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FIFTH ITEM ON THE AGENDA

Report of the Director-General

Third Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by the Government of Peru of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), made under article 24 of the ILO Constitution by the International Trade Union Confederation (ITUC), the Trade Union Confederation of the Americas (TUCA) and the Autonomous Workers' Confederation of Peru (CATP)

I. Introduction

1. In a communication received on 27 October 2014, the International Trade Union Confederation (ITUC), the Trade Union Confederation of the Americas (TUCA) and the Autonomous Workers' Confederation of Peru (CATP) made a representation to the International Labour Office alleging non-observance by the Government of Peru of the Indigenous and Tribal Peoples Convention, 1989 (No. 169).
2. The provisions of the Constitution of the International Labour Organization on the submission of representations are:

Article 24

Representations of non-observance of Conventions

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against

which it is made, and may invite that government to make such statement on the subject as it may think fit.

Article 25

Publication of representation

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

3. In accordance with article 1 of the Standing Orders concerning the procedure for the examination of representations, as revised by the Governing Body at its 291st Session (November 2004), the Director-General acknowledged receipt of the representation and informed the Government of Peru accordingly, in a communication dated 10 November 2014.
4. At its 323rd Session (March 2015), the Governing Body issued a decision on the receivability of the representation and appointed Mr Carlos Flores (Government member, Bolivarian Republic of Venezuela), Mr Alberto Echevarría Saldarriaga (Employer member, Colombia) and Ms Miryam Luz Triana (Worker member, Colombia) to form the tripartite committee charged with examining the representation.
5. The complainant organizations submitted additional information on 5 June 2015.
6. On 10 September 2015 the Government of Peru submitted a report issued by the Ministry of Culture's General Directorate for Indigenous Rights. In response to a questionnaire sent by the Committee, the Government of Peru submitted additional information on 29 January, 1 March and 14 April 2016.
7. The tripartite committee met on 3 November 2015, 23 March and 30 May 2016 to examine the representation and adopt its report.

II. Examination of the representation

The complainant organizations' allegations

8. The complainant organizations referred to the situation of indigenous peoples and recalled that Peru has one of the largest indigenous populations in the region (approximately 7 million people) and is among the countries with the most indigenous peoples (85, according to data published by the Economic Commission for Latin America and the Caribbean (ECLAC) in September 2014¹). Notwithstanding this highly varied demography and the cultural richness it implies, the complainant organizations allege that the Government does not, in practice, consider Peru a multinational and multicultural State as demonstrated by the low levels of indigenous representation in state institutions and the lack of real respect for indigenous peoples' rights.
9. The complainant organizations maintain that the rights of indigenous peoples have, throughout history, been systematically violated by successive governments and various private interest groups, resulting in the present situation of demographic, socio-environmental and territorial vulnerability and systemic and structural discrimination.

¹ ECLAC: *Guaranteeing indigenous people's rights in Latin America: Progress in the past decade and remaining challenges*, 2014, pp. 122–123.

10. The complainant organizations maintain that structural discrimination and inequality also manifest as structural violence against indigenous women (both children and adults), who are triply discriminated against for being female, poor and indigenous; this places them in an extremely weak position where they lack opportunities. Indigenous women work in the informal economy and, as domestic workers, do not participate in decision-making political forums and lack social security coverage.

The existing legal framework and indigenous people's rights

11. The complainant organizations recall that the current National Constitution (1993) contains Chapter VI on agricultural policy and *campesino* and indigenous communities. Article 89 of the Constitution recognizes the legal status and autonomous social organization of indigenous communities, the imprescriptible nature of their land ownership, and respect for their cultural identity. Furthermore, article 149 of the Constitution confers judicial powers on the *campesino* and indigenous communities.
12. The complainant organizations also refer to the General *Campesino* Communities Act (Act No. 24656), published on 9 December 1992, and to Legislative Decree No. 22175 concerning indigenous communities and the agricultural development of forest and mountain forest regions, adopted in May 1978, which, together, define *campesino* and indigenous communities. The principles governing the land tenure system are contained in the aforementioned Legislative Decree No. 22175.
13. The complainant organizations also refer to Act No. 29785, published on 7 September 2011, concerning the right of indigenous or aboriginal peoples to prior consultation as recognized by Convention No. 169 and to Supreme Decree No. 001-2012-MC, published on 3 April 2012, issuing the implementing regulations for Act No. 29785.
14. In the communication received in June 2015, the complainant organizations note that there is no centralized information on the number of *campesino* and indigenous communities. There is no single official registry of *campesino* and indigenous communities that are recognized and hold title to their land in Peru, which makes it difficult to evaluate the true status of the physical and legal restructuring of rural land ownership and to gain an overview of the number of rural plots still awaiting titling.
15. The complainant organizations recall that Act No. 29785 provides for the establishment of an official database of indigenous peoples of Peru and observe that, more than three years after work on the database was concluded, there is information on a total of 52 indigenous peoples: 48 in the Amazon region and four in the Andean region. Although the list of Amazonian peoples was published in April 2015, the process remains incomplete. According to the complainant organizations, the Quechua-speaking *campesino* communities have not been included in the database even though they represent over half of the communities that should be included.
16. The complainant organizations recall that defining “indigenous” and “aboriginal” populations is a sensitive issue in Peru. The communities known as “*campesino*” maintain the languages and cultural traditions of their ancestors and suffered the historical and social injustices that give them the right to be classified as indigenous peoples. However, as *campesino* communities have contact with “western” urban culture, these populations are considered “*campesino*” and not “indigenous”, which means that they are not granted the specific ethnic rights to which they should be entitled. The complainant organizations also note that some members of *campesino* communities, when signing documents, state that they are not indigenous; this undermines the sense of awareness of indigenous identity that is a defining criterion according to Convention No. 169.

17. The complainant organizations emphasize that it is important for the Government to have at its disposal, through the Department for Intercultural Relations, resources for training and the promotion of prior consultation. However, the symbolic cases referred to in the representation demonstrate that effective social dialogue forums either do not exist or are very weak and that bureaucratic obstacles make obtaining title to land complicated.

Development priorities – criminalization of indigenous peoples’ protests

18. The complainant organizations refer to the “Alternative Reports” that were drawn up in 2011, 2012 and 2013 by organizations of Amazonian and Andean indigenous peoples in order to submit their observations to the Committee of Experts on the Application of Conventions and Recommendations (Committee of Experts) via the CATP. The Alternative Reports are documents on compliance with Convention No. 169 that were prepared by the indigenous organizations which form the Pacto de Unidad alliance with support from the Indigenous Peoples Working Group of the National Coordinating Committee for Human Rights.
19. The complainant organizations maintain that in practice, rather than seeking to ensure respect for the collective rights recognized in Convention No. 169, the Government has, in general, continued systematically to put into effect exclusionary policies that fail to recognize the existence of the various indigenous peoples living within the national borders.
20. According to the complainant organizations, in practice, development policy is based on the priority given to investment in the extractive industries, which directly affects indigenous peoples. According to these organizations, the Government denies indigenous peoples the right to set their own priorities and exercise control over their own economic, social and cultural development, which in turn leads to a significant deterioration in their living and working conditions, health and education. This is a clear violation of the provisions of Article 7 of Convention No. 169.
21. The complainant organizations maintain that the consequent profound discontent among indigenous peoples has led to high levels of conflict. In recent years, there have been 43 civilian deaths as a result of law enforcement intervention in social protests. The full names and ages of all 43 people, details of the conflicts and the dates and locations of the deaths are attached (see Appendix).
22. The complainant organizations recall that, in its 2014 report, the Committee of Experts referred to the 2013 Alternative Report, which mentions cases of the repression of indigenous peoples and proceedings against their defenders in clear violation of the human rights and fundamental freedoms of members of indigenous groups, as recognized in Article 3 of Convention No. 169. The Committee of Experts requested the Government of Peru to “indicate the measures taken to ensure that no force or coercion is used in violation of the human rights and fundamental freedoms of indigenous peoples and to avoid criminalizing events involving indigenous peoples”.
23. The complainant organizations state that, on various occasions, states of emergency have been declared in areas where social protests associated with mining conflicts have taken place. According to the complainant organizations, on eight occasions the Government has authorized intervention by the armed forces in the internal monitoring of social protests. Each time, the protest was associated with an environmental dispute and took place in an area that formed part of an indigenous people’s ancestral territory; these interventions had serious human consequences. In this connection, the complainant organizations mention the death of four civilians in the town of Celendín, in the department of Cajamarca, in June 2012

during a conflict about the Conga mining project, an incident that was also mentioned in the 2013 Alternative Report.

24. According to the complainant organizations, the Government continues to resort routinely to declaring states of emergency in order to put an end to social conflicts arising from a state policy that violates indigenous peoples' rights. The complainant organizations refer to the conflict related to the Conga mining project, when a state of emergency was maintained for two periods of 60 and 120 days over approximately a year (November 2011–December 2012), thus undermining the human rights of social and indigenous leaders without justification as mentioned in the 2013 Alternative Report.
25. The complainant organizations note that the regions with the highest incidence of conflict are those that have the most extractive concessions and operations on indigenous peoples' territory. According to Social Conflict Report No. 127, issued by the Prevention of Social Conflict and Governance Section of the Ombudsman's Office – which is appended to the representation – by September 2014 there had been 201 social conflicts in Peru, of which 158 (78.6 per cent) were active and 43 (21.4 per cent) were latent (in other words, liable to break out at any moment), the regions with the highest levels of conflict being those with the greatest number of extractive concessions and operations (mining, petroleum, gas and other megaprojects) on indigenous peoples' land.
26. The complainant organizations submitted a list containing details of 59 active socio-environmental conflicts relating to mining activity affecting the country's *campesino* and indigenous communities.

Plot 108 and criminalization of the protest

27. In the additional submissions of June 2015, the complainant organizations refer to the criminalization of the protest on Plot 108, located in the department of Junín. The events of 10 February 2015 led to the death of a young man, and approximately 80 people were injured and 40 detained in the Pichanaki district.² According to the Ombudsman's Office, the young man who died was a 25-year-old, Mr Ever Pérez Huamán.³ The protest was against the exploitation of gas deposits and the pollution and environmental damage caused by the operations on Plot 108. The clash began during the night of 10 February 2015 and lasted until the early hours of 12 February, when the protesters managed to access a facility located at kilometre 72 of the road bordering the Central Forest, where materials for the gas exploitation project on Plot 108 were being stored.
28. The complainant organizations recall that the Plot 108 concession was granted to the Pluspetrol company in 2005. In 2013, the company presented a socio-environmental impact study. Demonstrators protested because they did not agree with a number of points in the study and requested a forum for dialogue with the company and the State to discuss those issues. The matter was mentioned in Social Conflict Report No. 131, produced by the Ombudsman's Office (January 2015),⁴ which indicated that the Environmental Defence

² The complainant organizations refer to the information available on Infoamazonia at: <http://infoamazonia.org/es/2015/02/protest-against-pluspetrol-leaves-1-dead-80-injured-and-40-arrested#!/story=post-12286>.

³ http://www.bbc.co.uk/mundo/ultimas_noticias/2015/02/150211_ultnot_peru_protestas_policia_manifestante_muerto_egn.

⁴ http://www.defensoria.gob.pe/conflictos-sociales/objetos/paginas/6/48reporte-mensual-de-conflictos-sociales-n_131-ener.pdf.

Front of the Pichanaki district (Junín) was opposed to the exploration operations that were taking place on Plot 108 and that the Government had not resolved the conflict.

Tía María mining project

29. The complainant organizations also present information relating to the Tía María mining project, which involves the construction of two work sites, Tía María and La Tapada, in the province of Islay, department of Arequipa. According to these organizations, on 7 July 2009, the company submitted an environmental impact study on the Tía María mining project and announced an investment of US\$950 million. In 2011, opposition to the project gave rise to violent protests, resulting in three people killed and hundreds injured. This deadly toll forced the Ministry of Energy and Mines to abandon the impact study.
30. According to the complainant organizations, the deaths of a total of six protesters were linked to the Tía María mining project in 2011 and 2015.

Tía María project – Victims 2011–15

Day	Victims
4 April 2011:	Andrés Taype Choquepuma (aged 22), died of a bullet wound which perforated his lung
7 April 2011:	Aurelio Huarca Puma (aged 50), died as a result of a bullet to the left side of his chest Néstor Cerezo Patana (aged 31), died of a bullet wound Miguel Ángel Pino (aged 23), died of a bullet wound to the head; his death was not communicated in the press
22 April 2015:	Victoriano Huayna Nina (aged 61), died of internal bleeding caused by a bullet wound
5 May 2015:	Henry Checla Chura (aged 35), died of a bullet wound

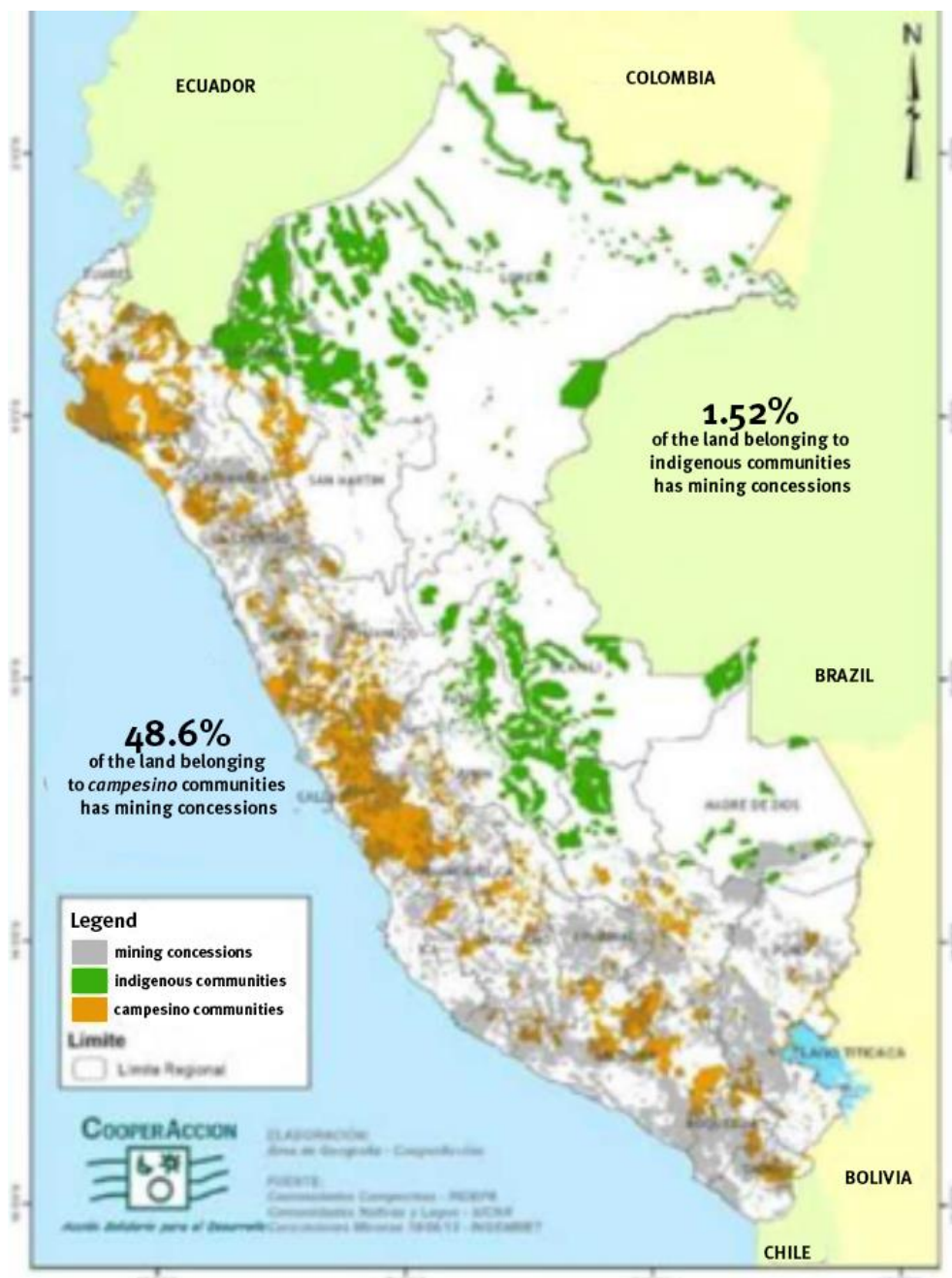
31. According to the complainant organizations, the Ombudsman's Office explained that the conflict had broken out on 22 January 2015 in response to statements made by a company director, who had announced that construction of the miner's camp might begin. The day after this announcement, the Chair of the Tambo Valley Users Council and the Chair of the Tambo Valley Defence Front went to the company's offices, prior to a visit to the Ministry of Energy and Mines, to request clarification of the situation. Five days later, the General Directorate for Mining, which is responsible for authorizing major mining projects, explained that the project was still at the assessment stage. However, the complainant organizations observe that the mining conflict had started years before, not with the protest that took place in January 2015.

Overlapping of mining concessions on lands traditionally occupied by indigenous peoples

32. The complainant organizations object to the Government's implementation of a development policy based on prioritizing investment in extractive industries, which directly affects indigenous communities because the mining companies occupy lands on which indigenous peoples traditionally inhabited, leading to competition for the use of natural resources between the extractive industries and indigenous communities.
33. The complainant organizations provide a map showing that mining concessions cover 25,744,281.87 hectares (20.23 per cent of the national territory). According to these organizations, most of the concessions directly affect *campesino* and indigenous communities as they overlap with lands that are traditionally occupied by those communities. The complainant organizations state that the mining concessions were granted

without prior consultation with the communities concerned and without any thorough or prior evaluation of the land for which the concessions were granted; this is contrary to the provisions of Article 13 of Convention No. 169.

iMap 1. Campesino and indigenous community lands with overlapping mining concessions



Source: Prepared by CooperAcción based on information from the Institute for Geology, Mining and Metallurgy.

34. The complainant organizations emphasize that mining concessions are granted without any thorough or prior evaluation of the land for which they are granted; in other words, without considering whether the concession is located in a fragile ecosystem, at river basin headwaters or on land inhabited by *campesino* or indigenous communities. Neither the peoples established on the land granted through mining concessions nor the local authorities responsible for management of the land in question are informed in advance, as stated in the 2013 Alternative Report.

35. The complainant organizations emphasize that the Ministry of Energy and Mines has repeatedly opposed introducing consultations on mining exploration projects.
36. The complainant organizations also recall that Plot 192 (located in the department of Loreto) is another symbolic case mentioned in the representation (see paragraphs 125–138). In the area of Plot 192, according to these organizations, chronic malnutrition affects 31 per cent of children and monetary poverty 78 per cent of families. Water and soil pollution has increased food insecurity. The likelihood of indigenous communities suffering from hunger is three times greater than the national average.
37. The complainant organizations emphasize that it is important for the Government to implement Act No. 29785 of 2011, which guarantees indigenous and aboriginal peoples the right to be consulted whenever an administrative or legislative measure is likely to alter their collective rights.
38. The complainant organizations maintain that prior consultation should provide solutions and help prevent conflicts rather than hindering development. Consultation and participation are fundamental principles of democratic governance and inclusive economic development.
39. The complainant organizations add that the widespread policy of granting mining concessions also causes another problem – environmental damage – which affects both individual rights (health, traditional occupations) and collective rights (land, territory, natural resources). The Committee of Experts mentioned the environmental pollution of land occupied by indigenous peoples in its observation adopted in 2012, in which it asked the Government of Peru, “if environmental pollution is confirmed, to make every effort to protect the life and health of the members of the communities affected”.

Land: Public policy on land titling and recognition of campesino and indigenous communities

40. The complainant organizations refer to Article 14 of Convention No. 169 and to the case law of the Inter-American Court of Human Rights (IACHR) pertaining to the Convention. They recall that the IACHR has ruled that **the right of ownership predates the legal recognition of communities**.
41. The complainant organizations again refer to article 89 of the 1993 Constitution, which accords full recognition and constitutional protection (*tutela*) to indigenous peoples. The organizations submit that the State has an obligation to provide legal certainty in respect of indigenous peoples’ land in accordance with Article 13 of Convention No. 169, which specifically establishes the obligation of governments to respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories. According to the complainant organizations, Convention No. 169 requires governments to adopt measures to safeguard indigenous peoples’ right to their land.
42. The complainant organizations also refer to Article 26(2) of the United Nations Declaration on the Rights of Indigenous Peoples, which states that indigenous peoples have the right to “own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired”.
43. The complainant organizations further refer to the Inter-American System for the protection of human rights and to the draft American Declaration on the Rights of Indigenous Peoples, which recognizes, in section XXIV, that “indigenous peoples have the right to the recognition of their property and ownership rights with respect to lands, territories and resources they have traditionally occupied ...”.

