

International observations and recommendations made to Peru have not yet been accepted by the Government

In accordance with the recommendations and observations issued by the different entities and mechanisms of the Universal Human Rights Protection System, it is observed that they have not been applied by the Peruvian Government.

It is worth mentioning that the Peruvian Government recently presented Report CERD/C/PER/14-17 in January 2009 to the Committee, by means of which it submitted periodic reports 14, 15, 16 and 17, which should have been submitted on January 29, 1998, as well as in 2000, 2002 and 2004, respectively. These repeated acts of in compliance exhibit the little interest successive governments have paid to the topic of racial discrimination in Peru. In its Concluding Observations Report issued in 1999 with regard to Peru (CEDR/C/304/ADD.69), the members of the Committee had already established, among others, the following concerns:

“12. The Committee notes with concern the close relationship between socio-economic underdevelopment and the phenomena of ethnic or racial discrimination against part of the population, chiefly the indigenous and peasant communities. In this respect, the Committee regrets the absence in the periodic report of information on the socio-economic indicators relevant to the situation of populations of indigenous, peasant or African origin. It nevertheless notes that the report acknowledges shortcomings in areas such as housing and health.

19. The Committee takes note of the information on major shortcomings in the health services provided for the rural population in the Andes and in Amazonia, and of the allegations of forced sterilization of women belonging to indigenous communities. It also takes note of reports that there is a difference of almost twenty years between the life expectancy of people of indigenous origin and that of the rest of the population.

22. The Committee is concerned about reports that the 1993 Constitution no longer totally guarantees that the communal property of indigenous populations is inalienable and unavailable for use.” (Emphasis has been added by the petitioners.)

The Committee also established, among others, the following observations in the same Concluding Observations Report:

“24. Measures should be taken to guarantee the right of the most underprivileged members of the population to benefit from all the rights listed in Article Five of the Convention and the right to equal treatment before the courts and in the exercise of their political rights.

28. In its next report, the State Party should provide information on, inter alia:

(a) The ethnic make-up of the population, insofar as such information is available

(b) Socio-economic indicators relevant to the situation of populations of indigenous, peasant or African origin

(c) The progress made to the benefit of those people on each of the rights listed in Article Five of the Convention

(d) The measures of legislative reform taken with a view to full compliance with the requirements of Article Four of the Convention and the punishment of all forms of racial and ethnic discrimination

(e) The follow-up to complaints from the victims of racial and ethnic discrimination and to their requests for reparation, in accordance with Article Six of the Convention

(f) The measures taken to train agents responsible for the implementation of legislation in terms of tolerance and inter-ethnic and inter-racial understanding

(g) The measures taken to spread knowledge of the Convention and to publicize the Committee's reports and concluding observations. (Emphasis has been added by the petitioners.)

Nevertheless, as observed in periodic Report CERD/C/PER/14-17, it is noted that the Peruvian Government has failed to comply with the cited recommendations, since the required points have not been explained. On the contrary, not only have the legislative reforms mentioned been insufficient, but they have also been counteracted by a series of executive orders issued in 2007, eliminating the few legal barriers that existed to alienate the indigenous land and natural resources without consultation, legal regulations that sparked the most extensive and intense indigenous protests in the Amazon Region in 2008 and 2009 that Peru has ever witness in its entire social history.

The Peruvian Government has opted to implement a development model strongly based on the expansion of oil and mining exploration borders at the expense of indigenous rights. Satisfactory institutional and regulatory mechanisms that truly guarantee the collective rights of the indigenous peoples, affected by the projects authorized by the central government, have not been created during this period. However, as recognized by CERD on other occasions, *“development objectives are no justification for encroachments on human rights, and that along with the right to exploit natural resources, there are specific, concomitant obligations towards the local population.”*¹

For example, MEM carries out its tasks, according to its policy objectives, which consist of promoting and simultaneously overseeing mining activities, without properly guaranteeing compliance with the rights of indigenous peoples. Having consulted with this Ministry about its execution of consultation or participation procedures in the approval of mining concessions, it formally indicated the following:

¹ *Concluding Observations, Suriname, CEDR/CEDR/C/64/CO/9 (April 28, 2004).*

*“Pursuant to the General Mining Act and its respective Regulations, the consultation or participation process, insofar as indigenous organizations and public entity representatives are concerned, is not regulated in the mining concession granting process.”² **(see Exhibit 20)***

