



PERU

BAGUA: CONSULTATION PROMISED BUT JUSTICE NOT DELIVERED

A year ago on 5 June 2009, Peru witnessed the tragic results of ignoring the claims of its Indigenous population. On the road to Bagua, and at Petroperú pumping station number six, 33 people died. At least 200 people were also injured after police intervened to end a protest by thousands of Indigenous people on a road near Bagua in northern Peru.¹ Twenty-three of those killed were police officers, five were local townspeople, and five were Indigenous People. The fate of one police officer remains unknown to this day.

Indigenous Peoples were protesting against the adoption in 2008, without consultation or participation, of legislative decrees that had the potential to affect their rights. This clearly contravened their right to be consulted in good faith before the adoption and implementation of any legislative or administrative measures that may affect them. The 2008 decree laws over the use of land and resources would undoubtedly affect lands traditionally occupied by them, including in the Amazon region. When the Indigenous Peoples protested against these decree laws and demanded their right to be consulted, not only were they not listened to, but as a direct result of their protests on 5 June 2009 they suffered ill-treatment and torture, they were arbitrarily detained, and some were killed.

One month after these events, Amnesty International delegates travelled to Bagua to interview victims, eye-witnesses and families of those that died. At the time Amnesty International concluded that serious acts of violence and human rights violations were committed and that these tragic events were the predictable and preventable result of the continued disregard by the Peruvian authorities of international human rights standards, including the International Labour Organization's Convention 169 and the UN Declaration on the Rights of Indigenous Peoples. These legal documents protect Indigenous Peoples against losing their land and resources in the name of development and have been adopted precisely to avoid the loss of life and livelihood of Indigenous Peoples, and to ensure that they are able to enjoy without discrimination all their human rights which are indispensable for their dignity.

After the tragic events of 5 June 2009, Amnesty International urged the Peruvian authorities to conduct a full, impartial and transparent investigation urgently so that those responsible for the human rights abuses that took place on that day could be brought to justice and victims of the violence could receive reparation. Amnesty International also urged the Peruvian authorities to take all necessary measures to ensure the right of Indigenous Peoples to free, prior and informed consent as well as their right to land and resources and to non-discrimination would be upheld in the future.

One year later, Amnesty International recognises that some positive developments have been achieved. However,

further steps need to be taken for the Peruvian authorities to show they are fully committed to ensuring that the rights of Indigenous Peoples in Peru are respected and protected.

Amnesty International considers that the approval by Congress of the Law on the Right of Indigenous People to Consultation (Ley de Derecho de Consulta Previa a los Pueblos Indígenas u Originarios) in May 2010 is a key development that could, if properly implemented in good faith, prevent any further protests such as those that had such terrible consequences in Bagua. Although Peru was legally obliged at the time to consult with Indigenous Peoples, as a result of having ratified the ILO Convention 169 in 1994, there was no clear process in place to hold such consultations with Indigenous Peoples before issuing legislation that could affect them.² Consultation could and should have taken place with an *ad hoc* process in the absence of legislation.

After the events in Bagua, all parties agreed that legislation to set up a mechanism for consultation was paramount to avoid further loss of life and livelihood in the name of development and to ensure that all communities enjoy their right to give free, prior and informed consent without discrimination. The Law on Consultation passed recently by Congress is thus a huge step forward, and the significant efforts of Indigenous Peoples and members of Congress to ensure it was passed should be congratulated. It is inspiring to see that despite all the human rights abuses Indigenous Peoples have suffered in Peru, their representatives participated in a constructive dialogue and reached agreement, demonstrating their willingness and good intentions to move forward on issues that are of such importance to them.

The state now has to seize this unique opportunity to work constructively with Indigenous Peoples in order to build a more open and collaborative society. As a first, immediate step President Alan García must promulgate the law without delay. A second urgent step must be the implementation of the law, which must be done in the same spirit that it was drawn up in, with the full participation of the Indigenous Peoples. In doing so, legislation, regulations, practices and institutions that contradict this law as well as the right to consultation need to be reviewed. The Committee of Experts of the International Labour Organization has given specific recommendations about legislation and institutions that need to be reviewed urgently,³ and Amnesty International will monitor closely the efforts of the Peruvian government to comply with these recommendations.

In addition, justice for the violence and human rights violations that occurred a year ago in Bagua is still owed to the hundreds of victims and their families, these include the 23 police officers and the 10 civilians that lost their lives as well as the hundreds who were injured. Ensuring accountability is essential because, first and foremost, those who have suffered harm have a right to truth and justice. Victims and their relatives must see that the wrongs done to them are acknowledged and those responsible are brought to account. If victims are to receive reparation, finding out what happened, by whom and why, is as important as bringing to justice those responsible for abuses.

