

Intrusions on indigenous territory and conflicts have been caused due to a lack of consultation

These announcements may cause recent conflictive incidents, arising from the rejection of unpermitted mining activities in Awajún territory, to reignite **(see Exhibit 15)**, incidents that have dangerously intensified over the last few months, due to repeated intrusions on indigenous ancestral land, in spite of the numerous official letters forwarded by ODECOFROC, requesting the State to respect the original area proposed for the creation of a protected natural area (Ichigkat Muja National Park) and communicating its rejection of the aforementioned mining activities on their land **(see Exhibit 6)**.

It is worth mentioning the recent event, which took place in November 2008, when the Awajún and Wampís indigenous peoples decided to send a delegation of observers to the campsite of the Peruvian mining company, Afroditá S.A.C. After verifying the damage caused to the forest resources, they demanded explanations from such company, inviting Afroditá S.A.C. to a meeting that never took place, owing to their nonattendance. In view of the unsuccessful dialogue, the indigenous peoples agreed to ask the company to withdraw its mining exploration base. Since this did not occur, a second delegation of unidentified Awajún inhabitants travelled to the location in December 2008 and dismantled the base, which was situated inside a military garrison at the border. Due to the increasing number of dangerous events, ODECOFROC once again forwarded letters to the Office of the Prime Minister and different Ministers of the Executive Branch (the Ministries of Agriculture, Environment, Foreign Affairs, Energy and Mines, etc.) requesting the presence of a government delegation at a meeting to be held on January 28, 2009.

However, as neither the case history, nor the letters, or public notices of rejection, forwarded by the indigenous communities to the mining company, Afroditá, were taken seriously, a delegation of six persons from the aforementioned company unilaterally entered the indigenous community of Huampami on January 14, 2009 without permission, causing the indigenous communities to demand immediate dialogue with a High-Level State Commission, as a condition before freeing such persons. This created a difficult crisis that was reported on throughout the country. Fortunately, the persons were freed by the communities after six days of negotiations, prior written acceptance by the Prime Minister to send a government delegation to the community of Huampami, a promise that was ultimately not kept.

A group of Peruvian congressmen subsequently visited the community of Huampami, and while dialogue with the indigenous community members was carried out, the latter indicated that the Awajún and Wampís peoples were “on maximum alert” against the presence of mining activities and in the phase prior to a “declaration of war”. This information was made public by the congressmen, but did not help avoid a new episode of unpermitted intrusion into indigenous territory on March 19, 2009, date on which two government officials (one from MEM and the other from the Ministry of Agriculture, accompanied by a

sociologist) entered the community of Huampami once again without consulting or previously arranging such visit with the indigenous communities or ODECOFROC. These officials allegedly decided to visit this community in order to hold a “training seminar in environmental, hydrocarbon and mining topics”, intended for leaders of a supposedly new indigenous organization. They were briefly detained, but were soon released by the community and allowed to leave.¹

This background, in addition to the violation of Article Eighteen of Convention 169, insofar as the penalties against intruders on indigenous land and the unauthorized use thereof are concerned, evidences a systematic policy of instigation aimed at creating a situation of violence that would result in the justification of criminal charges against indigenous leaders (policy of criminalization that has been subject matter of a Hearing before the Inter-American Commission of Human Rights in its 134th period of Sessions²).

We substantiate the foregoing as follows: As a result of the events in Huampami in January 2009, a criminal complaint was filed against the Awajún indigenous leader, Zebelio Kayap, President of ODECOFROC, by the State Attorney for the alleged crime of kidnapping, with an impending order of commitment, in spite of the fact that this leader was not present when the delegation sent by the mining company was detained as a result of the collective decision of the community. This procedure, pursued by the State Attorney’s Office, is still pending, although none of the persons detained by the indigenous community have rendered his or her statement before such Office or have provided accusatory statements against such leader.

This event needs to be considered, based on the policy of systematic criminalization of the social protest, implemented by the current Government through the enactment of several executive orders in July 2007 to amend the Criminal Code. These orders characterized different legitimate expressions of social disagreement³ as criminal behaviour and preceded the enactment of the executive orders that sparked the massive indigenous protest in the Amazon Region in August 2008 and in April 2009 with the tragic consequences now known around the world. However, the Inter-American Court of Human Rights has expressed the following:

¹ These events have been mentioned by the Ombudsman’s Office in its Report entitled “Active Conflicts from Amazonas to Lima”, March 2009. At: http://www.defensoria.gob.pe/conflictos-sociales/objetos/paginas/1/46conflictos_activos_-_amazonas_a_lima_-_marzo_2009.pdf (consulted on July 29, 2009).

² “Criminal Processes against Defenders of Indigenous Peoples in Countries in the Region”. Report submitted by the Andean Coordinator of Indigenous Organizations (CAOI), the National Indigenous Organization of Colombia (ONIC), the National Confederation of Peruvian Communities Affected by Mining (CONACAMI), the Confederation of the Peoples of Kichua Nationality of Ecuador (ECUARUNARI) and the Indian Law Resource Centre, dated March 20, 2009, Washington D.C.

³ This point establishes the unindictable nature of the police and armed forces when repressing social protests, thus, in practice, allowing them to go unpunished for killing. The right to protest is criminalized, defining such act as a crime of extortion, etc.

“Criminalizing the 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.”

As perceived by the World Bank in its analysis of the mining problem in Peru, the Government is responsible for this situation of increased conflict in relation to the mining sector:

“The mining industry has generally done little to understand the surroundings and social and cultural aspects of the local communities, and the government has done almost nothing to provide the industry with the required information about local ways of life.” “In this context, where social expectations are usually high regarding large-scale investments and negotiating capacities are low, the lack of a more proactive role on the part of MEM has further increased the communities’ perception of not being recognized as key social actors.” This situation “has worsen or caused conflicts in the different stages of the mining cycle.”⁴

⁴ Report: “Wealth and Sustainability: The Environmental and Social Dimensions of the Mining Sector in Peru”. World Bank, April 11, 2005. Executive Summary.