44. The complainant organizations note that section 10 of Legislative Decree No. 22175 concerning indigenous communities and the agricultural development of forest and mountain forest regions stipulates the State's obligation to guarantee the security of indigenous communities' land ownership, conduct the necessary land registry surveys and grant land titles accordingly. Furthermore, the General Administrative Procedures Act (Act No. 27444), states that any act contravening the Constitution or the law is null and void.
45. The complainant organizations state that Article 14(1) and (2) of Convention No. 169 establish the State's duty to recognize and safeguard indigenous peoples' rights of ownership and possession over the lands which they traditionally occupy. In addition, articles 88 and 89 of the Constitution establish the obligation to guarantee *campesino* and indigenous communities' right to ownership of their land. In practice, however, the State does not have a public policy that effectively and comprehensively addresses land titling and recognition of *campesino* and indigenous communities and has failed in its duty to restructure and formalize the land ownership of these communities.

Public policy issues concerning recognition of the land rights of indigenous peoples

46. The complainant organizations append to the representation the documents, conclusions and recommendations which the Ombudsman's Office submitted to the Ministry of Agriculture and Irrigation in June 2014 and which are contained in Report No. 002-2014-DP/AMASPPI-PPI, "Analysis of public policy on land titling and recognition of *campesino* and indigenous communities".⁵ The organizations also include a copy of Official Communication No. 0461-2014-DP of 6 October 2014 from the Ombudsman's Office to the Office of the President of the Council of Ministers, which emphasizes that the rules of procedure governing land titling and recognition of indigenous communities are complex, fragmented and, in some cases, contradictory.
47. Endorsing the analysis made by the Ombudsman's Office, the complainant organizations state, first, that regional governments do not have clear guidelines enabling them to settle disputes in the event of overlapping rights relating to the lands of indigenous communities for which the titling process is under way.
48. Second, the complainant organizations maintain that there is no adequate governing body responsible for the recognition and titling of communally owned lands. The State entity responsible for the recognition of *campesino* and indigenous communities and the titling of their communal lands has changed over the years. The competent authority was the Special Land Titling and Rural Land Registry Project (PETT) from 1992 to 2007, the Commission on the Formalization of Informal Property (COFOPRI) from 2007 to 2009 and the regional governments from 2009 to 2012; since 2013, responsibility for the process of restructuring ownership of communal property has lain with the Ministry of Agriculture and Irrigation but the regional governments are responsible for actually carrying out the task.
49. The complainant organizations agree with the Ombudsman's Office, which emphasized that the lack of a governing body or specialized authority "since the start of the process of putting regional governments in charge of land titling (for both *campesino* and indigenous communities) has meant that there has not been an articulated public policy, adequate procedures or standardized national requirements".⁶ The organizations maintain that the

⁵ Ombudsman's Office press release No. 106/OCII/DP/2014, 4 June 2014.

⁶ Ombudsman's Office press release No. 019/OCII/DP/2013.

Ministry of Agriculture and Irrigation also fails to adequately perform its duties relating to the restructuring and the formalization of communal property.

50. The complainant organizations note, third, that there is no single official registry of *campesino* and indigenous communities that are recognized and hold land titles in Peru, which makes it difficult to assess the true status of the physical restructuring of rural land ownership and to gain an overview of the number of rural plots of land still awaiting titling.
51. The complainant organizations state, fourth, that the staff in charge of the process of recognition and titling are not sufficiently specialized or trained. According to these organizations, the regional directorates for agriculture in the regional governments do not have enough staff specialized in land titling for *campesino* and indigenous communities.
52. The complainant organizations note, fifth, that there is no promotion of rights or suitably adapted management instruments. There are no tools being developed to raise awareness of rights and of the procedures available to *campesino* and indigenous communities with a view to recognition and titling of their lands.
53. The complainant organizations report, sixth, that the policy and procedure for recognition of *campesino* and indigenous communities and the titling of their lands are not given priority in the budget in order to ensure their implementation.
54. The complainant organizations maintain, seventh, that there are no clear guidelines on resolving disputes over rights and interests that arise in the event of overlapping rights over land occupied by *campesino* and indigenous communities for which the titling process is under way when, for example, these lands are designated as protected natural areas or permanent production forests. The complainant organizations emphasize that when these zones or forests are adjacent to the lands of indigenous or aboriginal communities the titling process becomes stalled, undermining the rights of the indigenous communities seeking recognition of their land ownership.
55. The complainant organizations note that on 10 October 2014, the Ombudsman's Office reiterated its concern about the legal uncertainty of *campesino* and indigenous communities' right to own land and recommended that the procedures for recognition and land titling should be simplified in order to adequately safeguard the right to communal land ownership.⁷
56. The complainant organizations report that of the 6,069 *campesino* communities and 1,469 indigenous communities recognized by the COFOPRI, 16 per cent still do not have title to their land. Between 2006 and 2010, only 19 new titles and 23 territorial expansions were granted to indigenous communities. In 2010, when responsibility was transferred from the COFOPRI to the regional governments, the communities of the Amazon region were not granted any titles. *Campesino* communities were granted a meagre four titles in 2010. According to data from the Institute of Public Welfare, in the past five years, only 142 new titles and 13 territorial expansions have been granted.

⁷ Ombudsman's Office press release No. 198/OCII/DP/2014.

The case of the Alto Tamaya–Saweto indigenous community

The Alto Tamaya–Saweto indigenous community:
Recognition and application for land titles

- 57.** The complainant organizations state that the Alto Tamaya–Saweto community is an indigenous Asháninka people belonging to the Arawaka language family. For more than half a century, the community has inhabited the eastern part of the department of Ucayali in the Peruvian Amazon, bordering the Brazilian state of Acre. The indigenous Alto Tamaya community occupies, and has traditionally occupied, a territory of approximately 80,000 hectares bordered by the right bank of the Alto Tamaya river, the left bank of the Putaya river in Quebrada Canyon, the border with Brazil and an old logging route.
- 58.** The complainant organizations have attached a copy of correspondence dated 18 October 2002, in which the indigenous community's leaders, Mr Benjamín Paredes Linares and Mr Edwin Chota Valera, applied for recognition of the community. They stated that since March 2002 they had lived in Alto Tamaya, adjacent to the small village of Pataya on the border between Peru and Brazil, Masísea district, and were the leaders of a community of 118 inhabitants who were engaged primarily in agriculture, logging and other activities in order to support their families.
- 59.** According to the documents provided by the complainant organizations, in April 2003 the Ucayali Regional Directorate for Rural Affairs, in accordance with section 89 of the 1993 Constitution and section 7 of the Act concerning indigenous communities and the agricultural development of forest and mountain forest regions, registered the Alto Tamaya indigenous community in the National Registry of Indigenous Communities.⁸
- 60.** The complainant organizations have provided the Socio-economic and Population Report on the Alto Tamaya–Saweto indigenous community,⁹ prepared by the Regional Sectoral Directorate for Agriculture in April 2013, which recalls the provisions of Convention No. 169 and of national legislation pertaining to the identification and titling of indigenous communities' territories. The Socio-economic and Population Report confirms the historical presence of indigenous Asháninkas on both sides of the Sierra del Divisor in a forested area rich in fine wood. In 1998, the Asháninka peoples began to gather at the mouths of the Alto Tamaya and Putaya rivers to create a village called Saweto, form a community and seek to establish a school and a territory.
- 61.** The Socio-economic and Population Report also includes copies of the administrative decisions on the establishment of a school for the Alto Tamaya community, adopted in April 2003.¹⁰ The complainant organizations note that, at the request of the communal authorities, an integrated secondary school was also set up, thereby ensuring continuity of the community's access to education.
- 62.** The complainant organizations state that the indigenous community's population increased to 32 families and highlight that one of its commitments has been to conserve the forest,

⁸ Regional Directorate Resolution No. 045-2003-GRUP-P-DRAU of 22 April 2003 was approved by Regional Directorate Resolution No. 075-GRU-P-DRAU of 10 June 2003.

⁹ Ucayali Regional Sectoral Directorate for Agriculture, Report No. 0018-2014-GRU-P-DRASU-DSFL, 3 Apr. 2013.

¹⁰ Regional Directorate Resolution No. 1196-2003-DRAU of 28 April 2003 (appended to the 2013 Socio-economic and Population Report), pursuant to which a primary school was established.

having taken on the role of forest guardian from the outset of its historical settlement. On numerous occasions, the indigenous community has submitted complaints to the administrative and judicial authorities concerning systematic illegal logging of timber-yielding trees on its territory. The complainant organizations explain that some of those complaints were shelved by the Public Prosecutor's Office and others were dismissed by the forestry authority because the community did not have title showing ownership of the land.

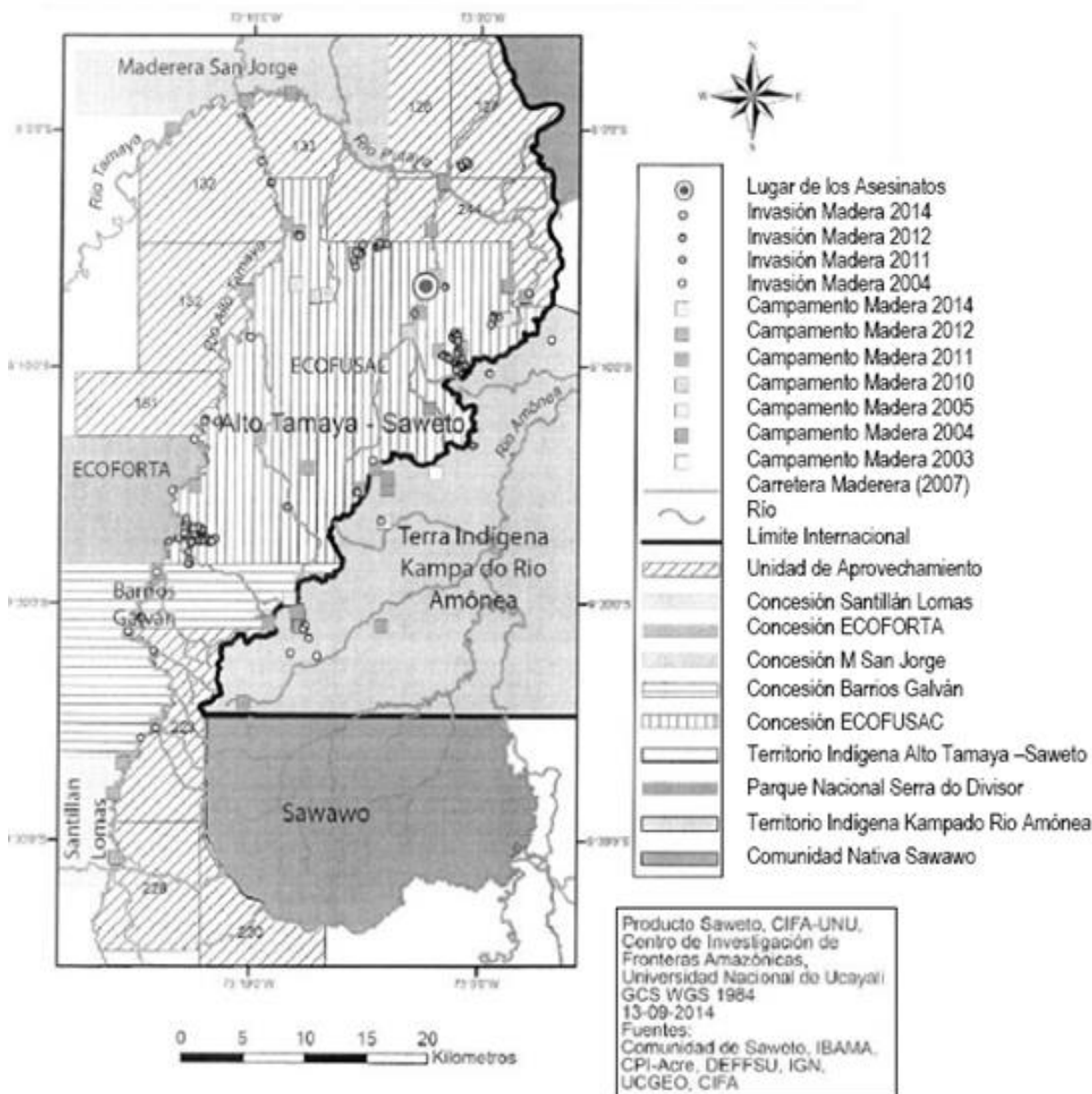
The Alto Tamaya–Saweto indigenous community's land

Granting of forestry concessions without prior consultation

- 63.** The complainant organizations state that the Forestry and Forest Wildlife Act (Act No. 27308), published on 16 July 2000, regulates forestry concessions and the exploitation of forest resources in primary natural forests. Section 10 of Act No. 27308 sets out the methods for managing forest resources in primary natural forests and the terms for granting forestry concessions for timber production through a public auction or tender for renewable concessions valid for a maximum of 40 years.
- 64.** The implementing regulations for Act No. 27308 are contained in Supreme Decree No. 014-2001-AG, published on 9 April 2001, which establishes the maximum size of concessions granted via public auctions and tenders. Sections 102 and 106 of the regulations provide that concessions granted through public auction may not exceed 120,000 hectares and those granted through public tender may not exceed 50,000 hectares.
- 65.** In that connection, on 7 January 2002, through Ministerial Decision No. 0026-2002-AG, the Government approved the creation of a permanent production forest in the department of Ucayali. This forest covered a surface area of 4,089,926 hectares, and was exempt from categorization as a protected natural area, land belonging to *campesino* or indigenous communities, private property and other forms of use officially recognized by the relevant authorities.
- 66.** At the same time, Supreme Decree No. 029-2002-AG of 3 May 2002 approved the review of the boundaries of the forest management units in the permanent production forest of Ucayali, which were to be granted through public tender, and established exactly what each unit would and would not include. Ministerial Decision No. 034-2006-AG of 18 May 2006 authorized the National Institute for Natural Resources (INRENA) to take charge of the boundary review of the permanent production forest. According to the complainant organizations, the process of reviewing the boundaries of the Ucayali permanent production forest units should have been undertaken with full respect for the rights of the *campesino* and indigenous communities and with continuous updating of the cartographic base for concession location when problems of overlapping land rights arise.
- 67.** The complainant organizations note that on 12 July 2002, through public tenders, the State granted concessions/awards for a total of 592 forest management units covering a surface area of 3,847,445 hectares. In Ucayali, 307 units covering a surface area of slightly more than 2 million hectares were awarded. Other public tenders awarded a total of 165 forest management units, covering a total surface area of slightly more than 1 million hectares, of which 97 units (625,991 hectares) are located in the department of Ucayali.
- 68.** The complainant organizations maintain that five of the concessions granted in the district of Masisea in the Tamaya river area overlap with land belonging to the Saweto indigenous community and that these five concessions were granted to the following companies: Santillán Lomas, ECOFORTA, Maderera San Jorge, Barrios Galván and Eco Forestal Ucayali SAC (ECOFUSAC), the ECOFUSAC concession being the one with the highest

percentage of overlapping. Map 2 shows the territory of the Alto Tamaya indigenous community and the surface area of the five forest concessions.

Map 2. Overlapping forest concessions and forest management units and illegal logging on the lands of the Alto Tamaya–Saweto (Peru) and Kampa do Rio Amônia (Brazil) communities between 2003 and 2014



69. The complainant organizations maintain that these concessions were granted without conducting a process of consultation with the affected indigenous communities.

Application for land titling

70. The complainant organizations provide a copy of the response to the indigenous community's request for its territory to be demarcated. The reply dated 21 October 2002 from the Ucayali Regional Directorate for Rural Affairs, which is in charge of the PETT, states that "there is neither the staff nor the budget for this type of work".

- 71.** In June 2003, the indigenous community again applied to the rural affairs authority, requesting the demarcation and titling of its territory. The request was supported by the representative of the Ombudsman in Ucayali, who recalled that Peru had ratified Convention No. 169 and had obligations, under Article 14, relating to recognition of the rights of ownership and possession over the lands that indigenous peoples traditionally occupy.¹¹
- 72.** The complainant organizations note that, between 2004 and 2009, the Alto Tamaya indigenous community repeatedly applied to the Ucayali Regional Sectoral Directorate for Agriculture, requesting title to its territory. However, in November 2009, according to the organizations, the COFOPRI indicated that land titling would be considered as the Alto Tamaya indigenous community's land had been included in an annex to an agreement between the Ministry of Agriculture and Irrigation and the COFOPRI on the demarcation of indigenous communities' territory.
- 73.** The complainant organizations state that, in November 2012, the Ucayali Regional Sectoral Directorate for Agriculture ordered a "soil survey" study of the indigenous community showing the relevant grid references and taking into account international and district boundaries, as well as river basins, elevations and tracks. On 3 April 2013, the aforementioned authority published the Socio-economic and Population Report.¹²

Attempts by the indigenous community to exclude forestry concessions from its territory

- 74.** The complainant organizations report that, on 5 April 2013, the Alto Tamaya indigenous community, acting in defence of its ancestral rights and rights of possession, requested the Executive Directorate for Forestry and Forest Wildlife to exclude forestry concessions that partially or totally overlapped with certain sections of its territory.
- 75.** The complainant organizations state that, through Executive Directorate Decision No. 044-2014-GRU-P-GGR-GRDE-DEFFS-IJ of 29 January 2014, the forestry authority rejected the indigenous community's application for the exclusion of forestry concessions from its territory. The indigenous community lodged an appeal, maintaining that Executive Directorate Decision No. 044-2014 had violated the land rights of indigenous peoples as laid down in Convention No. 169 and relevant national legislation.
- 76.** The complainant organizations attach the text of Regional Managerial Decision No. 006-2014-GRU-P-GGR-GRDE of 18 March 2014, which declared the appeal to be unfounded. The forestry authority considered that, although Convention No. 169 advocates respect for rights of possession when an indigenous community's ancestors can be shown to have traditionally occupied its land, in the case of the Alto Tamaya indigenous community "there are no records of traditional possession prior to the concession, and the accompanying documents ... while showing that there is currently an overlap, and has been since 2003, do not refer to the years prior to the establishment of the Ucayali permanent production forest, and the subsequent boundary inclusions, exclusions and review ...". The decision adds that the application documents for registration of the indigenous community and the administrative decisions creating the school date back to 2003. Although the application for registration as an indigenous community states that "the settlers have lived on the land which the community currently occupies for over 60 years", it is also apparent that "the

¹¹ Official Communication No. 1130-2003/DPU of 23 June 2003, added by the complainant organizations to the documents accompanying the representation.

¹² See paragraph 60.

community's first request for territorial demarcation is dated 16 July 2002, one day after the signing of the concession contract referred to in the study".

77. The complainant organizations state that they lodged additional administrative appeals and submitted complaints to the Public Prosecution Service (the criminal and special environmental branches with jurisdiction in Ucayali) for violation of land rights and rights to forestry resources found on indigenous peoples' lands, as well as complaints about the death threats made against members of the communities who opposed the illegal timber-harvesting operations in their forests.
78. The complainant organizations note that, following the murder of the four community leaders (on 1 September 2014), the regional government officially began to exclude the forestry concessions. Through Executive Directorate Decision No. 439-2014-GRUP-P-GGR-GRDE-DEFFS-U of 24 October 2014, 48,293 hectares that had been granted to the ECOFUSAC were excluded in recognition of the legitimacy of the indigenous community's request for the exclusion of concessions that overlapped with its territory.
79. The complainant organizations maintain that the Ucayali regional government, which issued two contradictory decisions in less than a year, has been shown to be incompetent. The organizations consider that the regional government should have authorized the exclusion of the forestry concessions and not waited until the indigenous community's leaders were murdered.

