

**Proposal for the Committee on the Elimination of Racial Discrimination within the
Framework of the 95th Session Period
(April 23 to May 11, 2018)**

Case.

Peru and the exercise of the indigenous peoples' right to communication

Summary / Request

A request for CERD to urge the Peruvian State to develop a normative framework that ensures the exercise of the right to communication (freedom of information and expression) of indigenous peoples, to establish effective mechanisms in favor of community media and recognize the indigenous communicators, protecting their integrity in the exercise of their work.

I. Status of the Right to Communication

Peru has the Radio and Television Law (Law No. 28278), promulgated in 2014. The regulations are not only lacking due to their gaps, but also due to their inadequate definition of community media, restricting it only to rural areas and in limited power conditions that do not make it attractive. As of January 1, 2017, there are only 17 radio stations and 02 TV stations with community purposes, which represent 0.3% of the total number of stations nationwide.

In addition, the Peruvian State does not assign an equitable percentage of the radio spectrum that allows frequencies for community media. Added to this situation is the criminal offense of "aggravated theft of the radio spectrum", which prevents community media from operating, restricting communicative activity and making them illegal.

Indigenous communicators develop a community social function through communication, and exercise it through their native languages, usually in private commercial spaces to which they access by buying the time, since they lack their own means. However, they are victims of harassment, threats and violence when they perform any monitoring or inform on extractive activities that impact their communities.

It is important to point out that the lack of guarantees for the real and full exercise of the right to communication is expressed in a scarce and invisible indigenous citizen participation and it weakens the democracy quality in Peru. A national survey conducted by the Ministry of Justice and Human Rights in 2013 reveals that a high percentage of Peruvians, 69 percent, consider that the media promotes discrimination.

We can summarize the situation in:

- Inadequate regulations that are restrictive for community media.
- Lack of means to promote community media.
- Non-recognition of the indigenous communicator status.
- Marginalization in the exercise of their informative functions, being in most cases excluded from press conferences or other official spaces, undermining their self-taught condition and their vocation as a communicators.
- Assaults and threats.
- Attacks on indigenous presence media.

The cases. Regarding the last two points, we can cite as evidence:

- **Personal Harassment**

The César Estrada Chuquilín Case, an indigenous communicator from Cajamarca, who on February 13, 2014 was physically attacked and threatened for his communicational work in defense of the lagoons that would be damaged and the environmental damage that the Conga mining project (Yanacocha) represents. Estrada Chuquilín, who was carrying out his journalistic work, was approached twice by the police serving the company and assaulted by community members in favor of the Conga mining project; this in the presence of the Prosecutor's Office. This and other previous attacks were reported to the Inter-American Commission on Human Rights, in which both Estrada and others affected by the aggressions of the Yanacocha mining company were identified as leaders in a serious and urgent situation due to threats to their personal integrity and their lives. On May 5, 2014, the IACHR ordered the Peruvian State to adopt precautionary measures to guarantee the integrity of 46 community leaders and rondas campesinas (peasant rounds) from Cajamarca, as well as the Chaupe family and the indigenous communicator César Estrada Chuquilín. Nevertheless, he is still being harassed, in breach of the precautionary measure that the IACHR granted him and others affected. Estrada's communication exercise also cost him the dispossession of his registration instruments.

- **Attacks to the Media**

Radio "La Voz de Bagua" Case (Amazonas). Commercial radio station that belongs to the Flores family. After the conflict in Bagua, on June 8, 2009, the Ministry of Transport and Communications, through the Vice-Ministerial Resolution 211-2009-MTC, suspends the station's operation license justifying such action for alleged indications of incitement to riot from the Awajún and Wampis indigenous people during June 05 and 06, 2009. (La República, 2008). This action has been interpreted as a mechanism of legal coercion that affects the freedom of information and the freedom of expression. The case was brought before the hearing 'Right to Freedom of Expression in Peru', of the

137th Session Period of the Inter-American Commission on Human Rights of the Organization of American States (OAS), where the Peruvian State was required to render such resolution null and void.

- **Radio Amazónica Case (Junín).** In May 2014, Radio Amazónica was the victim of the theft of its main transmission equipment located in Cerro San Sebastián, Río Negro district, in the city of Satipo. The incident was reported to public authorities and to social and indigenous communicators since the theft could have been caused by political interests due to the electoral campaign (regional and municipal) that began at that time and the careful programming of the radio on corruption, drug trafficking, crime and citizen insecurity issues. This fact represents a silencing of the Amazonian voices affecting the cultural diversity and freedom of expression of the independent media.
- **Radio Platinum Case (Arequipa).** It is an FM station that operates in Punta de Bombón, Arequipa. Its coverage reaches the entire Tambo Valley, current scenario of the socio-environmental conflict of the Tía María mining project. The station suffered an attack on April 13, 2015, in which a group of people violently accessed the radio installations and damaged the transmission equipment, which caused the silencing of the radio. This fact, in the words of the manager, Ludwin Espinoza, is a clear attack to the editorial line of the station because they support the population against the project.

I. Non-Compliance with Peru's Commitments Regarding the Right to Communication.

The State **has not fulfilled its role as promoter**, as indicated in Article III of Law No. 28278. Nor has it developed a normative framework to apply the United Nations Declaration on the Rights of Indigenous Peoples (Article 16).

Article 16:

- 1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.*
- 2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.*

Nor is compliance with the Universal Declaration of Human Rights (Article 19), the American Convention on Human Rights (Article 13), ILO Convention No. 169 on Indigenous and Tribal Peoples in Countries (Art. 30), the American Declaration of Human Rights (Art IV), the International Covenant on Civil and Political Rights (Article 19), the Universal Declaration of Unesco on Cultural Diversity, the Convention on the Protection and the Promotion of the Diversity of Cultural Expressions, approved by Unesco in 2005, the Jurisprudence of the Inter-

American Court of Human Rights and the Declarations of the Rapporteurs for Freedom of Expression of the United Nations and the OAS guaranteed to indigenous peoples.

I. The proposal for CERD

- I. To urge the Peruvian State to develop a normative framework that recognizes and ensures the right to communication as an inherent right of indigenous peoples, essential for their own social and cultural development, their participation in national intercultural dialogue and the full exercise of their citizenship.
- II. To urge the Peruvian State to promote the access of indigenous peoples to their own means of communication, and access spaces in their own indigenous language, in order to protect and express cultural diversity in public and private media.
- III. To urge the Peruvian State to recognize the work of indigenous communicators in the exercise of the freedom of information and freedom of expression of indigenous peoples and guarantee their physical, moral and material integrity. Also, to prioritize the protection of indigenous communicators in situations of natural disasters, social conflicts and other emergency contexts, under the exercise of the freedom to inform and be informed, freedom of opinion and expression within the framework of the state of democratic and constitutional law in force in Peru.
- IV. That the Peruvian State guarantees access to the radio spectrum of indigenous peoples in conditions of equity with other modalities, and channel frequencies for the installation of community radios and TV in indigenous communities or populations.
- V. Que en el proceso de la migración del Sistema Analógico al Sistema Digital, el Estado peruano de oficio, adopte los mecanismos necesarios para la reserva de frecuencias y canalizaciones en el espectro radioeléctrico para medios comunitarios (radio digital, televisión digital, telefonía, internet y otros medios por implementarse). That in the migration process from the Analog System to the Digital System, the Peruvian State adopts the necessary mechanisms for the preservation of frequencies and channels in the radio spectrum for community media (digital radio, digital television, telephony, internet and other means to be implemented).

Lima, March 29, 2018

Signature

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