It is also paramount that all those charged with these offences receive a fair trial under international human rights standards. In this context it is that Alberto Pizango, leader of AIDSESEP (Asociación Interétnica de Desarrollo de la Selva Peruana), one of the main Indigenous organizations in Peru and coordinators of the Indigenous protests in Bagua, is currently facing unsubstantiated criminal charges which Amnesty International believes are politically-motivated. These charges seek to hold Alberto Pizango responsible for the human rights abuses of the 5 June. Five other leaders of AIDSESEP are still facing similarly unsubstantiated charges.

Amnesty International laments the fact that to this day no-one has been brought to trial, although three Indigenous protestors remain in prison, over a dozen Indigenous people are still under arrest warrants and many more still face charges and no police officer or government official faces charges at present.

Criminal investigations have not been completed and this lack of progress in investigations and judicial procedures denies survivors and families of the deceased their right to truth, justice and reparations. It also condemns potentially innocent people to live in fear and uncertainty with charges hanging over them without the possibility of a swift and fair trial.

A year on, the approval of the Law on Consultation demonstrates that concerted efforts are needed to address the history of violations of Indigenous Peoples rights in Peru. The victims of the violence that took place in Bagua on 5 June 2009 are still waiting for the truth and for justice as well as for their rights to be protected and fulfilled. It is crucial that the positive steps that are beginning to emerge for the protection of Indigenous Peoples' rights in Peru are transformed from paper to reality.

AMNESTY INTERNATIONAL URGES THE PERUVIAN AUTHORITIES TO:

- Promulgate immediately the Law on the Right of Indigenous People to Consultation and agree a process of implementation with the participation of Indigenous Peoples.
- Review laws and regulations that contradict the law or are contrary to State's obligations to obtain free, prior and informed consent.
- Suspend decree laws that affect Indigenous Peoples' right to land and resources until an evaluation, in consultation with the Indigenous communities affected, has been carried out to establish the possible impact on their rights.
- Review urgently all concessions that have been granted to extractive industries in areas where such activity could affect the rights of Indigenous Peoples, and ensure that no activity takes place in these concession areas until those affected are consulted.
- Implement recommendations set out by the International Labour Organization Committee of Experts without delay.
- Carry out an independent and impartial investigation into the events of 5 June 2009 to determine all responsibilities. The results of the investigation must be made public and all alleged perpetrators must be brought to justice.
- Drop unsubstantiated charges against Indigenous people and put an end to the persecution and harassment against them and their organizations.
- Guarantee the right to a fair trial for all the accused, including access to interpreter, if the accused requires one, and to legal aid.
- Guarantee the right to all detainees not to be subjected to torture, ill-treatment or any form of cruel, inhuman or degrading treatment.
- Ensure that all security forces personnel involved in policing of demonstrations receive adequate training required on alternatives to the use of force and firearms, peaceful settlement of conflicts, understanding of crowd behaviour, and methods of persuasion, negotiation and mediation.

¹ See PERU: BAGUA, SIX MONTHS ON "JUST BECAUSE WE THINK AND SPEAK DIFFERENTLY, THEY ARE DOING THIS INJUSTICE TO US" AMR 46/017/2009, available at <<http://www.amnesty.org/en/library/asset/AMR46/017/2009/en/fea8db2d-a1e1-4440-9d5e-a13d3631e555/amr460172009en.pdf>>

² The obligation is set up in various international instruments ratified by Peru: the United Nations Declaration on the Rights of Indigenous Peoples (adopted in 2007 after 20 years of negotiations with Indigenous Peoples representatives and States of the world, negotiations in which Peru played a leading role); the International Labour Organization Convention 169 (ratified in 1994); the American Convention on Human Rights (ratified in 1978) and the interpretation of the Inter-American Court of Human Rights; the International Covenant of Civil and Political Rights (ratified in 1978) and the International Convention on the Elimination of all forms of Racial Discrimination (ratified in 1971).

³ Among other recommendations, the committee stressed that Decree No. 012-2008-MEM (regulations on citizens' participation in hydrocarbon activities) and Supreme Decree No. 020-2008-EM (regulating citizens' participation in the mining subsector), are much narrower than what the Convention 169 provides. The Committee also "urged the Government to ensure effective participation by the representative institutions of indigenous peoples in the design and implementation of [...] mechanisms needed for the coordinated and systematic administration of programmes affecting indigenous peoples, including the reform of INDEPA. It also asked the Government to ensure that such mechanisms have the necessary resources to perform their functions properly and have independence and real influence in the decision-making process." International Labour Organization, Report of the Committee of Experts on the Application of Conventions and Recommendations (2010), ; Session of the Conference:99; Document No. (ilolex): 042010, Pag 899. Available at <http://www.ilo.org/ilolex/gbs/ceacr2010.htm>.