**Murder of Mr Edwin Chota Valera, Mr Jorge Ríos Pérez,
Mr Leoncio Quinticima Meléndez and Mr Francisco Pinedo:
Complaints about illegal logging**

80. The complainant organizations condemn the fact that, on 1 September 2014, indigenous leaders Mr Edwin Chota Valera,¹³ Mr Jorge Ríos Pérez, Mr Leoncio Quinticima Meléndez and Mr Francisco Pinedo of the Asháninka indigenous community of Alto Tamaya–Saweto were ambushed, tortured, cruelly murdered and then dismembered by illegal timber traffickers.
81. The complainant organizations maintain that illegal loggers subjected the inhabitants of indigenous communities to forced labour in logging camps and made use of their tracks for illegal drug-trafficking activities.
82. In a complaint submitted to the Ucayali Special Public Prosecutor's Office for Environmental Affairs, dated 15 December 2010, Mr Edwin Chota Valera expressed concern at the serious impact of illegal logging activities "because they drive people to flee and push young people into taking up illegal logging. They bring with them alcohol and bad habits, not least seducing women and even girls. This is a crime against our people, who have the right to maintain their culture, and the State should safeguard this as provided in Convention No. 169, which Peru has ratified".

¹³ The 2013 Socio-environmental and Population Report notes that, "the Alto Tamaya community elected Mr Edwin Chota Valera, a mestizo, as leader following the death of the Asháninka leader, Mr Pablo Díaz Encina, and the resignation of Mr Benjamín Paredes Linares. During the field work, Mr Chota Valera, 51, was the leader and the deputy leader was an Asháninka, Mr Leandro Camacho Ramírez. The agreement of the Asháninkas to be represented by a mestizo for almost a decade shows that Mr Chota Valera was considered an integral member of the community and reflects the strategy of other Amazonian communities that have elected leaders who are not – or are only partly – indigenous in order to maintain or improve the quality of community life".

- 83.** The complainant organizations note that, in April 2014, the people who had been systematically reported for their involvement in illegal logging threatened to kill members of the communities as recorded in the Public Prosecutor's Office investigation report, which included a request for the seizure of timber extracted illegally from indigenous territory.
- 84.** The complainant organizations state that the indigenous community had invited the Forestry Concessions Supervisory Body (OSINFOR) to verify that the companies that had been granted concessions were not complying with the provisions of the concession contracts and were, in fact, facilitating illegal logging on Saweto indigenous community land and other indigenous peoples' lands in Brazil.
- 85.** The complainant organizations note that the OSINFOR conducted an inspection visit from 26 to 30 August 2014 to assess the illegal logging situation within the concession areas. At the end of the inspection, between 1 and 2 September 2014, indigenous leaders Mr Edwin Chota Valera (leader of the Saweto indigenous people), Mr Jorge Ríos Pérez, Mr Leoncio Quinticima Meléndez and Mr Francisco Pinedo, who had participated in the inspection, went to the territory of the Apiwtxa (*Associação Ashaninka do rio Amônia*) indigenous people in the neighbouring state of Acre, Brazil, to take part in a meeting to pursue a joint plan of action to combat illegal logging and drug trafficking. Against this backdrop, the four indigenous men were murdered by suspected illegal loggers. The place where the murders took place is also indicated on Map 2.
- 86.** The complainant organizations believe that the forestry companies and the state authorities were involved in the murders. The murdered indigenous leaders were travelling from Saweto to an Apiwtxa village in the Kampa del Río Amônia indigenous territory in the Marechal Thaumaturgo municipality in the state of Acre, Brazil.
- 87.** The complainant organizations emphasize that while the death threats had been brought to the attention of the national Government and of Ucayali regional government institutions, no specific steps had been taken to safeguard the leaders' fundamental right to life and physical integrity, nor was the indigenous community permitted to exercise its collective right to the titling of its ancestral territory.
- 88.** The complainant organizations request a real investigation into the violation of the indigenous community leaders' right to life in order to ensure recognition of, and respect for, the territorial and associated rights of the indigenous community and its freedom to exercise these rights in pursuit of the primary objective of decent, sustainable development.
- 89.** The complainant organizations recall that the indigenous leaders who were killed had been dealing with various government bodies over an 11-year period, seeking title to the lands traditionally occupied by them in the context of their land rights as recognized in Convention No. 169.
- 90.** The complainant organizations recall that, in press release No. 102/14 of 18 September 2014, the IACHR described the events of 1 September 2014. A group of loggers allegedly ambushed, bound, shot and dismembered the indigenous Asháninkas Mr Edwin Chota Valera, Mr Jorge Ríos Pérez, Mr Leoncio Quinticima Meléndez and Mr Francisco Pinedo in the community of Alto Tamaya–Saweto. The IACHR urged the State to investigate these acts of violence with due diligence, to conduct a judicial inquiry and to punish those responsible. The complainant organizations emphasize that the IACHR recalled that “the effective enjoyment by the indigenous peoples of the right to own land involves not only protection of an economic unit, but also of the human rights of a community that bases its economic, social and cultural development on its relationship with the land and its natural resources. The Commission recognizes that, despite the efforts of numerous States in the region to legally recognize the traditional territories of the indigenous peoples, there

continue to be considerable gaps in the protection of these rights. This leaves the indigenous peoples in a vulnerable situation vis-à-vis third parties, especially parties interested in using and developing the resources of indigenous territories. States must be especially mindful of these risks in the measures they take to guarantee observance of the rights of indigenous peoples and to protect in particular the integrity and the lives of defenders working to further these rights”.

Titling and registration of land belonging to the Alto Tamaya–Saweto indigenous community

91. The complainant organizations maintain that the indigenous community faced two obstacles in seeking title the land that it traditionally occupies. First, the State listed part of the community’s land as a permanent production forest area (a classification established under the Forestry and Forest Wildlife Act (Act No. 29763)); and, second, it granted a land concession to two forestry companies without conducting prior consultations with the indigenous communities that traditionally occupied the land. These two obstacles constitute a clear violation of the right to consultation under Article 6 of Convention No. 169 and the right to decide on priorities for the process of development under Article 7 thereof.
92. The complainant organizations note that, following the murder of the Saweto leaders, the national Government, represented by the President of the Council of Ministers, undertook to coordinate with the competent government bodies to grant the indigenous community title within the month following the President’s visit to the community in October 2014.
93. The complainant organizations indicate that, based on the exclusion of forestry concessions overlapping with the indigenous community’s territory under the aforementioned Executive Directorate Decision No. 439-2014-GRUP-P-GGR-GRDE-DEFFS-U of 24 October 2014, the Executive Directorate for Forestry and Forest Wildlife of the Ucayali regional government requested the Ucayali Regional Sectoral Directorate for Agriculture to resume the titling process requested by the community in 2003.
94. Under Regional Sectoral Directorate Decision No. 299-2014-GRU-P-DRSAU of 15 December 2014, the Ucayali Regional Sectoral Directorate for Agriculture approved demarcation of the perimeter of the territory of the indigenous community with a surface area of 78,611 hectares (8,700 m²).
95. The complainant organizations state that, in January 2015, the Ucayali Regional Sectoral Directorate for Agriculture resumed the titling process in relation to the indigenous community’s territory and that, in Regional Sectoral Directorate for Agriculture Decision No. 028-2015-GRU-P-GGR-GRDE-DRSAU of 30 January 2015, the regional authority decided to grant the Alto Tamaya indigenous community title to the territory that it occupies with a surface area of 78,611 hectares (8,700 m²).
96. The complainant organizations note that, on 30 January 2015, in order to honour the commitment of the Regional President, the Ucayali Regional Director for Agriculture made a symbolic presentation of title to the leader of the Alto Tamaya–Saweto indigenous community, “with sufficient merit to warrant its registration in the corresponding public register”.
97. The complainant organizations indicate that the Ucayali Regional Director for Agriculture requested the Public Registry Office of Ucayali to register Decision No. 028-2015, granting the title and approving the plan for demarcation of the community’s territory. The complainant organizations observe that the formal titling process for the indigenous community’s land will only be complete when the title has been duly registered.

- 98.** The complainant organizations submitted a copy of Official Communication No. 143-2015-GRU-P-GRRD-DRSAU, dated 10 February 2015, in which the Ucayali Regional Sectoral Directorate for Agriculture requested the National Directorate for the Forestry and Forest Wildlife Service (SERFOR) to initiate a review of the boundaries of permanent production forests located on the indigenous community's land. SERFOR confirmed that Ministerial Decision No. 0147-2015-MINAGRI, approving the review of the boundaries of the Ucayali permanent production forest, had been published and that the area titled to the Saweto indigenous community lay within the reviewed boundaries.¹⁴
- 99.** The complainant organizations state that the Ministry of Agriculture and Irrigation – the national authority – issued a decision recognizing that the administrative procedure for the demarcation and titling of the lands of indigenous communities under the responsibility of the regional governments could not be suspended owing to overlapping with the permanent production forest areas.¹⁵
- 100.** The complainant organizations also submitted a copy of Ucayali Regional Sectoral Directorate for Agriculture Decision No. 142-2015-GRU-P-GGR-GRDE-DRSAU of 23 April 2015, approving the Territorial Demarcation Plan and the title of ownership.
- 101.** However, in June 2015, the complainant organizations complained that the Ucayali District Public Registry Office – the registration authority – had not yet taken the administrative steps for final registration of the titling and boundary review documents.

Situation of the indigenous leader, Mr Washington Bolívar Días of the Mariscal Cáceres indigenous community

- 102.** The complainant organizations attach to the representation Official Communication No. 0422-2014/DP of 16 September 2014, in which the Ombudsman's Office requested the Minister of Internal Affairs to address the security issues faced by the indigenous Asháninka and Kashibo Kakataibo peoples of Ucayali and, in particular, the threats to the physical integrity and life of Washington Bolívar Días, leader of the Mariscal Cáceres indigenous community in the province of Padre Abad, department of Ucayali, who was reported to have received threats from individuals with vested interests in illegal logging.

Non-observance of Convention No. 169 and national legislation regarding the Alto Tamaya–Saweto indigenous community

- 103.** The complainant organizations indicate that the indigenous community is calling for the human rights of the community and its families to be upheld. In addition, the Saweto community is requesting that priority be given to investigating the murders, that the community leaders' families (including the 18 children who lost their fathers) be paid compensation and that the community also receive compensation for the loss of its leaders.
- 104.** The complainant organizations state that, in addition to the Saweto and Sahibo Kakataibo communities, over 1,000 indigenous communities, in accordance with Convention No. 169, are demanding recognition of their rights over lands which they traditionally occupy. In practice, however, recognition and titling problems and the lack of a public policy on the issue are an obstacle to the titling of land and, for the *campesino* and indigenous

¹⁴ *El Peruano*, Special Supplement, 5 Apr. 2015, pp. 550116–550130.

¹⁵ Ministry of Agriculture and Irrigation, Ministerial Resolution No. 0547-2014-MINAGRI of 30 Sep. 2014, published in *El Peruano*, 1 Oct. 2014, pp. 533837–533838.

communities, a source of legal uncertainty which not only undermines their land rights but endangers the lives and safety of their members.

- 105.** The complainant organizations observe that these circumstances constitute a violation of the provisions of Convention No. 169 and, in particular, Article 3 on the enjoyment of human rights and fundamental freedoms; Article 4 on the duty of States to adopt measures to safeguard the persons, cultures and environment of indigenous peoples; Article 6 on the right to participation, consultation and free and informed consent; Article 14 on the right of ownership and possession of lands; and Article 15 on the right to the natural resources pertaining to their lands.
- 106.** The complainant organizations draw attention to the Government's failure to comply with its assumed obligations during the process of granting title to indigenous communities' land. As regards the principles established in the General Administrative Procedure Act (Act No. 27444), these organizations consider that, among others, the principles of prompt and due process have been violated.
- 107.** *Non-compliance with the principle of prompt process.* In 2013, almost ten years after the land titling request was made, the agricultural authority issued the Social and Economic Report, which is an essential prerequisite for the titling process. Taking almost ten years to submit the Report exceeds the period provided for in the Legislative Decree concerning indigenous communities and the agricultural development of forest and mountain forest regions. According to the complainant organizations, the Government has failed to comply with the provisions of Convention No. 169, which requires governments to adopt necessary and adequate measures to uphold the land rights of indigenous peoples.
- 108.** *Non-observance of the principle of legality and the principle of due process.* The complainant organizations maintain that the Government granted forestry concessions in permanent production forests without regard for the existence of indigenous communities settled in the areas being considered for that purpose. The organizations emphasize that in the Saweto case, the indigenous communities were not consulted regarding the regulations and procedures concerning forestry concessions, which have a serious impact on their territories and cultures.
- 109.** The complainant organizations point out that the Ucayali regional government issued two contradictory rulings in 2014. The first, Regional Managerial Decision No. 006-2014 of 18 March 2014, declares the exclusion requested by the Saweto community unfounded; and the second, Executive Directorial Decision No. 439-2014 of 24 October 2014, following the murder of four indigenous leaders, declares the exclusion of the forestry concessions well founded. This exclusion was requested by the holder of one of the concessions that overlaps with land belonging to the indigenous community.
- 110.** The complainant organizations note that the first ruling of the regional rural affairs authority declared the exclusion unfounded. According to the regional authorities' interpretation at the time, the indigenous community was not entitled to request an exclusion because it did not have a title of ownership establishing its territorial rights over those lands. The regional rural affairs authority emphasized that recognition of the indigenous community occurred at a later date, a day after the forestry concession was granted. The complainant organizations observe that this interpretation runs counter to international case law, which provides that the rights of ownership of an indigenous community predate legal recognition of the community.
- 111.** The second ruling by the regional authority, declaring the exclusion well founded, was issued following the murder of four Saweto indigenous leaders, which resulted in issuance of a statement that the holders of the forestry concessions had agreed to accept compensation

through other forestry areas. However, according to the complainant organizations, it also represents a benchmark, as established in the case law of the Inter-American human rights system: indigenous peoples' rights pre-empt third-party claims to equal rights over lands occupied by the peoples concerned.

112. The complainant organizations claim that the SERFOR should have automatically reviewed the boundaries of the Ucayali permanent production forest and, in any event, should have addressed the request made by the indigenous community in April 2013. However, the ruling by the national forestry authority was subject to the decision of the regional rural affairs authority, which approved the granting of title to Saweto in 2015.
113. The complainant organizations acknowledge the benefits of supporting the forestry authority in the allocation and provision of resources for the implementation of effective and participatory strategies with direct stakeholders, such as the indigenous peoples of the Amazon region. In that regard, the organizations note that, on 4 May 2015, the Satellite Monitoring Deforestation and Illegal Logging Unit was established in Pucallpa (Ucayali) with technical and financial support from the United States Agency for International Development (USAID).
114. The complainant organizations emphasize that the Government has failed to comply with national and international standards on the rights of indigenous peoples. They also draw attention to the poor performance and weak response capacity in dealing with the titling process and the attempted murder of Saweto indigenous leaders by illegal loggers; the community had notified the national and regional government authorities of the loggers' constant and reiterated death threats. The organizations emphasize that the indigenous leaders feared reprisals in response to their numerous complaints of illegal logging, as set out in the investigation report of 9 April 2013 on the procedure for the seizure of timber extracted illegally from indigenous land.
115. Against this background, the complainant organizations request that note be taken of the lack of political will and weak authority shown by the Government, and the lack of legal certainty regarding indigenous people's territories, particularly in border areas.

Other cases of non-observance

Pakitzapango and Tambo hydroelectric power plant projects in the territories of the Asháninka communities

116. The complainant organizations recall that the Agreement between the Government of the Republic of Peru and the Government of the Federative Republic of Brazil for the supply of electricity to Peru and the export of surplus to Brazil was signed in Manaus on 16 June 2010. The Agreement proposed to facilitate the establishment of an electricity interconnection and a legal framework for the construction and operation of hydroelectric power plants and transmission lines in Peru with the work carried out by Brazilian companies and funded with Brazilian capital.
117. The complainant organizations report that, when negotiating the energy agreement, the Government issued temporary concessions for Brazilian-backed companies to conduct feasibility studies for the construction of hydroelectric power plants. Two of these temporary concessions involved indigenous land: the Pakitzapango hydroelectric power plant and the Tambo 40 ("Tam 40") hydroelectric power plant.

- 118.** The complainant organizations note that in December 2008, under Ministerial Decision No. 546-2008-MEM/DM, the Ministry of Energy and Mines granted a temporary 20-month concession to a company, Paquitzapango Energía SAC, to conduct feasibility studies for electricity generation. When the concession expired in August 2010, the company had not completed its studies.
- 119.** The complainant organizations recall that the situation had been the subject of a joint representation (article 24 of the ILO Constitution) by indigenous people’s organizations and the General Confederation of Workers of Peru (CGTP) concerning non-observance of Convention No. 169. In closing the representation procedure, the ILO Governing Body requested the Government “to ensure that technical, economic and environmental feasibility studies are conducted with the cooperation of the indigenous peoples concerned, in accordance with Article 7(3) of Convention No. 169. The Committee expresses the hope that the legislative progress made in the country will enable the indigenous peoples to be involved as soon as possible in the decision-making processes concerning legislative or administrative measures that are liable to affect them directly”.¹⁶
- 120.** The complainant organizations observe that, in November 2010, through Ministerial Decision No. 453-2010-MEM/DM, the Ministry of Energy and Mines granted a company a temporary concession to carry out the feasibility studies for the Tam 40 hydroelectric power plant. This project is located on the river Tambo (at the confluence of the Ene and Perené rivers) and affects the Asháninka communities of the Tambo and Ene river basins (as far as the Pakitzapango canyon).
- 121.** The complainant organizations report that this temporary concession overlaps with land belonging to the Asháninka indigenous communities of the Tambo and Ene river basins, which include part of the Communal Reserve Asháninka 78, and that, as with the Pakitzapango concession, no prior information and consultation process has been conducted among the indigenous peoples involved. This concession covers a larger area than the Pakitzapango project and also includes the Pakitzapango canyon in the Ene river basin.
- 122.** The complainant organizations observe that the concession was granted for two years but in November 2011, in view of the opposition to the project by the Asháninkas, the company decided to discontinue the feasibility studies.
- 123.** The complainant organizations report that the executive board of the Asháninka Ene river community council (CARE) and its communities were surprised to find that the construction of the Pakitzapango hydroelectric power plant had been included in the Climate Change Planning Project (PlanCC) document that the Government presented at the Conference of the Parties to the United Nations Framework Convention on Climate Change (COP20), held in December 2014 in Lima. The proposed “Electricity Interconnection with Brazil”, set out in the energy sector’s technical specifications document (ENE12), is part of the 77 Mitigation Options of the PlanCC, was developed by a committee chaired by the Ministry of the Environment, and involves the Ministry of Foreign Affairs, the Ministry of Economy and Finance and the National Strategy Planning Centre.
- 124.** The complainant organizations claim that construction of the Pakitzapango and Tambo hydroelectric power plants would impinge upon the peace and tranquillity of the communities, damaging the environment and Asháninka culture (10,000 people would be displaced and 90,000 hectares of forest flooded). The organizations argue that this constitutes another violation of the right to prior consultation.

¹⁶ Paragraph 36(b) of document GB.313/INS/12/5, 21 Mar. 2012.

