-LIMA of the Supreme Court of Justice of the Republic Chamber of Permanent Constitutional and Social Law, which corrects the Regulation of the Prior Consultation Law?
- Can the State incorporate the prior consultation protocols prepared by the indigenous peoples, as part of the procedure and implementation of the right?
- What is the situation regarding the lands and territories of the indigenous peoples and communities of Peru? How many are titled? What are the problems regarding the overlapping of other rights?
- What is the national strategy for the fight against organized crime, specifically related to illicit economies that affect indigenous territories?
- What coordination measures with other constitutionally autonomous powers and bodies have you planned to ensure effective protection of environmental defenders?
- What is your strategy to coordinate with other state powers such as the Congress of the Republic to avoid the approval of initiatives that undermine the institutional protection of the PIACI?
- What measures have you planned for the protection of the existing PIACI Reserves, as well as those in the process of being created, in the face of complaints about the existence of illegal activities within them or in surrounding areas?