In this regard, it is worth mentioning that the Committee has expressed, in a number of documents, that the Convention applies to indigenous and tribal populations and requires State Parties “to recognize and protect the rights of the indigenous peoples to own, develop, control and use their communal land, territories and resources...,” as well as their right to participate in and consent to activities that could affect their rights and to receive restitution by means of the right to “just, fair and prompt compensation.”³ In harmony therewith, the Committee has also stated, “*that all appropriate measures need to be taken in order to combat and eliminate such discrimination*” against indigenous tribal peoples. CERD General Recommendation XXIII points out that one of the most serious threats the indigenous and tribal populations have been dealing with is the loss of land and resources for resource exploitation and tourist interest purposes, observing that these threats are directly related to the preservation of their cultural and historical identity.

By means of its Committee of Experts on the Application of Conventions and Recommendations (CEACR), the ILO has observed, in different paragraphs of its report issued in February of 2009⁴, the ongoing failure of the Peruvian Government to comply with ILO Convention 169:

“The Committee requests the Government once again to provide, in consultation with the institutions representing the indigenous peoples, a unified criterion with regard to the peoples that could be included under the Convention, to end the confusion resulting from the various definitions and terms and to provide information on this matter. Furthermore, it urges the Government to take all necessary measures in order to guarantee that everyone, included under Article One of the Convention, is covered by all its provisions and enjoys the rights contained therein under equal conditions, and to provide information on this matter.”

*“The Convention expects the entire system to apply its provisions in a systematic and coordinated manner in cooperation with the indigenous peoples. This implies the creation of entities and mechanisms considered appropriate for these purposes. **The Committee requests the Government, with the participation of and in consultation with indigenous peoples, to establish the institutions and mechanisms foreseen in Article Thirty-Three of the Convention, to guarantee that such institutions or mechanisms have all necessary means***

² Report 010-2009-INGEMMET-OAJ/AI, dated March 4, 2009.

³ General Recommendation XXIV, regarding persons belonging to different races, national / ethnic groups or indigenous peoples

⁴ Observation, CEACR 2008/79th meeting, published in February 2009 (Bold print in the original; the petitioners have underlined the sections above).

available to fully carry out their functions and to provide information on the measures adopted in this regard.”

“The Committee takes note that on May 19, 2008, Executive Order 1015 was approved, by means of which the number of voters required to alienate communal land was modified. The General Confederation of Peruvian Workers (CGTP) indicates that, in view of the generalized criticism, this regulation was amended on June 28, 2008 by means of Executive Order 1073, which also made the conditions to alienate communal land more flexible. They indicate that no consultation was conducted with regard to this legislation (...)”

“In this case in particular, the Committee notes that there are no indications that consultations have been carried out with regard to the implications of these land registration measures with the concerned peoples, as required by the Convention. Furthermore, such report reminded the Government of its obligation to consult in the case of Article Seventeen, 2), even with respect to the scope and implications of the proposed measures. The Committee expresses its concern due to the fact that ten years after the Administrative Council issued its report, notices are still being received alleging a lack of prior consultation with respect to the adoption of measures established in Articles Six and Seventeen, 2) of the Convention. **The Committee urges the Government to immediately advance with the participation of indigenous peoples in the design of appropriate participation and consultation mechanisms and encourages it to consult the indigenous peoples before adopting the measures referred to in Articles Six and Seventeen, 2) of the Convention and to provide information on this matters.”**

“The Committee takes note that, as per the report, the Government has put forth some effort insofar as consultation and participation are concerned. Nevertheless, it cannot overlook the fact that notices, prepared with extensive indigenous participation, and even the cited report issued by the Ombudsman’s Office, make reference to the fact that these efforts are specific and isolated and do not comply with the Convention (informative meetings not aimed at consultation, for example). They lack participation and consultation to deal with the numerous conflicts related to the exploitation of resources on land traditionally occupied by indigenous peoples. The Committee expresses its concerns for the allegations received and the lack of comments from the Government thereon. **The Committee urges the Government, with the participation and consultation of the indigenous peoples, to immediately adopt the measures needed to guarantee: 1) the participation and consultation of indigenous peoples in a coordinated and systematic manner, pursuant to Articles Two, Six, Seven, Fifteen and Thirty-Three of the Convention; 2) the identification of urgent situations related to the exploitation of**

natural resources putting persons, institutions, assets, work, cultures and the environment of interested peoples at risk, in addition to the quick application of special measures that may be specified in order to safeguard them. The Committee requests the Government to provide information on these measures, together with its comments on the notices received.”