The case of Plot 192 (department of Loreto): Oil exploration and production and environmental damage

- 125.** The complainant organizations refer to the case of Plot192 (previously known as 1-AB) in the Dátem del Marañon and Loreto provinces in the department of Loreto, in the northern region of the Peruvian Amazon rainforest. The complainant organizations report that the Pluspetrol company is engaged in oil and natural gas exploration and production in the territory of the Achuar, Candoshi, Kichwa, Kukama, Kukamiria, Quechua and Urarina indigenous peoples.
- 126.** The complainant organizations recall that there has been an oil concession on Plot 192 for 43 years and that, over that period, the water and soil of the communities' land have been contaminated with heavy metals and total petroleum hydrocarbons, making them unfit for human consumption. According to the organizations, the company failed to pay an oil easement to the indigenous peoples living on those plots of land. Furthermore, the communities have not approved the presence of the company that is exploiting their natural resources since they were not consulted about the concessions on their own ancestral land.
- 127.** The complainant organizations also maintain that Supreme Decision No. 060-2006-EM of 27 October 2006, granting occupation easements to Pluspetrol Norte SA, and the accompanying Supreme Decision No. 061-2006-EM of 25 October 2006 do not recognize the ancestral ownership of the indigenous territories. According to the organizations, this constitutes a violation of Convention No. 169, which provides that possession of the land should suffice for indigenous communities lacking real title to property of the land to obtain official recognition of that property, and for consequent registration.
- 128.** The complainant organizations state that the studies carried out by the Ministry of the Environment in the Pastaza river basin (in relation to Plot 192) led to the declaration of an environmental emergency in the Pastaza basin through Ministerial Decision No. 094-2013-MINAM of 22 March 2014.
- 129.** The complainant organizations note that the Agency for Environmental Assessment and Enforcement (OEFA), in its report No. 411-2014-OEFA/DS-HID of 20 October 2014 (appended to the representation), requested the company to settle the damages.
- 130.** The complainant organizations report that the OEFA monitored 92 sites on the Pastaza, Corrientes and Tigre rivers, drawing on the participation of environmental monitors from the indigenous federations of those river basins. The OEFA report also indicates that the Pluspetrol concession ended on 29 August 2015. However, the company "has not requested that the competent authority approve an environmental management instrument enabling it, with prior approval from the certifying body, to withdraw from the plot of land in an orderly fashion and to ensure completion of the environmental remediation work required in accordance with the environmental obligations assumed together with the concession".
- 131.** The complainant organizations state that Act No. 30111 amending the Environmental Assessment and Enforcement System, published on 26 April 2013, raised the maximum fine to 30,000 tax units and mandated the OEFA to establish offences and penalties.
- 132.** The complainant organizations observe that Act No. 30230, establishing fiscal measures and simplifying the procedures and licences required to promote and stimulate investment in the country, was published in July 2014. They observe that for three years, in accordance with Act No. 30230, the OEFA should give priority to measures designed to prevent and correct non-compliance, limiting its action to warning companies about bad practice and only seeking fines in exceptionally serious cases affecting the life and health of the population; to activities carried out without regard for the environmental management instrument or

without authorization to begin operations and those carried out in prohibited areas; and to offences repeated within six months of a first offence. The complainant organizations observe that Act No. 30230 also reduces fine amounts by 50 per cent, which appears to provide an incentive for non-compliance with environmental standards.

- 133.** The complainant organizations condemn the attitude adopted by Pluspetrol and four other companies,¹⁷ which are trying to discredit the interventions of the OEFA and are bringing judicial proceedings to avoid paying the regulatory contribution required under environmental legislation. The complainant organizations consider that the State is violating the constitutional rights of the indigenous peoples in Plot 192 and is not complying with Article 14 of Convention No. 169.
- 134.** The complainant organizations note that, although the law provides that all oil and mining companies are required to compensate the owners of the land on which they carry out their extractive activities, the decisions adopted by the Ministry of Energy and Mines have stipulated that, in the case of land owned by the State, easements are free. Accordingly, the State exempted Pluspetrol from the payment of an easement.
- 135.** The complainant organizations emphasize that the right to consultation was violated since the granting of concessions to the plots of land should have been subject to consultation given that they affected the indigenous communities living on them. They call for the holding of prior consultations on Plot 192.
- 136.** The complainant organizations recall that, in accordance with the Act on Prior Consultation, bidding on the plot of land – whether in order to renew the contract with Pluspetrol or to establish a new contract with another company – should be subject to consultation with the indigenous communities since the concession undermines their collective rights.
- 137.** The complainant organizations state that the priority of the indigenous communities is the settlement of environmental liabilities before the Pluspetrol concession expires on 29 August 2015. The Achuar indigenous community emphasizes that there should be no prior consultation until the claims for remediation, land titling and compensation have been addressed.
- 138.** The complainant organizations note that the indigenous communities are seeking a new operator on the plot and are calling for the operator and the State to play radically different roles, one upholding and the other guaranteeing the legal certainty and social and environmental rights in indigenous territories. They also call for compliance with the right to the titling of their traditional lands, to the natural resources found in them and to the involvement of indigenous and tribal peoples in matters that affect them directly. The complainant organizations observe that the changes in oil operator and in government authorities will go ahead without taking the disputes affecting the indigenous communities into consideration.

Shawi communities (department of San Martín): Overlapping of plots and absence of land titling

- 139.** The complainant organizations state that, in October 2010, the leaders of the indigenous communities of the Shawi and Kichwa ethnic groups in the Papaplaya district (San Martín province and region) became aware of the overlapping of a plot in the hands of Ecoamérica SAC, which affects the indigenous communities.

¹⁷ Mining companies Pampa de Cobre SA, Vichaycocha SAC, Corona SAC and Caudalosa SA, another of the companies reported in the representation.

- 140.** The organizations report that the company requested the titling and registration of a rural plot known as Yúrac, alleging that the plot was in its possession and that it had been carrying out agricultural activities on freely available state land. It was a plot of land located between the districts of Teniente César López (Alto Amazonas province), Sarayacu (Ucayali province) and Puinahua (Requena province), in the Loreto and Ucayali regions, with a surface area of 72,654 hectares (4,806 m²).
- 141.** According to the complainant organizations, in 2009 the company filed a complaint concerning the lack of response to its administrative request for titling and registration of the plot in its name. The ruling in the legal proceedings upheld the company's claim. The ruling was, however, contested by the prosecutor of the Ministry of Housing, Construction and Sanitation. In January 2011, the Court of Appeal revoked the ruling handed down at first instance. The company then submitted the case again before the Loreto rural authority, requesting registration of the ownership rights.
- 142.** The complainant organizations note that the Supreme Court of San Martín ruled that the company's request was not admissible on the grounds that, although the request included reports proving that the plot was on freely available state land, the requests submitted to the rural affairs authority and the registry office were not, in themselves, sufficient to justify automatic registration of the ownership rights without first complying with the requirements and procedures set out in the General Agrarian Sanitary Act and its implementing regulations.
- 143.** The complainant organizations also mention that a Constitutional Court ruling of 14 June 2012 (File No. 00419-2011-PC/TC, San Martín, Ecoamérica SAC) rejected an appeal filed by the company and recognized that the area to which the company was seeking title overlapped with land belonging to other entities.
- 144.** The complainant organizations regret that the company continues to deforest the area and that the regional government of San Martín has not yet granted title to the Shawi communities.

Indigenous peoples affected by environmental pollution of rivers
(tailing spills) in the department of Huancavelica

- 145.** When they submitted the representation in October 2014, the complainant organizations indicated that the department of Huancavelica, while considered to be a mining region, had one of the highest economic poverty rates in the country and that its population consisted primarily of indigenous peoples living in *campesino* communities. Water is the main source of the inhabitants' agricultural and livestock activities. If it is affected by toxic waste or pollutants, the physical survival of the communities is placed at risk. The complainant organizations point out that the State is responsible for protecting the lands and resources traditionally used by the communities to prevent their disappearance as indigenous peoples.
- 146.** The complainant organizations report that a mining company, Caudalosa SA, has been operating since 1989 near the mouth of the Escalera gorge, in the Huachocolpa district, where it set up a mineral concentrator plant producing waste material that is deposited as tailings (toxic mining waste), which have formed a surface mound close to the Escalera river.
- 147.** The complainant organizations note that, in Report No. 00003-2010/DGCA-jevc/MINAM of 25 June 2010, it was reported that there had been a tailings flow slide as a result of the collapse of dam A, one of the company's three drainage fields. As a result, approximately 22,615 m³ of tailings containing lead, zinc, copper, silver and other materials had spilled into the waters of the Escalera river and, subsequently, of the Tororapampa, Huachocolpa, Opamayo, Sicras, Urubamba and Mantaro rivers.

- 148.** The complainant organizations state that the spillage affected more than 400 inhabitants. The following day, on 26 June 2010, the Public Prosecutor's Office for Crime Prevention and the Environment met with the people of the Huachocolpa district to establish prevention measures and restrict the use of water from the aforementioned rivers. On 27 June 2010, the local authorities and various regional directors agreed to ban use of the water by the affected people and to establish mechanisms for the protection of public health. The organizations observe that the inhabitants were fully exposed to health risks for 48 hours and although the local authorities were aware of the events, those who might have been affected were not informed of any of the measures taken in a timely manner; this attitude demonstrates a lack of concern for their right to life and to health.
- 149.** The complainant organizations state that, on 30 June 2010, the regional government of Huancavelica issued a communication indicating that the Huachocolpa health facility would be collecting water samples. The Local Water Board issued a technical report providing notification of the collapse of the drainage field dam and, in a communication of 30 July 2010, it advised the company of the initiation of proceedings with a view to the imposition of sanctions for the water pollution caused by the tailings spill.
- 150.** The complainant organizations report that, following an investigation, the authorities imposed the most symbolic sanction ever levied in the country, fining the company 10,000 tax units (36,000,000 Peruvian nuevo soles (PEN)) for violation of the Water Resources Act owing to the damage caused to the Escalera river and its tributaries.
- 151.** The complainant organizations observe that Administrative Decision No. 308-2010-ALA-HCVA, sanctioning the company, concluded that 100 per cent of the water flow of the Escalera, Tinquicorral, Huachocolpa, Opamayo and Lircay rivers was affected, exceeding their diluting capacity and limiting their use for primary purposes and irrigation. The company was also required to submit a mitigation plan and to restore water quality. The company filed an appeal against the sanction.
- 152.** The complainant organizations state that, in follow-up to the aforementioned report, the Ministry of the Environment adopted Ministerial Decision No. 117-2010-MINAM of 5 July 2010, declaring an "environmental emergency" (for a period of 90 days) in the area affected by the tailings spill caused by the Caudalosa SA mining company, and approved an immediate and short-term plan of action for the recovery of the area. Furthermore, on 13 July 2010, the Ministry of Energy and Mines ordered the company's mining and metallurgy activities halted and steps taken to ensure the physical stability of the tailings and avoid further spills.
- 153.** The complainant organizations also state that Ministerial Decision No. 122-2010-MINAM approved the actions to be taken under the Environmental Emergency Declaration's immediate and short-term Plan, giving the company 50 calendar days in which to clean up the tailings and affected soil. In addition, the authorities granted the company 70 calendar days to carry out the rehabilitation works to the affected soil and pasture land. The scope of the environmental emergency was also expanded to include other districts.
- 154.** The complainant organizations report that, on 23 July 2010, the regional government of Huancavelica approved a health intervention plan to deal with the tailings spill. The complainant organizations observe that, to date, no training has been provided to staff and the inhabitants have not been checked or informed about the true situation; the polluted river water is still being used.
- 155.** The complainant organizations note that the inhabitants of Angaraes have initiated criminal proceedings against the company's officials for the pollution of water or other substances intended for consumption (section 286 of the Criminal Code), environmental pollution

(section 304), aggravated pollution of the environment (section 305), non-compliance with the regulations on the management of solid residues (section 306) and alteration of the environment or landscape (section 313). These regulations make it possible to sanction a company and hold it responsible for pollution caused by its mining activities.

156. The complainant organizations state that, in June 2014, the Ministry of the Environment sanctioned the company with a warning and a possible fine of 1,000 tax units for failing to submit a rehabilitation plan for the area affected. It was reported that the company had not conducted any rehabilitation work in the affected areas.
157. The complainant organizations complain that the company has failed to exercise its authority to ensure that the company responds in a socially responsible way to the people affected. The institutions involved only refer to the district of Huachocolpa in their reports although the environmental emergency reportedly covers many other areas.
158. The complainant organizations claim that the events are not isolated or unrelated; the company in question has not complied with the environmental and sectoral regulations from the outset, resulting in the spillage of waste water into the Escalera river over many years. The organizations argue that the country's special legislation regarding workers exposed to mining activities has also been violated and that the State did not do enough to protect the workers and to ensure the company's compliance with its environmental obligations.
159. The complainant organizations recall that the right to satisfactory work conditions is protected under Article 6 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights. However, by exposing workers to tailings clean-up without taking the necessary measures to protect them, thereby exposing them, the State is violating not only that right, but also the right to health and decent work.

Conclusions of the complainant organizations

160. According to the complainant organizations, the representation demonstrates that the Government of Peru is failing to comply with the obligation to guarantee the exercise of indigenous peoples' rights as recognized in Convention No. 169.
161. The complainant organizations claim that the symbolic case of the indigenous Asháninka community of Alto Tamaya–Saweto clearly reveals the State's failure to comply with the Convention by not ensuring the exercise of collective rights (to consultation and participation, to decide their own priorities concerning the development process and to the ownership of land that they traditionally occupy) and undermines the human rights and fundamental freedoms of indigenous peoples. The complainant organizations highlight the lack of an adequate public policy that comprehensively addresses the problem of the recognition and titling of indigenous peoples. They also condemn the attitude of the relevant state institutions, which effectively prevent thousands of indigenous communities from obtaining title to their lands and place them in a situation of legal uncertainty that not only undermines their land rights, but also endangers the physical integrity and lives of their members.
162. The complainant organizations stress that indigenous peoples are criminalized and are the victims of state violence since it is the Government that is violating the human rights and fundamental freedoms of indigenous peoples and the collective rights of indigenous communities as rights-holders. According to these organizations, the State is not only failing to guarantee the rights recognized in Convention No. 169; it is also becoming the perpetrator of violations of those rights.

The Government's observations

Legislation on prior consultation and the operation of the database on indigenous peoples

- 163.** The Government states that, in 2015, the Department for Intercultural Relations launched publication of a preliminary list of communities of indigenous peoples from the Peruvian Andes. To date, the Department for Intercultural Relations has identified 55 indigenous or aboriginal peoples in the country, of which 51 are from the Amazon region and four are from the Andes region (the Aymara, Jaqaru, Quechua and Uro peoples).
- 164.** As for the *campesino* communities, the Government notes that it does not have any official information on their ethnic self-identification. The identification of communities that are considered to be Andean indigenous peoples was made on the basis of a threshold percentage of people in the community whose mother tongue is an indigenous language.¹⁸
- 165.** The Government recalls that, although the factors of indigenous language and communal lands are not a prerequisite for the identification of indigenous peoples, they are considered to be important elements contributing to their identification.
- 166.** The Government stresses that this is an initial reference list of *campesino* communities comprising indigenous Andean communities. Ten *campesino* communities have been identified in the Cusco and Huancavelica regions. They are considered to comprise indigenous peoples on the basis of field studies carried out under prior consultation processes. The list will be progressively updated to include the *campesino* communities which, under prior consultation processes, have been identified as indigenous peoples, regardless of whether they speak an indigenous language.
- 167.** The Government states that the official database of indigenous or aboriginal peoples contains information on 2,938 *campesino* communities of indigenous peoples.¹⁹ It emphasizes that the official database is updated continually and that it is a declaratory registry and reference tool. The Government states that protection of the collective rights of indigenous and aboriginal peoples is recognized whether or not they are listed in the official database. Likewise, indigenous and *campesino* communities belonging to indigenous peoples have the same rights, regardless of whether they are included in the official database.
- 168.** The Government explains that, under section 20 of the Right to Prior Consultation Act (Act No. 29785), the Department for Intercultural Relations is responsible for the official database and applies the criteria for the identification of indigenous or aboriginal peoples set out in Convention No. 169 and in the aforementioned Act. Furthermore, in accordance with section 6.5 of the directive regulating the operation of the official database, approved through Ministerial Decision No. 202-2012-MC, the official database is a declaratory registry and reference tool. The Government explains that, because it is, by nature, different from a registry, the database does not confer rights. The publication of information on the database is an ongoing process. According to section 6.4 of the aforementioned directive, information is added progressively and is updated continually as information is generated by public administration bodies.

¹⁸ The Government indicates that more information can be found in the sections on the Aymara and Quechua peoples at the following links: <http://bdpi.cultura.Rob.pe/pueblo/Aymara> and <http://bdpi.cultura.gob.pe/pueblo/quechuas>.

¹⁹ The information is available on the following website: <http://bdpi.cultura.gob.pe/busqueda-de-comunidades-campesinas>.

- 169.** The Government emphasizes that protection of the collective rights of indigenous and aboriginal peoples is recognized, regardless of whether they are listed in the official database. Likewise, indigenous *campesino* and aboriginal communities have the same rights, whether or not they are included in the official database.

Indigenous consultation and development priorities

- 170.** The Government states that it has complied with the requirement of prior consultation, which is a fundamental mechanism for ensuring the effective participation of indigenous peoples in the adoption of decisions that may affect their rights and interests.
- 171.** The Government recognizes that ensuring the exercise of indigenous and aboriginal peoples' right to prior consultation is a state obligation whenever an administrative or legislative decision that directly affects their collective right to existence, cultural identity, quality of life or development is adopted.
- 172.** The Government notes that this mandate is based not only on the provisions of Convention No. 169, but also on Peru's national legal framework, which includes a number of instruments such as Act No. 29785, approved through Supreme Decree No. 001-2012-MC of 3 April 2012.
- 173.** The Government adds that it takes a multicultural approach to the State's ethnic and cultural diversity and that prior consultation is therefore a crucial forum for dialogue between the State and indigenous and aboriginal peoples as "a group that needs to be defended with the full weight of the fundamental rights granted to society".
- 174.** The Government considers that the indigenous peoples consulted, as rights-holders and an active part of a multicultural State, have the right to receive from state entities all the information that they need in order to express their views regarding the implementation of any decision that could lead to changes in the exercise of their collective rights. The Government states that agreement or consent can be reached during the deliberations on the State's decision – which is the purpose of prior consultation – as recognized under section 3 of Act No. 29785.
- 175.** The Government reports that since 8 December 2011, the date of the entry into force of Act No. 29785, the indigenous population has participated in 22 prior consultation processes in connection with various measures concerning the education, health, forestry, hydrocarbon and mining sectors and the procedure for the approval of protected natural areas. The Government stresses that agreement between the State and the indigenous peoples concerned was reached in 20 of the 22 consultations conducted; 651 indigenous communities participated in those consultations. According to the Government, the agreements reached during prior consultations have made it possible to address the various needs of the indigenous people directly concerned.
- 176.** The Government emphasizes that representatives of the seven national indigenous organizations participated in prior consultations on the implementing regulations for the Forestry and Forest Wildlife Act, the Sectoral Intercultural Health Policy and the National Intercultural and Bilingual Education Plan. The agreements reached during the prior consultations on the implementing regulations for the Forestry and Forest Wildlife Act were closely related to the right of the indigenous peoples to participate in the use, management and conservation of those resources as provided in Article 15(1) of the Convention.
- 177.** The Government states that, in the case of Plot 192, the agreements between the indigenous peoples consulted and the state concern compensation for land use, health, land titling, education, distribution of royalties, environmental monitoring and housing development.

The Government draws attention to the agreement to establish a social fund amounting to 0.75 per cent of the monetary value of production, paid directly to the communities in the area, as an example of exercise of the right to participation in the benefits as provided in Article 15(2) of Convention No. 169.

- 178.** The Government also indicates that the agreements reached through the prior consultations on the Amazonian Waterway Project constitute recognition and appreciation of the traditional use of the Amazon rivers with a view to improving their navigability.
- 179.** The Government maintains that it promotes and guarantees the participation of indigenous peoples in state decisions that may affect their rights and interests and that the arguments put forward by the complainant organizations should be rejected.

Criminalization of the indigenous people's protest: Dispute over the Conga mining project – Plot 108 – Tía María mining project

- 180.** With regard to the list of 43 people alleged by the complainant organizations to have been victims of the social protest, the Government has submitted documents relating to the events that took place in the city of Puerto Madonado, capital of the Madre de Dios province, on 14 March 2012 during a protest against the forced eradication of illegal mining. According to the information submitted by the Peruvian national police, on 14 March 2012 there was “a clash between the armed forces and the demonstrating informal and illegal miners and indigenous people, in which three civilians [Mr Carlos Lanci Yumbato, Mr Julio César Ticcona Medina and Mr Francisco Areque Jipa] died”. In the same incident, 27 policemen and 36 civilians were injured and of these, four civilians and two policemen were evacuated to the city of Lima because of the seriousness of their condition. In April 2016, the Government added that it had completed the preparatory investigation concerning two individuals who were accused of the crime of homicide.
- 181.** The Madre de Dios police report transmitted by the Government also mentions a “protest stoppage by illegal miners”, which took place on 8 April 2014 in the village of Mazuko, where Mr Américo Laura Pizarro died from a gunshot wound.
- 182.** Another police report from the department of San Martín refers to the death of Mr Jaime Inuma Huiñapi and Mr Emilio Marchisi Huansi. The events relating to the death of Mr Inuma Huiñapi, age 21, on 21 October 2013 during a strike called by the Front for the Defence and Development of Alto Amazonas–Yurimaguas (FREDESAA) was ruled an act of genocide and are under investigation by the Supra-Provincial Public Prosecutor's Office in Lima. The death of Mr Marchisi Huansi, an *apu* (leader) of the Indigenous Community of Santa Rosa del Alto Shambira, on 5 April 2014 was ruled an alleged aggravated homicide and the investigation is still ongoing.
- 183.** With regard to the dispute concerning the Conga mining project, mentioned in the representation and in the 2013 Alternative Report, the Government states that, according to the information transmitted by the Cajamarca police, the dispute that began on 31 May 2012 was led by the Regional President of Cajamarca and the President of the Environmental Defence Front. The following people died in the clashes: Mr Faustino Silva Sánchez, Mr Gilmer Cesar Medina Aguilar, Mr Paulino Leontorio García Rojas, Mr José Antonio Sánchez Huamán and two members of the Peruvian national police. Five members of the Peruvian army were injured. The Government states that the perpetrators of the crimes under investigation have not been identified and that the investigation is ongoing.
- 184.** The Government adds that on 3 June 2012, violent acts were carried out against the Conga mining project, resulting in the death of Mr Joselito Vásquez Jambo. The First Provincial Public Prosecutor's Office for Corporate Affairs in Chiclayo was charged with the

investigation and brought the complaint before the competent court. The Government states that, as at November 2015, the investigation is ongoing in an attempt to identify the perpetrators of the crime.

- 185.** The Government notes with respect to the dispute over Plot 108 that, according to the information provided by the Junín regional police, the Environmental Defence Front of Pichanaki encouraged protests against Pluspetrol activities. The Government adds that, in the early morning of 11 February 2015, there was a violent clash between the police and demonstrators. It has not ruled out the possibility that members of organizations that do not represent indigenous peoples may have infiltrated the protest.
- 186.** The Government reports that Mr Ever Percy Perez Huamán (age 24) was killed and 11 people were injured in the incident of 11 February 2015. The investigation into the events is ongoing before the Second Provincial Public Prosecutor's Office in Chanchamayo.
- 187.** Regarding the Tía María mining project, the Government states that, according to the information provided by the Arequipa regional police, there is a history of social disputes relating to this project dating back to 2009, particularly in 2011 and 2015. Mr Andrés Taipe Choquepuma, Mr Edilberto Salazar Aurelio Huarcapuma, Mr Néstor Cerezo Patana and Mr Miguel Ángel Pino were killed in 2011 and Mr Victoriano Huayna Nina, Mr Henry Checy Chura, Mr Ramón Colque Vilca and a national police officer, Mr Alberto Henry Vásquez Durand, in 2015. The Government adds that the investigation into these cases is being handled by the Provincial Public Prosecutor's Office for Corporate Affairs in Islay and the Islay Court of Preliminary Investigation in the department of Arequipa.
- 188.** In April 2016, the Government provided additional information, stating that the Public Prosecutor's Office had shelved the case in the murder of Mr Pierre Eduardo Gonzales Arias in Huancavelica on 9 July 2011 because, owing to the extent of the protests and the absence of police logistics, it had been impossible to identify the alleged perpetrators. The Public Prosecutor's Office had also decided to shelve the investigation into the death of Mr Yoel Rufino Mendoza Gavidia, Mr Olger Ramiro Fernández Pizan, Mr Alex Antayhua Chacón and Mr Javier Luis Rengifo Mozombite. Its investigation of two individuals in the murder of Mr Santos Pablo Esquivel Iparraguirre on 14 April 2012 was ongoing. On 4 February 2016, Peruvian national police Colonels (retired) Carlos Augusto Remy Ramis and Edgard Reyner del Castillo Araujo were formally charged and the Provincial Public Prosecutor's Office requested that both of the individuals accused of the murder of Mr Kenllu Jairo Sifuentes Pinillos in Barranca on 4 July 2013 be sentenced to 14 years' imprisonment.

Prior consultation in the mining sector

- 189.** In a report presented by the Ministry of Energy and Mines, the Government refers to Article 15(2) of Convention No. 169 and to section 9 of Act No. 29785, which states that: "State bodies are officially responsible for identifying any proposed legislative or administrative measures that have a direct bearing on the collective rights of indigenous or aboriginal peoples. Thus, if it is concluded that their collective rights might be directly affected, prior consultation on those measures shall be conducted".
- 190.** The Government states that section 3 of the implementing regulations for Act No. 29785 provides that the promoting entity is "any public body responsible for issuing legislative or administrative measures that will be subject to consultation", stipulating that the Office of the President of the Council of Ministers, ministries and other competent public bodies are included in that definition.
- 191.** The Government notes that section 6 of the implementing regulations for the Act on Prior Consultation provides that: "the State has an obligation to consult with indigenous peoples

whose rights may be directly affected, and to ascertain to what degree they may be affected, before approving the administrative measure specified in section 3(i) of the regulations authorizing commencement of exploration and exploitation operations for the natural resources in question, in the geographical areas where the indigenous people or peoples are located, in accordance with the applicable legal requirements each case”.

192. The Government points out that the amendment to the Ministry of Energy and Mines Compendium of Administrative Procedures (TUPA) specifies the following procedures for prior consultation on mining activities, which fall within the remit of the General Directorate for Mining (DGM):

- (a) Granting of operating licences (CM01);
- (b) Authorization for the commencement of exploration activities in metal and non-metal mining concessions (AM01 Case A); and
- (c) Authorization for the commencement of exploitation activities (including mining and landfill plans) in metal and non-metal mining concessions (AM01 Case B).

193. The Government emphasizes that these are the administrative procedures required for the commencement of mineral exploration, exploitation or processing activities and that the administrative measure taken by the Ministry of Energy and Mines is therefore consistent with the provisions of Article 15(2) of Convention No. 169 and section 6 of the implementing regulations for Act No. 29785.

194. In the August 2015 amendments to the TUPA, the “notes” to the three aforementioned procedures were amended, stipulating that: “Where appropriate, the State, through the General Directorate for Mining Environmental Affairs, shall conduct prior consultations with the indigenous or aboriginal peoples whose collective rights may be directly affected before authorizing construction (by granting the operating licence), the commencement of exploration activities in metal or non-metal mining concessions, or the commencement of exploitation activities (prior to approval of the mining plan). The General Directorate for Mining and the Social Administration Office shall be responsible for assisting the General Directorate for Mining Environmental Affairs during the prior consultation process”.

195. The Government states that the new regulation introduces a distinction between the “directorate proposing the measure” (which issues the administrative act, namely the DGM) and the “directorate conducting the prior consultations” (which carries out the prior consultation process, namely the General Directorate for Mining Environmental Affairs (DGAAM)), thereby retaining the administrative measures on prior consultation previously introduced by the TUPA.

196. The Government adds that the mining concessions awarded by the Institute for Geology, Mining and Metallurgy (INGEMMET), under the Ministry of Energy and Mines, or by the regional governments, do not constitute authorization of the commencement of mining exploration or exploitation activities; the mining concession merely grants the holder preference over other mining investors with respect to the subsurface mineral resources in a given area. In order to carry out mining operations, this right is, in turn, subject to environmental certification through approval of the environmental management instrument, negotiation with the owner of the surface land and authorization of the commencement of exploration and exploitation activities. The Government therefore emphasizes that the process of granting mining concessions is not an administrative measure authorizing the commencement of exploration or exploitation activities for these natural resources, nor does it directly affect the collective rights of indigenous peoples. Thus, there is no need to conduct prior consultations before granting a concession.

197. The Government states that mining concessions do not directly affect the collective rights of indigenous peoples since:

- a mining concession is a genuine “sui generis” right, which has the legal status of property but is distinct and separate from the site on which it is located;
- it merely grants an individual exclusive rights to a mineral resource which, prior to extraction, belongs to all Peruvians under article 66 of the Peruvian Constitution;
- as specifically stated in section 7²⁰ of Act No. 26505, which promotes private investment in the development of economic activities on national territory and the territory of *campesino* and indigenous communities, it does not authorize use of the site or land for mining activities;
- it does not authorize the search for or extraction of minerals on property or land since the commencement of such activities must be authorized through other administrative measures and supported by environmental studies and licences that come into operation once the concession has been granted;
- it does not contain information on mining projects or approve exploration or exploitation projects since such projects are developed after a mining concession has been granted and are authorized by the Ministry of Energy and Mines and, in the case of small-scale and informal mining, the regional governments based on environmental studies endorsing them.

198. The Government maintains that, in accordance with Ministry of Energy and Mines’ administrative procedures, prior consultation in the mining sector is implemented through the procedures authorizing the commencement of exploration and exploitation activities and granting the operating licence as provided in Article 15(2) of Convention No. 169 and section 6 of the implementing regulations for Act No. 29785.

199. The Government considers that the procedure for granting mining concessions is not an administrative measure authorizing the commencement of mineral exploration, exploitation or processing activities or directly affecting the collective rights of indigenous peoples and that there is therefore no need to conduct consultations before granting such concessions.

²⁰ Section 7 of Act No. 26505 (the “Land Act”), published on 18 July 1995, states: “Without the prior agreement of the land owner, no mining rights shall be established. If, by agreement of the Council of Ministers following a report by the Ministry of Energy and Mines, the site is considered of national interest, the owner shall receive a fair price and appropriate compensation from the holder of the mining rights in advance”.

Section 7 of Act No. 26505 was replaced by Act No. 26570, published on 4 January 1996, and the current text reads: “The use of land for mining or hydrocarbon activities requires the prior consent of the owner or completion of the easement process to be specified in the implementing regulations for this Act. In the case of a mining or hydrocarbon easement, the landowner shall receive from the mining or hydrocarbon company prior compensation in cash equivalent to the assessed value, including compensation for potential damages, to be determined by a Supreme Decision endorsed by the Minister of Agriculture and the Minister of Energy and Mines. During the period covered by this Decision, mining or hydrocarbon activities may be carried out on any uncultivated land owned by the State and currently occupied by mining and hydrocarbon infrastructure, facilities and services”.

Land: Analysis of public policy on land titling and recognition of *campesino* and indigenous communities

- 200.** The Government states that constitutional guarantees for *campesino* and indigenous communities are provided in the 1993 Constitution. It refers to article 88 of the Constitution, which states: “The State guarantees the right to own land privately, communally or under any other form of partnership” and to article 89, which states: “*Campesino* and indigenous communities have legal status and are legal persons. They have autonomy in their organization, communal work and use and free disposal of their land, as well as in economic and administrative matters, within the framework established by law. The State respects the cultural identity of the *campesino* and indigenous communities”.
- 201.** The Government also refers to section 14 of Legislative Decree No. 22175 concerning indigenous communities and the agricultural development of forest and mountain forest regions, which provides for the registration of the communities concerned in the National Registry of Indigenous Communities. Furthermore, section 2 of Supreme Decree No. 003 79-AA, approving the implementing regulations for Legislative Decree No. 22175, states that the Regional Directorate for Agriculture is responsible for this procedure, which has been transferred to the regional governments.
- 202.** The Government recalls that section 7 of Legislative Decree No. 22175 establishes State recognition of the legal status and legal personality of indigenous communities and that section 10 provides that: “the State guarantees the territorial integrity of the property of indigenous communities and will conduct a land registry survey and issue them with the title deed”. The procedure for territorial organization and demarcation for the purpose of titling land owned by indigenous communities is also regulated by the aforementioned Legislative Decree.
- 203.** The Government states that land titling is provided for in Supreme Decree No. 017-2009-AG, approving the implementing regulations for the Land Classification to Ensure Increased Capacity Use (CTCUM) system with a view to promoting rational soil use and preventing soil degradation without compromising the stability of water basins and the availability of natural resources. In addition, the national CTCUM system provides a framework appropriate to the ecological properties of each soil map unit so as to ensure that it is used and handled in the most appropriate manner.
- 204.** The Government adds that Supreme Decree No. 013-2010-AG, establishing rules of procedure for conducting soil surveys, was recently complemented by Ministerial Decision No. 0355-2015-MINAGRI, dated 6 July 2015 and published on 8 July 2015. This Ministerial Decision, referring to Article 14(2) and (3) of Convention No. 169, approved the “guidelines for conducting and approving soil surveys for land classification in order to increase their capacity for purposes of physical and legal restructuring and formalization of indigenous communities’ land”.
- 205.** The Government also adds that, for *campesino* communities, Act No. 24656 declares that comprehensive development is a national necessity of social and cultural importance. Furthermore, Act No. 25657 states that the demarcation and titling of *campesino* community land shall be declared a national necessity and of social importance.
- 206.** The Government recalls that the Peruvian National Agreement, signed in July 2001, established long-term state policies and gave high priority to the agricultural sector owing to its role in reducing poverty and social gaps.

- 207.** The Government notes that, as part of the State’s decentralization process, section 51(n) of the Regional Government Organization Act (Act No. 27867), issued on 2 November 2002, states that regional governments are responsible for promoting, managing and administrating the physical and legal restructuring of agricultural land ownership, with the participation of the concerned stakeholders, thereby safeguarding the imprescriptible, inalienable and unseizable nature of *campesino* and indigenous community lands. Supreme Decree No. 066-2006-AG empowers the regional governments to rule, at second and final administrative instance, on all proceedings that concern land. Administrative decisions regarding procedures concerning the transfer of powers are taken by the relevant regional government bodies.
- 208.** The Government recalls that the Ministry of Agriculture and Irrigation is the lead agency in the agricultural sector, including land used for agriculture or grazing and forest land and resources (Legislative Decree No. 997, the Act on the organization and functions of the Ministry of Agriculture, as amended). The Ministry of Agriculture and Irrigation performs specific functions, such as issuing technical standards and guidelines regarding the physical and legal restructuring and formalization of the ownership of agricultural land, including land belonging to *campesino* and indigenous communities. In this regard, the Regulations on the Organization and Functions of the Ministry of Agriculture and Irrigation, approved through Supreme Decree No. 008-2014-MINAGRI of 23 July 2014, provide that the Directorate for the Restructuring of Agricultural Land Ownership and Rural Land Registry (DISPACR) shall be responsible for “promoting the development of plans, strategies, policies, directives, guidelines and standards for the physical and legal restructuring and formalization of agricultural land ownership” (section 63(a) of the Regulations). The Government indicates that the DISPACR has exclusive regulatory power.
- 209.** The Government states that the Ministry of Agriculture and Irrigation, through Ministerial Decision No. 0709-2014-MINAGRI of 31 December 2014, approved the Ministry’s “agricultural policy guidelines”, which include, among their strategic guidelines, legal certainty over land in order to increase legal land security for both *campesino* and indigenous communities and individual farms practising small- and medium-scale agriculture. The Ministry of Agriculture and Irrigation strategy is to prioritize the establishment of boundaries, land titling and registration of the rights of all recognized *campesino* and indigenous communities within the framework of domestic law.
- 210.** The Government emphasizes that it has a broad regulatory framework on the recognition of indigenous communities and the titling of their land and an established public policy established through the aforementioned legislation. It considers that these standards guarantee indigenous peoples the right to belong to an indigenous community and provides protection so that they can practise, renew and transmit to future generations their traditions, histories, languages, cultural practices and so on as envisaged in Articles 9 and 13 of the United Nations Declaration on the Rights of Indigenous Peoples.
- 211.** The Government states that section 2(a) of Supreme Decree No. 003-79-AA provides that specialists in the Regional Directorate for Agriculture shall conduct a population census and carry out socio-economic studies that will determine how a community should be registered. In these studies, the type of community settlement (whether it is nuclear or dispersed) and whether it is sedentary or migrates seasonally (nomadic) shall be specified. Furthermore, section 7 of Legislative Decree No. 22175 states: “the State recognizes the legal status and legal personality of indigenous communities”, and section 8 states: “indigenous communities have their origins in the tribal groups of the forest and mountain forest regions”. According to the Government, the country has standards that provide communities of indigenous peoples with all of the guarantees established in Convention No. 169.

- 212.** The Government notes that, concerning the rights of ownership and possession referred to in Article 14 of Convention No. 169, the State must, in accordance with section 10 of Legislative Decree No. 22175, conduct the rural land registry survey and issue the corresponding title. Permission for use of the portion of indigenous communities' land that is suitable for forest production shall be granted pursuant to the relevant legislation (section 11 of Legislative Decree No. 22175) and constitute recognition of the right of possession.
- 213.** According to the Government, the State has been complying with the provisions of Convention No. 169 by ensuring through legal regulations that indigenous and *campesino* communities enjoy the right to recognition of legal personality and the right of ownership and possession.

**Murder of Mr Edwin Chota Valera, Mr Jorge Ríos Pérez,
Mr Leoncio Quinticima Meléndez and Mr Francisco Pinedo:
Complaints of illegal logging**

- 214.** In September 2015, the Government transmitted a report from the Ministry of Culture General Directorate for Indigenous Rights, which states that the events of 1 September 2014, in which leaders and members of the Alto Tamaya–Saweto indigenous community council died, are related to the Saweto community's request for land titling, interim measures to protect Saweto community territory, the resources needed for the police investigation into the murder of Saweto community leaders, financial benefits for the leaders' families and compensation of the Saweto community for the loss of its community leaders.
- 215.** The Government states that the Ministry of Culture Department for Intercultural Relations is the authority on intercultural issues and the inclusion of indigenous groups and, as such, is responsible for promoting and guaranteeing the rights of the country's indigenous peoples. In accordance with Act No. 29785, the duties of the Department for Intercultural Relations include discussing, articulating and coordinating state policy on ensuring enjoyment of the right to prior consultation. The Government reports that it has provided technical assistance to indigenous peoples during 20 consultation processes.
- 216.** With regard to the complaints of illegal logging lodged on 9 April 2013 by Mr Edwin Chota Valera as leader of the Alto Tamaya–Saweto indigenous community, the Government states that in response to complaints regarding the illegal extraction of forest products, the Ucayali Provincial Public Prosecutor's Office for Corporate Affairs took action; in April 2013, it opened two cases against Mr Eurico Mapes Gomes, Mr Francisco Anderson Mapes de Souza and Mr Segundo Euclides Atachi Félix for aggravated forest and forest products crimes and against Mr José Carlos Estrada Huayta and Mr Hugo Soria Flores for aggravated illegal trafficking in timber forest products.
- 217.** The Government states that the Ministry of Culture, in an official statement made on 9 September 2014, expressed regret at the death of the four Asháninka leaders, condemning the attack and the threats against families of the Saweto community.²¹ The Ministry expressed its condolences to the families, the community and the Asháninka people as a whole and ordered a team to be sent to the Ucayali region to coordinate with the Public Prosecutor's Office, the Criminal Investigations Directorate and other local organizations in order to assist in the relevant investigations. The national police organized several flights over the area to locate the bodies of the indigenous leaders.

²¹ <http://www.cultura.gob.pe/es/comunicacion/noticia/ministerio-de-cultura-lamenta-muerte-de-cuatro-lideres-ashaninkas>.

- 218.** The Government adds that the Ministry of Culture provided the necessary facilities to ensure that the families of the deceased indigenous leaders could pursue their complaints with the relevant authorities and receive medical care through the Comprehensive Health Service (SIS).
- 219.** The Government states that the Ministry of Culture has taken steps, in coordination with the Executive Directorate for Forestry and Forest Wildlife of the Ucayali regional government, to collect information on the status of forestry concessions in the Alto Tamaya river basin and took part in a meeting organized by the Ucayali Special Public Prosecutor's Office for Environmental Affairs to address the issue.
- 220.** The Government also states that the Ministry of Culture produced a report supporting exemption from and reduction of registration fees so as to facilitate the titling of *campesino* and indigenous communities' land.
- 221.** In February 2016, in response to a request from the Committee, the Government added that the Provincial Public Prosecutor's Office for Corporate Affairs Specializing in the Investigation of Organized Crime in the Ucayali region of Peru was investigating Mr Eurico Mapes Gómez, Mr Hugo Soria Flores, Mr Segundo Euclides Atachi Félix, Mr Josimar Atachi Félix and Mr José Carlos Estrada Huayta on suspicion of the aggravated murder of Mr Edwin Chota Valera, Mr Leoncio Quíntisima Meléndez, Mr Jorge Ríos Pérez and Mr Francisco Pinedo Ramírez.
- 222.** The Government states that, according to the Public Prosecutor's Office, the four indigenous leaders set off for the indigenous community of Apiwtxa, in Brazil, on 31 August 2014 to take part in a meeting of community members on 2 September 2014. However, they were ambushed and shot dead near the Putaya gorge, a six-hour walk from Saweto, in the Masísea district. The deaths probably occurred on 1 September. On 5 September 2014, Jaime Arévalo Lomas and Hilda Cushamba found their bodies.
- 223.** The Government reports that the investigation into the case was initially handled by the Third Provincial Public Prosecutor's Office in Coronel Portillo and formally opened against Mr Eurico Mapes, Mr Hugo Soria, Mr Segundo Atachi, Mr Josimar Atachi and Mr José Estrada pursuant to an order dated 14 September 2014. The Government states that José Estrada is the founder and manager of ECOFUSAC, a company engaged in logging in the area of the crime. Subsequently, on 1 October 2014, the case was referred to the Provincial Public Prosecutor's Office for Corporate Affairs Specializing in the Investigation of Organized Crime. The Government also states that the accused, Mr Eurico Mapes, has been held in pre-trial detention since 23 December 2014.

Titling and registration of land belonging to the Alto Tamaya–Saweto indigenous community

- 224.** The Government states that on 30 January 2015, in a symbolic gesture, the Regional Directorate for Agriculture in Ucayali (DRAU) issued Decision No. 28-2015-GRU-P-GGR-GRDE-DRSAU, granting the Alto Tamaya–Saweto indigenous community title to a territory with a surface area of 78,611 hectares (8,700 m²).
- 225.** The Government also states that the DRAU encouraged the National Office of the Superintendent of Public Registries (SUNARP)–Pucallpa to deal with the title registration. During this process, SUNARP–Pucallpa made observations and requested adjustments in the territory of the permanent production forest administered by the SERFOR.

226. The Government indicates that the grant of title to the Alto Tamaya–Saweto indigenous community was registered with the SUNARP according to SUNARP records dated 16 June 2015, available in two electronic files:

- Electronic file No. 11117802: Zone A with 64,432.49 hectares.
- Electronic file No. 11117803: Zone B with 13,696.73 hectares.

In a communication received in April 2016, the Government stated that there was no overlapping of forestry concessions on the land belonging to the Alto Tamaya–Saweto indigenous community since the DRAU had granted that community title to the land.

Situation of indigenous leader Washington Bolívar Días

227. The Government states that indigenous leader Washington Bolívar Días reported that Plantaciones Pucallpa company workers had pillaged approximately 300 hectares of primary forests in the Santa Clara indigenous community in Nueva Requena (Ucayali). Against this backdrop, the indigenous leader filed a series of complaints against the Plantaciones Ucayali and Pucallpa SAC companies at the national and international levels.

228. The Government adds that Mr Bolívar’s leadership of the Kakataybo indigenous community has been called into question. It states that in September 2015, he formed the Civic Committee for the Defence of the Amazon Region and Life (COCIDAV). Moreover, in the absence of evidence of any threat to the physical integrity of Mr Bolívar, the police recommended that the personal protection service provided to the indigenous leader be disallowed and withdrawn, a decision that was communicated to him on 23 July 2015.

Consultation on and compensation for environmental damage: Pakitzapango and Tambo hydroelectric power plants – Plot 192 – titling of Shawi community land – environmental pollution of rivers (tailings spill) in the department of Huancavelica

229. With regard to prior consultation with indigenous peoples on the construction of the Pakitzapango and Tambo hydroelectric power plants, the Government states that the Ministry of Energy and Mines identified the granting of the final concession for generation, transmission and distribution as a measure requiring consultation under Ministerial Decisions Nos. 350-2012-MEM/DM of 20 July 2012 and 209-2015-MEM/DM of 4 May 2015. In this regard, the Government considers that there is no administrative procedure for granting final concessions for generation, transmission and distribution in these types of energy projects; hence, no prior consultations on the Pakitzapango and Tambo hydroelectric power plant projects were conducted.

230. With respect to renewal of the oil concession on Plot 192, the Government states that the plot is located in the department of Loreto and extends into the districts of Andoas, in the province of Datem del Marañón, and the districts of Trompeteros and El Tigre, in the province of Loreto and includes settlements located in the Pastaza, Corrientes and Tigre river basins. The Government reports that prior consultations were held from 21 to 23 May 2015 and continued until 25 August 2015. In order to carry out the prior consultation process, the interested parties – the presidents of the federations of the Pastaza, Tigre, Corrientes and Marañón river basins and representatives of the national Government and the regional government of Loreto – signed the Lima Act on 10 March 2015. On 30 August 2015, as a result of the prior consultation process, a temporary service contract for the exploitation of hydrocarbons on Plot 192 was signed with Pacific Stratus Energy of Peru and approved through Supreme Decree No. 027-2015-EM of 29 August 2015.

- 231.** The Government emphasizes that the State complied with the obligation to consult the indigenous peoples and to make a good-faith effort to reach agreement by consensus. In accordance with current regulations, the process was conducted in such a way as to ensure that all minimum stages in the process were fulfilled and some actions – such as the preparatory meetings, which, albeit not mandatory, ensured the proper conduct of the process – were taken.
- 232.** With regard to representative institutions, the Government states that the process focused on individual peoples and communities. Thus, the promoting entity did convene the settlements in the area of Plot 192 and, as is their right, those settlements appointed their highest-level representative indigenous organizations. The Government adds that, by the end of the prior consultation process, the following representative organizations had been identified: the Indigenous Federation of Quechua del Pastaza (FEDIQUEP), the Federation of the Indigenous Communities of Corrientes (FECONACO), the Inter-ethnic Organization of Alto Pastaza (ORIAP), the Indigenous Federation of Alto Pastaza (FEDINAPA) and the Federation of Indigenous Communities of Alto Tigre (FECONAT). The Government emphasizes that some 18 agreements were reached with 14 settlements in Alto Pastaza and Tigre, represented by the ORIAP, FEDINAPA and FECONAT, and maintains that these agreements demonstrate that the prior consultation process did indeed lead to meaningful agreements with indigenous peoples.
- 233.** The Government states that the agreements signed as a result of the prior consultations are being implemented and that the agreements on respect for the collective rights of indigenous peoples include the indigenous communities that are members of the indigenous organizations, FEDIQUEP and FECONACO. As stated in relation to other issues raised in the complaint, the agreements between the indigenous peoples consulted and the State regarding the case of Plot 192 deal with compensation for land use, health, land titling, education, distribution of royalties, environmental monitoring and housing development.
- 234.** The Government draws attention to the agreement to establish a social fund amounting to 0.75 per cent of the monetary value of production, paid directly to the communities in the area, thus ensuring the right to participate in the benefits as stipulated in Article 15(2) of Convention No. 169.
- 235.** Concerning the spillage of tailings into the rivers of the Huancavelica region, the Government refers to the regulatory framework established under Act No. 28611, the General Environment Act, and Act No. 29325, the Act on the National Environmental Evaluation and Inspection System, as amended by Act No. 30011. The Government also provides a document illustrating the activities of the Huancavelica Local Water Board (ALA-Hvca) and showing that, according to the decision issued on 14 July 2010, there was “very serious” pollution of the waters of the Escalera river by the Caudalosa SA mining company, which had breached environmental quality standards.
- 236.** As for the tailings spill into the Opomayo river, the Huancavelica Regional Director of Energy and Mines stated, in a report dated 19 January 2016, that the Caudalosa SA mining company was currently operating as the Kolpa SA mining company and that, since it fell into the “medium-scale mining” category, the regional directorate had no authority over it and the OEFA would need to address environmental issues directly.

III. The Committee's conclusions

Human rights and fundamental freedoms

237. The complainant organizations state that the policies implemented by the Government have triggered profound discontent among the indigenous peoples, which has led to high levels of conflict. The organizations submit a list of 43 civilians who died as a result of the intervention of law enforcement officers in social protests (see the appendix to this report).
238. The Committee notes that, in response to the allegations of the criminalization of social protests, the Government provides information on the incidents referred to by the complainant organizations. The Government reports that, on 14 March 2012 in the city of Puerto Maldonado, capital of Madre de Dios province, there was a protest against the forced eradication of illegal mining in which, according to information received from the Peruvian national police, there was “a clash between the armed forces and the demonstrating informal and illegal miners and indigenous peoples, in which three civilians [**Mr Carlos Lanci Yumbato, Mr Julio César Ticcona Medina and Mr Francisco Areque Jipa**] died”. The Government adds that 27 police officers and 36 civilians were injured in the same incident, with four civilians and two police officers evacuated to the city of Lima because of the seriousness of their condition. Furthermore, during a “protest stoppage by illegal miners”, which took place on 8 April 2014 in the village of Mazuko (Madre de Dios province), **Mr Américo Laura Pizarro** died from a gunshot wound. The Committee notes that, according to another police report, in the department of San Martín on 21 October 2013, 21-year-old **Mr Jaime Inuma Huiñapi** died in an incident that occurred during a strike called by the Front for the Defence and Development of Alto Amazonas–Yurimaguas (FREDESAA). This death was ruled an act of genocide by the competent authorities and the investigation into the crime was being carried out by the Supra-Provincial Public Prosecutor’s Office in Lima. The death of **Mr Emilio Marchisi Huansi**, an *apu* (leader) of the indigenous community of Santa Rosa del Alto Shambira, on 5 April 2014 was ruled an alleged aggravated homicide. The Government adds that, on 3 June 2012, acts of violence were carried out against the Conga mining project, resulting in the death of **Mr Joselito Vásquez Jambo**.
239. With regard to the dispute concerning the Conga mining project, the Committee takes note of the information transmitted by the Cajamarca police concerning the clashes in May 2012, in which **Mr Faustino Silva Sánchez, Mr Gilmer Cesar Medina Aguilar, Mr Paulino Leontorio García Rojas and Mr José Antonio Sánchez Huamán** died and two members of the Peruvian national police and five members of the Peruvian army were injured.
240. With regard to the dispute over Plot 108, the Committee notes the Government’s statement that in the early morning of 11 February 2015, there was a violent clash between law enforcement officers and demonstrators in which **Mr Ever Percy Pérez Huamán** died and 11 people were injured. According to the Government, the protest was infiltrated by members of organizations that do not represent indigenous peoples.
241. Regarding the Tía María mining project, the Government confirms the statements made by the complainant organizations and acknowledges the death of **Mr Andrés Taipe Choquepuma, Mr Néstor Cerezo Patana and Mr Miguel Ángel Pino** in 2011. It adds that, according to information provided by the Arequipa regional police, **Mr Edilberto Salazar Aurelio Huarcapuma** also died. The organizations also report the death of **Mr Miguel Angel Pino** in this protest. The Government confirms that **Mr Victoriano Huayna Nina and Mr Henry Checya Chura** died in connection with the Tía María mining project in 2015 and states that in 2015, **Mr Ramón Colque Vilca** and national police officer **Mr Alberto Henry Vásquez Durand** also died during this dispute.

242. The Committee takes note of the additional information that the Government provided in April 2016 to the effect that the Public Prosecutor's Office had permanently shelved the case in the murder of **Mr Pierre Eduardo Gonzales Arias** in Huancavelica on 9 July 2011 because, owing to the extent of the protests and the absence of police logistics, it had been impossible to identify the alleged perpetrators. The Public Prosecutor's Office had also decided to shelve the investigation into the death of **Mr Yoel Rufino Mendoza Gavidia, Mr Olger Ramiro Fernández Pizan, Mr Alex Antayhua Chacón** and **Mr Javier Luis Rengifo Mozombite**. Its investigation of two individuals in the murder of **Mr Santos Pablo Esquivel Iparraquirre** in La Libertad on 14 April 2012 was ongoing. On 4 February 2016, the Public Prosecutor's Office formally charged two retired Peruvian national police colonels accused of the murder of **Mr Kenllu Jairo Sifuentes Pinillos** in Barranca on 4 July 2013 and requested that they be sentenced to 14 years' imprisonment.
243. The complainant organizations also refer to the threats to the physical integrity and life of Mr Washington Bolívar Días, leader of the Mariscal Cáceres indigenous community in the province of Padre Abad, department of Ucayali, which were highlighted in a communication from the Ombudsman's Office to the Ministry of Internal Affairs in September 2014. The Committee notes that, according to information sent by the Government in March 2016, the national police decided to withdraw the personal protection service provided to the indigenous leader in the absence of evidence of any threat to his physical integrity, a decision that was communicated to him in July 2015.
244. The Committee recalls that the Convention must be implemented in its entirety²² and considers that Article 3²³ thereof is particularly important for the examination of the situation arising from the repression of indigenous people's protest, as alleged by the complainant organizations in the representation.
245. The Committee notes that the Government has not provided any information on the following persons, whose full names are listed in the appendix to the representation and whose deaths appear to be linked to the social protests by indigenous peoples that occurred between 2011 and 2014: **Efraín Quispe Huarcaya, Luis Felipe García Guerrero, Cristian Alvarado Frías, Carlos Alberto Ramos Carmen, Robert Erickson Castillo Paucar, Rudencindo Manuelo Puma, Walter Sencia Ancca, Félix Yauri Usca, Rider Roque Romero, Juan Antenor Espinoza Jaimés, Alejandro Máximo Gozáles Huaman, Demetrio Poma Rosales, Gino Cárdenas Rivero, Kenyi Castro Velita, Jesús Eduardo Enríquez Apolaya, Mauro Pio Peña, Carlos Vásquez Becerra, Aristides Aguilar Izquierdo, Gino Andrés Lorino Vizcardo, Karina Johany Delgado Mires, Claysont Huilca Pereira, Pedro Flavio Carita, Elena Gallegos Mamani** and **Kepashiato Rosalio Sánchez**.
246. The Committee deplores all the deaths and acts of violence referred to in the representation and recalls that indigenous and tribal peoples "shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination" and that "no form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned". *The Committee therefore requests the Government to take the*

²² Chile, report adopted in March 2016, document GB.326/INS/15/5, para. 111.

²³ Article 3

1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.

2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.

necessary steps to ensure that indigenous and tribal peoples can fully exercise, in freedom and security, the rights embodied in the Convention. The Committee requests the Government to provide the Committee of Experts with detailed information on the specific progress made in each of the investigations opened into the deaths and events referred to by the complainant organizations in this report.

Situation of the Alto Tamaya–Saweto indigenous community

- 247.** *Recognition of the indigenous community and application for the titling of traditionally occupied lands.* The Committee notes that, according to the documents provided by the complainant organizations, on 18 October 2002 the leaders of the indigenous community informed the Ucayali Regional Directorate for Rural Affairs that they had been living in Alto Tamaya since March 2002 and applied for registration as an indigenous community.
- 248.** The Committee notes that, in April and June 2003, the Regional Directorate for Rural Affairs issued the corresponding decisions and registered the Alto Tamaya indigenous community in the National Registry of Indigenous Communities in accordance with article 89 of the 1993 Constitution and section 7 of the Act concerning indigenous communities and the agricultural development of forest and mountain forest regions.
- 249.** The Committee notes that the Socio-Economic and Population Report on the Alto Tamaya–Saweto indigenous community,²⁴ prepared by the Regional Sectoral Directorate for Agriculture in April 2013, confirms the historical presence of indigenous Asháninkas on both sides of the Sierra del Divisor. The report states that in 1998, the Asháninka peoples began to gather at the mouths of the Alto Tamaya and Putaya rivers to create a village called Saweto, form a community and seek to establish a school and a territory. The competent authority set up a primary school in April 2003 and, subsequently, a secondary school.
- 250.** The Committee notes that, according to the documents provided by the organizations, the Ucayali Regional Directorate for Rural Affairs, which is in charge of the Special Land Titling and Rural Land Registry Project (PETT), responded to the indigenous community’s request for land titling in October 2002, stating that “there is neither the staff nor the budget for this type of work”.
- 251.** The Committee notes that, in June 2003, the indigenous community again applied to the rural affairs authority for the demarcation and titling of the traditionally occupied territory. The indigenous community’s request was supported by the representative of the Ombudsman in Ucayali, who recalled that Peru had ratified Convention No. 169 and had obligations, under Article 14, relating to recognition of the rights of ownership and possession over the lands that indigenous peoples traditionally occupy.²⁵
- 252.** The Committee notes that between 2004 and 2009, the indigenous community repeatedly applied for title to its territory, but without success. It also notes that in November 2012, the Ucayali Regional Sectoral Directorate for Agriculture ordered a “soil survey” study of the indigenous community and that, on 3 April 2013, this authority published the corresponding Socio-Economic and Population Report.

²⁴ Ucayali Regional Sectoral Directorate for Agriculture, Report 0018-2014-GRU-P-DRASU-DSFL, 3 Apr. 2013.

²⁵ Official Communication No. 1130-2003/DPU of 23 June 2003, added by the complainant organizations to the documents accompanying the representation.

- 253.** *Granting of forestry concessions within traditionally occupied lands.* The Committee notes that, according to the complainant organizations, through Ministerial Decision No. 0026-2002-AG of 7 January 2002, the national Government approved the creation of a permanent production forest in the department of Ucayali, which included the territory claimed by the indigenous community. Furthermore, according to the organizations, five private concessions that were granted in the district of Masísea in the Tamaya river area overlapped with the territory traditionally occupied by the indigenous community. Map 2 (see above) shows the territory traditionally occupied by the indigenous community and the surface area of the five forestry concessions.
- 254.** The organizations claim that the Government granted the forestry concessions without conducting consultations with the affected indigenous communities and that these concessions overlapped with the territory traditionally occupied by the indigenous community.
- 255.** The Committee notes that, through Regional Managerial Decision No. 006-2014-GRU-P-GGR-GRDE of 18 March 2014, the forestry authority considered that, although Convention No. 169 advocates respect for rights of possession when an indigenous community's ancestors can be shown to have traditionally occupied its land, in the case of the Alto Tamaya indigenous community "there are no records of traditional possession prior to the concession, and the accompanying documents ... while showing that there is currently an overlap, and has been since 2003, do not refer to the years prior to the establishment of the Ucayali permanent production forest, and the subsequent boundary inclusions, exclusions and review ...". The decision adds that the application documents for registration of the indigenous community and the administrative decisions creating the school date back to 2003 and considers that although the application for registration as an indigenous community states that "the settlers have lived on the land which the community currently occupies for over 60 years, it is also apparent that the community's first request for territorial demarcation is dated 16 July 2002, one day after the signing of the concession contract referred to in the study".
- 256.** The Committee notes that, following the murders of the four community leaders (on 1 September 2014), the regional government officially began to exclude the forestry concessions. Through Executive Directorate Decision No. 439-2014-GRUP-P-GGR-GRDE-DEFFS-U of 24 October 2014, a total of 48,293 hectares that had been granted to ECO Forestal Ucayali SAC (ECOFUSAC) were excluded in recognition of the legitimacy of the indigenous community's request for the exclusion of concessions that overlapped with its territory.
- 257.** *Complaints about illegal logging.* The Committee notes that the indigenous community lodged complaints about logging on its territory with the administrative and judicial authorities. The complainant organizations indicate that, in some cases, the complaints were shelved by the Public Prosecutor's Office and in others they were dismissed by the forestry authority because the community did not have title showing ownership of the land.
- 258.** The Committee notes that, according to the complainant organizations, in a complaint submitted to the Ucayali Special Public Prosecutor's Office for Environmental Affairs, dated 15 December 2010, **Mr Edwin Chota Valera** expressed concern at the impact of illegal logging activities "because they drive people to flee and push young people into taking up illegal logging. They bring with them alcohol and bad habits, not least seducing women and even girls. This is a crime against our people, who have the right to maintain their culture, and the State should safeguard this as provided for in Convention No. 169, which Peru has ratified".

259. The complainant organizations also note that, in April 2014, the people who had been reported for their involvement in illegal logging threatened to kill members of the communities as recorded in the Public Prosecutor's Office investigation report, which included a request for the seizure of timber extracted illegally from indigenous territory.
260. The complainant organizations state that the indigenous community had invited the Forestry Concessions Supervisory Body (OSINFOR) to conduct an inspection visit from 26 to 30 August 2014 and verify that the companies that had been granted concessions were not complying with the provisions of the concession contracts and were, in fact, facilitating illegal logging on Saweto indigenous community land.
261. The Government states that in response to complaints of illegal logging lodged on 9 April 2013 by the Alto Tamaya–Saweto indigenous community, the Ucayali Provincial Public Prosecutor's Office for Corporate Affairs opened two cases against Mr Eurico Mapes Gomes, Mr Francisco Anderson Mapes de Souza and Mr Segundo Euclides Atachi Félix for aggravated forest and forest products crimes and against Mr José Carlos Estrada Huayta and Mr Hugo Soria Flores for aggravated illegal trafficking in timber forest products.
262. *Murder of Mr Edwin Chota Valera, Mr Jorge Ríos Pérez, Mr Leoncio Quinticima Meléndez and Mr Francisco Pinedo.* The Committee takes note of the murder, on 1 September 2014, of indigenous leaders **Mr Edwin Chota Valera, Mr Jorge Ríos Pérez, Mr Leoncio Quinticima Meléndez and Mr Francisco Pinedo** from the Alto Tamaya–Saweto indigenous community (the place where the bodies were found is also indicated on Map 2). The complainant organizations link the murders to the complaints about illegal logging and the steps taken over an 11-year period in pursuit of title to the lands traditionally occupied by them in accordance with Convention No. 169.
263. The Committee observes that the complainant organizations have requested a proper investigation into the violation of the right to life of the indigenous community's leaders and are seeking payment of compensation not only to the families of the 18 children who lost their fathers, but also to the indigenous community for the loss of its leaders.
264. The Committee notes that the Ministry of Culture, in an official statement made on 9 September 2014, expressed regret at the death of the four Asháninka leaders, condemning the attack and the threats against families of the Saweto community. The Ministry of Culture expressed its condolences to the families, the community and the Asháninka people as a whole and ordered a team to be sent to the Ucayali region to coordinate with the Public Prosecutor's Office, the Criminal Investigations Directorate and other local organizations in order to assist in the relevant investigations. The national police organized several flights over the area to locate the bodies of the murdered indigenous leaders.
265. The Government adds that the Ministry of Culture provided the necessary facilities to ensure that the families of the deceased indigenous leaders could pursue their complaints with the relevant authorities and receive medical care through the Comprehensive Health Service (SIS).
266. The Committee notes that, according to information transmitted by the Government, the Public Prosecutor's Office confirmed that, on 31 August 2014, the four indigenous leaders set off for the indigenous community of Apiwtxa, in Brazil, to take part in a meeting of community members on 2 September 2014. However, they were ambushed and shot dead near the Putaya gorge, a six-hour walk from Saweto, in the Masísea district. The deaths probably occurred on 1 September 2014.

- 267.** The Government reports that the Ucayali Provincial Public Prosecutor's Office for Corporate Affairs Specializing in the Investigation of Organized Crime is investigating Mr Eurico Mapes Gómez, Mr Hugo Soria Flores, Mr Segundo Euclides Atachi Félix, Mr Josimar Atachi Félix and Mr José Carlos Estrada Huayta on suspicion of the aggravated murder of the four indigenous leaders. The Committee notes that the investigation into the case was initially handled by the Third Provincial Public Prosecutor's Office in Coronel Portillo and formally opened against the five aforementioned persons pursuant to an order dated 14 September 2014. Subsequently, on 1 October 2014, the case was referred to the Provincial Public Prosecutor's Office for Corporate Affairs Specializing in the Investigation of Organized Crime.
- 268.** The Committee notes that the Government has identified Mr José Estrada as the founder and manager of ECOFUSAC, a company engaged in logging in the area of the crime. The Government also states that Mr Eurico Mapes was charged and has been held in pre-trial detention since 23 December 2014.
- 269.** *The Committee deeply regrets the murder of Mr Edwin Chota Valera, Mr Jorge Ríos Pérez, Mr Leoncio Quinticima Meléndez and Mr Francisco Pinedo, leaders of the Alto Tamaya–Saweto indigenous community, on 1 September 2014; such acts call for stern action by the authorities. The Committee requests the Government to provide the Committee of Experts with detailed information on the steps taken to identify those responsible and punish the guilty.*
- 270.** *The Committee condemns violence and is saddened by all the deaths and injuries mentioned in this report. It hopes that disputes will be resolved solely through social dialogue.*
- 271.** *Registration of the indigenous community's ownership title.* The Committee notes that, according to the complainant organizations, in January 2015 the Ucayali Regional Sectoral Directorate for Agriculture resumed the titling process for the communal territory and that, under Regional Sectoral Directorate for Agriculture Decision No. 028-2015-GRU-P-GGR-GRDE-DRSAU of 30 January 2015, the regional agricultural authority decided to grant the Alto Tamaya indigenous community title to a territory with a surface area of 78,611 hectares (8,700 m²).
- 272.** The complainant organizations note that on 30 January 2015, the Ucayali Regional Director for Agriculture made a symbolic presentation of title to the leader of the Alto Tamaya–Saweto indigenous community “with sufficient merit to warrant its registration in the corresponding public register”.
- 273.** The Committee notes that in June 2015, the grant of title to the Alto Tamaya–Saweto indigenous community was registered with the National Office of the Superintendent of Public Registries in two electronic files: (i) electronic file No. 11117802: Zone A with 64,432.49 hectares; and (ii) electronic file No. 11117803: Zone B with 13,696.73 hectares.
- 274.** The Committee observes that the exclusion of forestry concessions requested by the indigenous community and registration of the corresponding title occurred after the murder of the four indigenous leaders, who had taken the appropriate steps to obtain the demarcation and titling of the lands traditionally occupied by the indigenous community and had lodged complaints about the granting of forestry concessions and logging without the prior consultation required under the Convention.
- 275.** The Committee considers that Articles 3, 13, 14 and 16 of the Convention are especially important for analysing the situation highlighted by the indigenous community and deems it useful to recall past instances where those Articles were invoked in previous reports of

tripartite committees set up to examine non-observance of Convention No. 169 (article 24 of the ILO Constitution).

Lands

276. According to Article 14 of the Convention:

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised
2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

277. In the report on a representation concerning the application of Convention No. 169, the tripartite committee considered that “in accordance with these paragraphs of Article 14 of the Convention, . . . the Government should endeavour to speed up the processes of the regularization of title to the lands that the indigenous communities traditionally occupy and should ensure not only that their individual rights are guaranteed, but also their collective rights and the various aspects of their relationship with the land. Indeed, the rights to lands that are traditionally occupied as recognized by the Convention do not only relate to ownership and occupation, but also to the survival of indigenous peoples as such and their historical continuity.”²⁶ On that occasion, the tripartite committee recognized that “the regularization of land ownership requires time, that the adoption of legislation is not sufficient in itself and that it is the outcome of a complex process. It also considers that indigenous peoples should not be prejudiced by the duration of this process. It would therefore be desirable to adopt transitional measures during the course of the process to protect the land rights of the peoples concerned. It also observes that the Government’s expressed opinion that the lands traditionally occupied by the indigenous communities are held illegally, as they do not have ownership title, is not in conformity with the Convention, Article 14 of which recognizes the rights of indigenous peoples over the lands that they traditionally occupy.”²⁷

278. In the same report, the tripartite committee, referring specifically to cases where an indigenous community did not hold title of ownership at the time when a mining licence was granted, identified a link between the provisions of the Convention on consultation, lands and natural resources. The committee was of the view that Articles 13 and 15 of the Convention should be applied and read in conjunction:²⁸

Under the terms of Article 13:

1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which **they occupy or otherwise use, and in particular the collective aspects of this relationship** (emphasis added in the report adopted in June 2007).
2. The use of the term **lands** in Articles 15 and 16 shall include the concept of territories, which covers the **total environment of the areas which the peoples concerned occupy or otherwise use** (emphasis added in the report adopted in June 2007).

²⁶ Guatemala, report adopted in June 2007, GB.299/6/1, para. 44.

²⁷ *ibid.*, para. 45.

²⁸ *ibid.*, para. 47.

The tripartite committee also recalled that Article 15(2) provides that:

In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures **through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced**, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned **shall wherever possible participate in the benefits of such activities, and shall receive fair compensation** for any damages which they may sustain as a result of such activities (emphasis added in the report adopted in June 2007).

- 279.** On that occasion, the tripartite committee drew the Government’s attention to the fact that, “as set out in Article 13, paragraph 2, and Article 15, paragraph 2, of the Convention, and as reaffirmed repeatedly by the supervisory bodies, the Convention does not require indigenous peoples to be in possession of ownership title for the purposes of the consultations envisaged in Article 15, paragraph 2. The consultations referred to in Article 15, paragraph 2, are required in respect of resources owned by the State pertaining to the lands that the peoples concerned occupy or otherwise use, whether or not they hold ownership title to those lands”.²⁹

Overlapping between lands traditionally occupied by indigenous communities and forestry concessions

- 280.** In an initial representation alleging overlapping between indigenous peoples’ lands and forestry concessions, the tripartite committee recalled that “Article 15 of the Convention should be read in conjunction with Articles 6 and 7 of the Convention, and that by ratifying the Convention governments undertake to ensure that the indigenous communities concerned are consulted promptly and adequately on the extent and implications of exploration and exploitation activities, whether these are mining, petroleum or forestry activities”.³⁰
- 281.** In a second representation, alleging overlapping between national forests and lands on which indigenous peoples were living, a tripartite committee drew the Government’s attention to the fact that, “under Article 15(2) of the Convention, it must consult the indigenous peoples concerned regarding state-owned resources located on the lands defined in Article 13(2) of the Convention, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands, that is to say, before licences are granted, with a view to ascertaining whether and to what degree their interests would be prejudiced. Furthermore, the peoples concerned must, wherever possible, be able to participate in the benefits of such activities and receive fair compensation for any loss or damage they may sustain as a result of such activities”.³¹
- 282.** *Bearing in mind that over ten years elapsed before the Alto Tamaya–Saweto indigenous community obtained recognition of the right to ownership of the lands that they traditionally occupy, the Committee requests the Government to provide the Committee of Experts with detailed information on significant progress in the investigation into the complaints of illegal logging by the affected community and on any requests eventually made in that regard (Article 15(2) of the Convention).*

²⁹ *ibid.*, para. 48.

³⁰ Bolivia, report adopted in March 1999, GB.274/16/7, para. 38.

³¹ Brazil, report adopted in March 2009, GB.304/14/7, para. 50.

Recognition of the peoples covered by the Convention

283. The Committee observes that, in the communication received in June 2015, the complainant organizations state that Act No. 29785 concerning the right of indigenous and aboriginal peoples to prior consultation, issued on 7 September 2011, provides for the establishment of a database of the indigenous peoples of Peru but that the list of registered Andean communities and Quechua-speaking *campesino* communities have not been included in the database.
284. The Committee notes the Government's statement that in 2015, the Department for Intercultural Affairs published a preliminary list of communities of indigenous peoples from the Peruvian Andes. To date, the Department for Intercultural Affairs has identified 55 indigenous or aboriginal peoples in the country, of which 51 are from the Amazon region and four are from the Andes region (the Aymara, Jaqaru, Quechua and Uro peoples).
285. The Committee notes that the Government does not have any official information on the ethnic self-identification of *campesino* communities. The identification of communities that are considered to be Andean indigenous peoples was made on the basis of a threshold percentage of people in the community whose mother tongue is an indigenous language.
286. The Committee notes that the official database of indigenous or aboriginal peoples (BDPI) contains information on 2,938 *campesino* communities of indigenous peoples, that the database is updated continually and that it is a declaratory registry and reference tool.
287. The Committee recalls that, with respect to Article 1³² of the Convention, the Committee of Experts has commented on the functioning of the official database of indigenous or aboriginal peoples.³³ ***The Committee requests the Government to keep the Committee of Experts informed in this regard.***

³² Article 1

1. This Convention applies to:
 - (a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
 - (b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.
2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.
3. The use of the term *peoples* in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

³³ The direct request adopted in 2013 and published in 2014 includes the following:

Article 1 of the Convention. Peoples covered by the Convention. The Government indicates in the report received in September 2013 that the Office of the Deputy Ministry for Inter-Cultural Affairs has drawn up and published a list of 52 indigenous peoples, with four in the Andean zone and 48 in Amazonia, which will be used for updating the official database of indigenous or original peoples. The Government indicates that the bodies sponsoring administrative or legislative measures that necessitate consultation are responsible for identifying the indigenous peoples, including native and farming

Indigenous consultation and development priorities

- 288.** The Committee notes that, according to the complainant organizations, in practice, development policy is based on the priority given to investment in the extractive industries, which directly affects the indigenous peoples. According to the organizations, the Government denies indigenous peoples the right to set their own priorities and exercise control over their own economic, social and cultural development, which in turn leads to a significant deterioration in their living and working conditions, health and education.
- 289.** The Committee notes the Government's statement that it is complying with prior consultation processes, which are a fundamental mechanism for ensuring the effective participation of indigenous peoples in the adoption of decisions that may affect their rights and interests. The Government indicates in this regard that the mandate to conduct consultations derives not only from the provisions of Convention No. 169, but also from Peru's national legal framework, which contains various items of legislation such as Act No. 29785 and its implementing regulations as approved through Supreme Decree No. 001-2012-MC, published on 3 April 2012.
- 290.** The Committee notes the Government's indication that, since 8 December 2011, the date of entry into force of Act No. 29785, the indigenous population has participated in 22 prior consultation processes in connection with the implementing regulations for the Forestry and Forest Wildlife Act, the Sectoral Intercultural Health Policy and the National Intercultural and Bilingual Education Plan and that representatives of the seven national indigenous organizations participated in those processes. Moreover, agreement between the State and the indigenous peoples concerned was reached in 20 of the 22 consultations conducted. A total of 651 indigenous communities participated in those processes.
- 291.** *The Committee notes that the agreements reached during the prior consultation process on the implementing regulations for the Forestry and Forest Wildlife Act were closely related to the right of the indigenous peoples to participate in the use, management and conservation of those resources as provided in Article 15(1) of the Convention.*
- 292.** *The Committee commends the efforts of the Government and the other parties concerned to conduct the consultations required by Article 6(1)(a) of the Convention. The Committee hopes that these consultations will enable the peoples concerned, in particular through their representative institutions, to better exercise the right: (1) to set their own priorities for the development process as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use; (2) to exercise control, to the extent possible, over their own economic, social and cultural development; and (3) to participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly (Article 7(1) of the Convention).*
- 293.** *The Committee requests the Government to continue to provide the Committee of Experts with updated information on consultations held, taking into account the requirements of Articles 6 and 7 of the Convention.*

communities, in each specific case. The Committee recalls that awareness of indigenous identity is a key criterion in determining the groups to be covered by the Convention. *The Committee invites the Government to provide information in its next report on the operation of the official database of indigenous or original peoples and on the manner in which it is ensured that specific groups of the national population have not been excluded from measures intended to give effect to the Convention.*

Recognition of ownership and land titling

- 294.** The Committee notes the complainant organizations' allegations that, in practice, the State does not have a public policy that effectively and comprehensively addresses land titling and recognition of *campesino* and indigenous communities, and has failed in its duty to restructure and formalize the land ownership of these communities. The organizations have referred to the arguments put forward by the Ombudsman's Office in a report³⁴ which it submitted to the Ministry of Agriculture and Irrigation in June 2014 and which is appended to the representation.
- 295.** The complainant organizations report that of the 6,069 *campesino* communities and 1,469 indigenous communities recognized by the Commission on the Formalization of Informal Property (COFOPRI), 16 per cent still do not have title to their land. Between 2006 and 2010, only 19 new titles and 23 territorial expansions were granted to indigenous communities. In 2010, when responsibility was transferred from COFOPRI to the regional governments, the communities of the Amazon region were not granted any titles. *Campesino* communities were granted a meagre four titles in 2010. According to data from the Institute of Public Welfare, in the past five years, only 142 new titles and 13 territorial expansions have been granted.
- 296.** The Committee notes the broad regulatory framework on the recognition of indigenous communities and the titling of their lands referred to by the Government, as well as the description of the functions relating to the titling of lands traditionally occupied by indigenous communities that have been entrusted to the Ministry of Agriculture and Irrigation.
- 297.** The Committee notes, with regard to the rights of ownership and possession referred to in Article 14 of Convention No. 169, the Government's indication that, according to section 10 of the Act concerning indigenous communities and the agricultural development of forest and mountain forest regions, the State will conduct the relevant land registry survey and issue title deeds. Article 11 of that Act provides that permission for use of the portion of indigenous communities' land that is suitable for forest production shall be granted pursuant to the relevant legislation. The Government states that the aforementioned provisions constitute recognition of the right of possession.
- 298.** *The Committee refers to the land issues already addressed in this report, recalls that the Committee of Experts has commented on those issues 35 and requests the Government to continue to provide the Committee of Experts with specific and updated information on the land registration and titling processes conducted by the competent national and regional authorities, specifying the surface areas titled and the beneficiary communities in each region of the country.*

³⁴ Report No. 002-2014-DP/AMASPPI-PPI, Analysis of public policy on land titling and recognition for *campesino* and indigenous communities.

³⁵ The direct request adopted in 2013 and published in 2014 includes the following:

Article 14. Lands. The Government indicates that the Ministry of Agriculture, as the body in charge of national agrarian policy, is responsible for devising the process of restructuring and formalizing agrarian ownership, and regional governments are responsible for implementing that process. The 2013 Alternative Report states that 16 per cent of the recognized 6,069 farming communities and 1,469 native communities still have no land ownership titles. *The Committee asks the Government to include detailed information in its next report on the land registration and titling processes conducted by regional governments, specifying the surface areas titled and the beneficiary communities in each region of the country. The Committee also requests the Government to provide examples of the manner in which the difficulties faced by indigenous communities in relation to land claims have been resolved.*

299. *Land titling for the Shawi communities (San Martín department).* The Committee notes the complainant organizations' allegations concerning a plot of land located between the districts of Teniente César López (Alto Amazonas province), Sarayacu (Ucayali province) and Puinahua (Requena province), in the Loreto and Ucayali regions, with a surface area of 72,654 hectares (4,806 m²). In a Constitutional Court ruling of 14 June 2012 (file No. 00419-2011-PC/TC, San Martín, Ecoamérica SAC), an appeal filed by the company was rejected and it was recognized that the area to which the company was seeking title overlapped with land belonging to other entities. The Committee notes that, despite repeated requests, the Government has not provided any information on this matter. ***The Committee requests the Government to include in its report to the Committee of Experts specific and updated information on how it has guaranteed effective protection of the Shawi communities' rights of ownership and possession over the land referred to in the representation (Article 14(2) of the Convention).***

Consultation before undertaking or permitting mining concessions

300. The complainant organizations provide a map showing that mining concessions cover 25,744,281.87 hectares (20.23 per cent of the national territory). According to the organizations, many of these mining concessions directly affect *campesino* and indigenous communities as they overlap with territories traditionally occupied by them. The organizations state that the mining concessions were granted without prior consultation with the communities concerned; this is contrary to the provisions of Article 13 of Convention No. 169. Moreover, mining concessions are authorized without any thorough or prior evaluation of the land for which they are granted; in other words, without consideration for whether the concession is located in a fragile ecosystem, at river basin headwaters, or in a territory inhabited by indigenous or *campesino* communities. According to the organizations, neither the peoples established on the land granted through mining concessions nor the local authorities responsible for management of the land in question are informed in advance, as stated in the 2013 Alternative Report. The organizations emphasize that the Ministry of Energy and Mines has repeatedly opposed introducing consultations on mining exploration projects.

301. In a report presented by the Ministry of Energy and Mines in March 2016, the Government refers to Article 15(2) of Convention No. 169 and to section 9 of Act No. 29785, which provides that "State bodies are officially responsible for identifying any proposed legislative or administrative measures that have a direct bearing on the collective rights of indigenous or aboriginal peoples. Thus, if it is concluded that their collective rights might be directly affected, prior consultation on those measures shall be conducted." The Government indicates that section 3 of the implementing regulations for Act No. 29785 provides that a promoting entity is "any public body responsible for issuing legislative or administrative measures that will be subject to consultation", stipulating that the Office of the President of the Council of Ministers, ministries and other competent public bodies are included in that definition.

302. The Government adds that section 6 of the implementing regulations for Act No. 29785 provides that "the State has an obligation to consult with indigenous peoples whose collective rights may be directly affected, and to ascertain to what degree they may be affected, before approving the administrative measure specified in section 3(i) of the regulations authorizing commencement of exploration or exploitation operations for the natural resources in question, in the geographical areas where the indigenous people or peoples are located, in accordance with the applicable legal requirements in each case".

- 303.** The Government points out that the amendment to the consolidated texts on administrative procedures (TUPA) of the Ministry of Energy and Mines specified the following procedures for consultation on mining activities, which fall within the remit of the General Directorate for Mining (DGM): (a) granting of operating licences; (b) authorization for the commencement of exploration activities in metal and non-metal mining concessions; and (c) authorization for the commencement of exploitation activities (including mining and landfill plans) in metal and non-metal mining concessions. The Government emphasizes that these are the administrative procedures required for the commencement of mineral exploration, exploitation or processing activities and that the administrative measure taken by the Ministry of Energy and Mines is therefore consistent with the provisions of Article 15(2) of Convention No. 169 and section 6 of the implementing regulations for Act No. 29785.
- 304.** In the previous representation on the application of Convention No. 169 in Peru, the tripartite committee welcomed the promulgation of Act No. 29785 and expressed the hope that “the recent legislative progress made in the country will enable the indigenous peoples to be involved as soon as possible in the decision-making processes concerning legislative or administrative measures that are liable to affect them directly”.³⁶
- 305.** The Committee recalls that the Committee of Experts commented on the use of mineral resources and the prior consultation required by Article 15(2) of the Convention.³⁷ ***The Committee requests the Government to continue to provide the Committee of Experts with specific and updated information on the consultations held before undertaking or permitting any programme for the exploration or exploitation of mining resources.***
- 306.** *Renewal of the oil concession on Plot 192.* The Committee notes that the complainant organizations refer to the situation of Plot 192 (in the Datem del Marañón and Loreto provinces, department of Loreto). The organizations state that, according to Act No. 29785, bidding on the plot of land – whether in order to renew the contract or to establish a new contract with another company – should be subject to consultation with the indigenous communities. Furthermore, the organizations demanded the settlement of environmental liabilities before the company’s concession expired on 29 August 2015.

³⁶ Peru, report adopted in March 2012, GB.313/INS/12/5, paras 32 and 34.

³⁷ The direct request adopted in 2013 and published in 2014 includes the following:

Article 15. Regulation of the use of forestry resources and the mining and energy sector. The Government reiterates in its report that it is continuing its review of national forestry policy with the participation of the indigenous peoples of Peruvian Amazonia and the Andean peoples. The Government supplies detailed information on various forms of progress made by the Ministry of Agriculture with regard to forest resources, including, firstly, the adoption of a “methodology guide” relating to the decentralized participation process for the adoption of the new national forestry and fauna policy and, secondly, the identification of the regulations implementing the Forestry Act as measures requiring prior consultation. The 2013 Alternative Report indicates that even though each sponsoring body has discretionary powers in the process for identifying measures necessitating prior consultation, the consolidated texts on administrative procedures (TUPA) of certain bodies have not identified the measures that require consultation, as is the case in the electricity sector, and do not guarantee consultation at all stages of projects, as is the case in the oil and gas sector, which also does not prescribe specific procedures to ensure the participation of indigenous peoples in the preparation of environmental impact studies. ***The Committee invites the Government to include information in its next report on the results of the review of national forestry policy and of the prior consultation process relating to the relevant articles of the regulations implementing the Forestry Act. The Committee requests the Government to indicate any measures taken to ensure that the legislation regulating mining and energy activities provides for consultation at all stages of projects and prescribes that the peoples concerned shall be associated with the preparation of environmental impact studies (Articles 7 and 15).***

307. The Committee notes the information sent by the Government indicating that prior consultations were conducted from 21 to 23 May 2015 and continued until 25 August 2015. As a result of the prior consultation process, a temporary service contract for the exploitation of hydrocarbons on Plot 192 was signed on 30 August 2015 and approved through Supreme Decree No. 027-2015-EM of 29 August 2015.
308. The Government states that the State complied with the obligation to consult the indigenous peoples and to make a good-faith effort to reach agreement by consensus. In accordance with current regulations, the process was conducted in such a way as to ensure that all minimum stages in the process were fulfilled and some actions – such as the preparatory meetings, which, albeit not mandatory, ensured the proper conduct of the process – were taken.
309. The Government states that, with regard to Plot 192, further to the submission of the representation, the agreements reached between the indigenous peoples consulted and the State concern compensation for land use, health, land titling, education, distribution of royalties, environmental monitoring and housing development. The Government highlights the agreement to establish a social fund amounting to 0.75 per cent of the monetary value of production, paid directly to the communities in the area, thus ensuring the right to participate in the benefits as stipulated in Article 15(2) of Convention No. 169. ***The Committee commends the efforts of the Government and the other parties concerned to conduct the consultations required by the Convention with respect to the renewal of the oil concession on Plot 192.***
310. *Consultation regarding the Pakitzapango and Tambo hydroelectric power plant projects in territories traditionally occupied by Asháninka communities.* The Committee notes the complainant organizations' indication that the executive board of the Asháninka Ene river community council (CARE) and its communities were surprised to find that the construction of the Pakitzapango hydroelectric power plant had been included in the Climate Change Planning Project (PlanCC) document that the Government presented at the Conference of the Parties to the United Nations Framework Convention on Climate Change (COP 20), held in December 2014 in Lima. According to the organizations, a committee chaired by the Ministry of the Environment and involving the Ministry of Foreign Affairs, the Ministry of Economy and Finance and the National Strategy Planning Centre developed a proposed "Electricity Interconnection" with Brazil, set out in the energy sector's technical specifications document (ENE12), as part of the 77 Mitigation Options of the PlanCC.
311. The complainant organizations recall that in November 2010, the Ministry of Energy and Mines authorized a company to carry out feasibility studies for a hydroelectric power plant to be built on the Tambo river (at the confluence of the Ene and Perené rivers), affecting the Asháninka communities of the Tambo and Ene river basins (up to the Pakitzapango canyon).
312. The complainant organizations state that the territories which would be affected by the construction of the Tambo hydroelectric power plant overlap lands traditionally occupied by the Asháninka communities of the Tambo and Ene river basins. The organizations observe that, as in the case of the Pakitzapango hydroelectric power plant project, no prior information or consultation process has been conducted among the indigenous peoples involved.

- 313.** The Government states that, with respect to the Pakitzapango and Tambo hydroelectric power plant construction projects, the Ministry of Energy and Mines identified the granting of the final concession for generation, transmission and distribution as a measure requiring consultation under Ministerial Decisions Nos. 350-2012-MEM/DM of 20 July 2012³⁸ and 209-2015-MEM/DM of 4 May 2015.³⁹ In this regard, the Government considers that there is no administrative procedure for granting final concessions for generation, transmission and distribution in these types of energy projects; hence, no prior consultations on the Pakitzapango and Tambo hydroelectric power plant projects were conducted.
- 314.** The Committee recalls that the Pakitzapango and Tambo hydroelectric power plant projects had been the subject of a representation (under article 24 of the ILO Constitution) presented jointly by indigenous peoples' organizations and the General Confederation of Workers of Peru (CGTP) for non-observance of Convention No. 169 by Peru. At the conclusion of the representation procedure, the ILO Governing Body requested the Government "to ensure that technical, economic and environmental feasibility studies are conducted with the cooperation of the indigenous peoples concerned, in accordance with Article 7(3) of Convention No. 169. The Committee expresses the hope that the legislative progress made in the country will enable the indigenous peoples to be involved as soon as possible in the decision-making processes concerning legislative or administrative measures that are liable to affect them directly."⁴⁰
- 315.** In another situation concerning the exploitation of natural resources, the tripartite committee considered in its report that "the concept of consulting the indigenous communities that could be affected by the exploration or exploitation of natural resources includes establishing a genuine dialogue between both parties characterized by communication and understanding, mutual respect, good faith and the sincere wish to reach a common accord. A simple information meeting cannot be considered as complying with the provisions of the Convention. In addition, Article 6 requires consultation to be 'prior', which means that the communities affected are involved as soon as possible in the process, including in conducting environmental impact studies."⁴¹ ***The Committee requests the Government to involve the Asháninka communities as soon as possible in the decision-making processes concerning the Pakitzapango and Tambo hydroelectric power plant projects and to provide the Committee of Experts with information demonstrating that the requirements set out in Articles 6, 7, 15 and, where appropriate, 16 of the Convention have been met.***
- 316.** *Environmental pollution caused by tailings spills in rivers in the department of Huancavelica.* The Committee notes that in October 2014, the complainant organizations reported that a company that had been operating since 1989 near the mouth of the Escalera gorge, in the Huachocolpa district, had set up a mineral concentrator plant. The plant produced waste material that was deposited as tailings (toxic mining waste), which had formed a surface mound close to the Escalera river. The organizations state that, in Report No. 00003-2010/DGCA-jevca/MINAM of 25 June 2010, the Ministry of the Environment

³⁸ Ministry of Energy and Mines Ministerial Resolution No. 350-2102-MEM/DM approving the administrative procedures for conducting prior consultation, the timing thereof and the directorate responsible, pursuant to article 26 of Supreme Decree 001-2012-MC, which issues the regulations implementing Act No. 29785 ...

³⁹ Ministry of Energy and Mines Ministerial Resolution No. 209-2015-MEM/DM approving the administrative procedures for conducting prior consultation with respect to hydrocarbons and electricity.

⁴⁰ Peru, report adopted in March 2012, GB.313/INS/12/5, para. 36(b).

⁴¹ Colombia, report adopted in November 2001, GB.282/14/3, para. 90.

reported that there had been a tailings flow slide as a result of the collapse of dam “A”, one of the company’s three drainage fields. As a result, approximately 22,615 m³ of tailings containing lead, zinc, copper, silver and other materials had spilled into the waters of the Escalera river. Subsequently, the tailings affected the waters of the Tororapampa, Huachocolpa, Opamayo, Sicras, Urubamba and Mantaro rivers; this had an impact on more than 400 inhabitants. The organizations stated that the population of Huancavelica department consists primarily of indigenous peoples living in *campesino* communities.

- 317.** The complainant organizations complain that the company has failed to comply with the regulations governing mining activities and that the State has failed to intervene to ensure that the company responds in a socially responsible way to the people affected. Furthermore, according to the organizations, the Government exposed workers to tailings clean-up work without taking the necessary steps to protect them; this constitutes a violation of the right to health and decent work.
- 318.** The Committee notes the regulatory framework referred to by the Government in its response (Act No. 28611 (General Environment Act) and Act No. 29325 (Act on the National Environmental Evaluation and Inspection System, as amended by Act No. 30011)). The Government also provided a document illustrating the activities of the Huancavelica Local Water Board (ALA-Hvca) and showing that, according to the decision issued on 14 July 2010, there was “very serious” pollution of the waters of the Escalera river by the Caudalosa SA mining company, which had breached environmental quality standards.
- 319.** The Committee also notes, with regard to the tailings spill in the Opomayo river, the information provided by the Regional Director of Energy and Mines in Huancavelica, in a report dated 19 January 2016, to the effect that the Caudalosa SA mining company was currently operating as the Kolpa SA mining company and that, since it fell into the “medium-scale mining” category, the regional directorate had no authority over it and the OEFA would need to address environmental issues directly.
- 320.** The Committee recalls that, with regard to Article 15 of the Convention, the Committee of Experts has commented on the exploitation of mineral resources and environmental pollution.⁴² The Committee also refers to Article 20(3)(b) of the Convention, which requests

⁴² The direct request adopted in 2013 and published in 2014 includes the following:

Mining and hydroelectricity. The Committee notes that Act No. 30011 of 26 April 2013, amending Act No. 29325 establishing the National Environmental Evaluation and Inspection System, imposes financial penalties on enterprises where a complaint is proven or non-compliance with environmental regulations is established and gives the Environmental Evaluation and Inspection Agency (OEFA) responsibility for imposing corrective and preventive measures to alleviate and reduce the environmental hazards of operations and facilities established in the context of investment projects. The Government provides detailed information on the action taken in the context of the multi-sectoral commission for the improvement of the social and environmental conditions of the peoples living in the Pastaza, Tigre, Corrientes and Marañón river basins (department of Loreto), including the launch of the plan to identify the environmental impact of past oil and gas production which, in 2013 and 2014, is due to record environmental damage and pollution in the area. The 2013 Alternative Report refers to new cases of environmental pollution and lack of prior consultation regarding the exploration and exploitation on natural resources within indigenous territories, namely: oil and gas exploration and exploitation in the territories of the native community of Canaán de Cachiyaçu (Loreto region); licence for gas exploration and exploitation on plot 88 overlapping the Nahua Kugapakori territorial reserve (RTKNN) in the Lower Urubamba area; licences for mining on the lands of the farming community of San Juan de Cañaris (Lambayeque region); and licences for forestry operations on the territories of the native communities of Santa Sofía, Santa Rosa de Quebrada Matador and San Manuel de Nashatauri (San Martín and Loreto regions). **The Committee asks the Government to include detailed information in its next report on the measures taken to ensure observance of the Convention, particularly Article 15, in the situations referred to in its previous comments and in the cases described in the 2012 and 2013 Alternative Reports. The Committee requests the Government to provide examples in its next report of the manner**

governments to take steps to ensure that workers belonging to indigenous peoples “are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances”. *The Committee requests the Government to provide the Committee of Experts with accurate and updated information on the steps taken to ensure respect for the Convention in the situation identified in the tailings spills in the rivers of Huancavelica department, which occurred in June 2010. The Committee requests the Government, if environmental pollution is confirmed, to take all necessary steps to protect the lives and health of the members of the indigenous communities affected.*

IV. The Committee’s recommendations

321. *In the light of the foregoing conclusions concerning the issues raised in the representation, the Committee recommends the Governing Body to:*

- (a) approve this report;*
- (b) request the Government to continue its efforts to identify those responsible and punish the guilty in the murders of Mr Edwin Chota Valera, Mr Jorge Ríos Pérez, Mr Leoncio Quinticima Meléndez and Mr Francisco Pinedo;*
- (c) request the Government to take steps to prevent murders and acts of violence and to ensure, in accordance with national legislation, that the complaints lodged by the families of the victims mentioned in this report are addressed;*
- (d) invite the Government to include in its report to the Committee of Experts detailed and updated information on the other issues addressed in this report and in the Committee’s conclusions; and*
- (e) make this report publicly available and close the present procedure.*

Geneva, 30 May 2016

(Signed) Mr Carlos Flores

Ms Myriam Luz Triana

Mr Alberto Echevarría Saldarriaga

in which the application of the new environmental inspection system has helped to protect and preserve the environment of the territories inhabited by the peoples concerned.

Appendix

No.	First name and surname	Age	Area	Situation	Date	Injuries
1	Efrain Quispe Huarcaya	33	Huancavelica	Boundary issues between the Ccarhuac and Lillinta communities	09/07/2011	
2	Pierre Eduardo Gonzáles Arias	24	Lima	Protest about the Cañete prison extension	02/12/2011	Shot in upper limbs and torso
3	Carlos Lanci Yumbato	45	Madre de Dios	Protests about the forced eradication of informal mining	14/03/2012	Shot in torso
4	Julio César Ticona Medina	41	Madre de Dios	Protests about the forced eradication of informal mining	14/03/2012	Gunshot wound
5	Francisco Areque Jipa	35	Madre de Dios	Protests about the forced eradication of informal mining	14/03/2012	Shot in head
6	Luis Felipe García Guerrero	20	Piura	Protests by local fishermen against gas pipeline project	27/03/2012	Shot in back
7	Cristian Alvarado Frías	24	Piura	Protests by local fishermen against gas pipeline project	27/03/2012	Shot in back
8	Carlos Alberto Ramos Carmen	15	Paita	Protests by fishermen for increase in hake fishing quota	26/04/2012	Gunshot wound
9	Robert Erickson Castillo Paucar	28	Paita	Protests by fishermen for increase in hake fishing quota	26/04/2012	Shot in chest
10	Rudencindo Manuelo Puma	27	Espinar	Protests against mining company Xstrata	28/05/2012	Shot in neck
11	Walter Sencia Ancca	26	Espinar	Protests against mining company Xstrata	28/05/2012	Shot in neck
12	Paulino García Rojas	48	Cajamarca	Protests against the Conga project (he did not take part)	03/06/2012	Gunshot wound
13	Félix Yauri Usca	62	Espinar	Protests against Xstrata. Dies days after wound becomes infected	Wounded on 28/05/2012	Shot in eye
14	José Faustino Silva Sánchez	35	Cajamarca	Protests against Conga project	03/06/2012	Shot in head
15	César Medina Aguilar	17	Cajamarca	Protests against Conga project	03/06/2012	Shot in head
16	Joselito Vásquez Jambo	28	Cajamarca	Protests against Conga project	04/06/2012	Gunshot wound
17	Antonio Joselito Sánchez Huamán	29	Cajamarca	Protests against Conga project	04/06/2012	Shot in mouth
18	Rider Roque Romero	27	Huánuco	Forced eradication of coca leaf in Monzón valley	28/08/2012	Gunshot wound
19	Juan Antenor Espinoza Jaimes	47	Huánuco	Forced eradication of coca leaf in Monzón valley	28/08/2012	Gunshot wound
20	Alejandro Máximo Gozales Huaman	36	Junín	Protests demanding improvements to Francisco Carlé airport	29/08/2012	Was thrown into river and drowned
21	Demetrio Poma Rosales	54	Ancash	Protest complaining about water – against mining company Barrick Misquichilca	19/09/2012	
22	Gino Cardenas Rivero	20	Lambayeque	Protest against blockade of La Parada market	25/10/2012	Shot in head and neck
23	Kenyi Castro Velita	32	Lambayeque	Protest against blockade of La Parada market	25/10/2012	Shot in torso

No.	First name and surname	Age	Area	Situation	Date	Injuries
24	Jesús Eduardo Enriquez Apolaya	28	Lambayeque	Protest against blockade of La Parada market	27/10/2012	Gunshot wound
25	NN		Lambayeque	Protest against blockade of La Parada market	27/10/2012	Gunshot wound
26	Yoel Rufino Mendoza Gavidia	19	La Libertad	Operation by DINOES and mining company Horizonte against informal miners	15/03/2013	Shot in head and neck
27	Olger Ramiro Fernández Pizan	27	La Libertad	Operation by DINOES and mining company Horizonte against informal miners	15/03/2013	Shot in arm. Dies on way to hospital
28	Alex Antayhua Chacon	37	Ayacucho	Clashes between workers from mining company Victoria 100 and Sotrami	11/04/2013	
29	Santos Pablo Esquivel Iparraguirre	37	La Libertad	Protest against mining company San Simón	14/04/2013	Shot at point-blank range
30	Mauro Pio Peña	57	Junín	Murder of Asháninka leader by the mafia engaged in land trafficking, logging and exploitation of other Peruvian forest resources	27/05/2013	Gunshot wound
31	Carlos Vásquez Becerra	45	Cajamarca	Opponent of La Zanja and Conga mining projects	26/06/2013	Asphyxia
32	Kenllu Jairo Sifuentes Pinillos	22	Barranca	Campaign days for the construction of public infrastructure on charitable lands. He did not take part in the protest	04/07/2013	Gunshot wound
33	Aristides Aguilar Izquierdo	32	Cajamarca	Environmental leader opposed to mining operations in Santa Cruz	06/07/2013	Gunshot wound
34	Gino Andrés Lorino Vizcardo	24	Lambayeque	Protest against outstanding wages and about labour rights in the agro-industrial company Pucalá	19/08/2013	Gunshot wound
35	Jaime Inuma Huiñapi	21	Loreto	Provincial strike in Alto Amazonas – FREDESSA	21/10/2013	Gunshot wound
36	Karina Johany Delgado Mires	32	Lambayeque	Protest against outstanding wages and about labour rights in the agro-industrial company Pucalá	28/10/2013	Gunshot wound
37	Javier Luis Rengifo Mozombite	20	Loreto	Protest about management irregularities by the provincial mayor of Loreto-Nauta	31/10/2013	Gunshot wound
38	Claysont Huilca Pereira	16	Cusco	Striker against the construction of the Santa Teresa II hydroelectric power plant	09/02/2014	Shot in torso
39	Pedro Flavio Ccarita	62	Arequipa	Protest against the eviction of residents in the Majes Siguan project	25/02/2014	Gunshot wound
40	Elena Gallegos Mamani	35	Arequipa	Protest against the eviction of residents in the Majes Siguan project	25/02/2014	Gunshot wound
41	Emilio Marichi Huansi		San Martín	Death of Shawi indigenous leader – Land titling	05/04/2014	Gunshot wound
42	Américo Laura Pizarro	48	Madre de Dios	Protests about the forced eradication of informal mining	08/04/2014	Shot in head and neck
43	Kepashiato Rosalio Sánchez	65	Cusco	Convention against the southern Peru gas pipelines project	09/06/2014	His vehicle was thrown into a river

