

3 February, 2009

Mr. Torsten Schakel, Secretary  
United Nations Committee on the Elimination of  
Racial Discrimination  
Treaties and Commission Branch  
Office of the High Commissioner for Human Rights  
UNOG-OHCHR  
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**RE: Follow Up regarding the Urgent Situation of the Achuar People  
of the Rio Corrientes region of Peru (74<sup>o</sup> session) (16 February - 6  
March 2009)**

Dear Mr. Schakel:

1. On behalf of the Native Communities of the Corrientes River Federation (FECONACO), the Racimos de Ungurahui Working Group (Racimos), and Forest Peoples Programme (Submitting Organizations), we would like to thank you for continuing to help us to obtain the assistance of the Committee on the Elimination of Racial Discrimination (CERD or Committee) to address the urgent and grave situation facing the Achuar People living in the Rio Corrientes (Corrientes River) region of Peru.
2. As you might recall, on January 10 of 2008, FECONACO and Racimos first informed the Committee of the serious violations of the rights of the Achuar Peoples living on the banks of the Corrientes River in Peru and requested its urgent attention pursuant to its early warning measures and urgent procedures. This submission and another dated June 2008 demonstrated that the gravity of the situation arises from irreparable harms caused by prior oil exploration, ongoing operations, as well as plans for future exploration. The ongoing violations and urgency of this situation also arises from the continued existence of discriminatory legislation, an inadequate legislative framework to protect indigenous peoples' rights in the context of hydrocarbon exploration, repeated encroachment on the traditional lands of the Achuar (including new oil concessions), and the State authorized pollution and engagement of hazardous activities within Achuar lands. All of this reflects a pattern of racial discrimination that has led to substantial harm to the members of the indigenous communities – particularly to their health, culture, and territories – and as a result placed them on the lowest social and economic indicators within the nation.

3. During the Committee's last session (73<sup>o</sup> session) in July/August of 2008, members of the Committee held a briefing with representatives from Racimos, FECONACO and Forest Peoples Programme regarding the situation and then subsequently heard in their plenary session directly from the Government of Peru. The Submitting Organization then sent to the Committee a follow up communication dated 8 February 2009 addressing three points raised in the briefing and subsequent hearing with the Government. These three points were: i) the implementation of the status of the Dorissa Agreement between the Government, the oil company PlusPetrol, and the indigenous peoples of Rio Corrientes represented by FECONACO; ii) the nature and representation of the indigenous organizations in Peru involved in the Rio Corrientes matter; and iii) the content of the Peruvian legal framework related to consultation, consent and participation processes with indigenous peoples.
4. ***Now in anticipation of the 74 session of the Committee to begin on 16 February, the Submitting Organizations would like to inform the Secretariat and the Committee that there have been no changes on the ground to report to CERD.*** Despite the concerns that the Committee expressed to the Government of Peru, no further actions have been taken on the part of the State to implement the Dorissa Agreement of October 2006 between the Government, the oil company PlusPetrol, and the indigenous peoples of Rio Corrientes designed to remediate the environment, attend to the health crisis of the community members, and reform the ongoing exploration activities of the PlusPetrol. The Government has also not taken steps to reform the Peruvian legal framework related to consultation, consent and participation processes with indigenous peoples. Additionally, the State has refused to place a moratorium on the initiation or continuation of additional activities related to the exploration and exploitation of oil in Achuar lands in lots 101, 102, 104, 106, 123, 127 and 143 until the health of the Achuar People and the natural environment in Rio Corrientes are restored, and the affected communities have granted their free, prior and informed consent to the same.
5. At the end of the last session (73<sup>o</sup> session) and in a letter to the Government of Peru dated 15 August 2008, the Committee expressed its continued concern for the situation involving the Achuar and the grave problems and irreparable damage that continue in their ancestral lands. In light of its concerns, *the Committee specifically requested that by 31 December 2008 the State submit further information as to the steps it is taking to resolve this situation along with a comprehensive periodic report encompassing its long overdue 14-18<sup>th</sup> reports to the Committee. The Committee further informed the State that its periodic reports would be reviewed during this next session scheduled for February.*
6. Based on our discussions with Marta Franco from the OHCHR, we now understand that the Government has submitted its overdue periodic report and an update on the Achuar, but the Committee has decided *not* to carry out its periodic review of Peru during its next 74<sup>o</sup> session. We understand that this may be due to

the time needed for the Committee to translate and review the report. Based on the Committee's current website postings, it further appears that Peru is also not scheduled for review during the Committee's 75<sup>o</sup> session as well.

7. We were most pleased that last July the Committee shared our concerns about the urgent situation facing the Achuar and created a space for the Achuar's representatives to share information about the State's failure to take the appropriate steps to remedy this grave situation and avoid ongoing and future violations through new petroleum exploration. We are concerned, however, that Peru is not currently calendared for a review.
8. For these reasons, we respectfully request that the Committee that the Committee place Peru on its calendar for examination and review no later than in its next session in August of 2009. As we have not seen the new information submitted by Peru, we further note that in the approval of new petroleum lots, Peru's "Reglamento de Calificación de Empresas Petroleras" (Regulation of Petroleum Company Qualifications),<sup>1</sup> require the State to take into consideration past experiences with oil companies and prior environmental practices with a view to improving the manner in which such exploitation takes place in the future and avoids harms. If the State's report to the Committee has not addressed the application of this law in their recent reports to CERD, we request that the Committee asks the State how it is implementing this regulation in the context of the new lots that the Government continues to carve out and grant within the Achuar territories. Further, attached at Annex A we have provided a list of the questions that the Committee put before the Government after its presentation last July. If the State's recent report does not address these questions, we respectfully request that the Committee remind the Government that it still seeks a response to these inquiries. To the extent that these questions are not addressed in the new communications from the State, we ask that the Committee request that Peru provides responses to these issues before its full examination and periodic review before the Committee hopefully during its next session. To facilitate the Committee's understanding of the situation of the Achuar, the Submitting Organizations also offer in Annex B several additional questions that the Committee might ask of the State as well.
9. Please know that when the Submitting Organizations obtain a copy of the State's new communications (we will request this from the Government of Peru in the meantime), and the Committee places the State on its calendar for examination of its periodic reports, in advance the Submitting Organizations will provide the Committee with an additional update and useful commentaries on the State's report to improve the Committee's understanding of developments on the ground in Rio Corrientes and nationally. Indeed, as Committee member Patrick Thornberry, correctly pointed out in July, the case of the Achuar is one that will have an impact on all indigenous peoples throughout the Amazon and throughout Peru.

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<sup>1</sup> Decreto Supremo, N° 030-2004-EM (2004), see in particular article 5(3) and 11.

10. The situation of the Achuar people and their environment remains quite urgent. For these reasons we request that the Committee continue its review of this situation during this 74<sup>o</sup> session given that the Achuar People are very sick and need immediate medical treatment, the scale of devastation of the environment and its continuing contamination is alarming, and the impact that the resolution of this matter will have on the entire Amazon. Therefore, we respectfully request that the Committee takes the necessary actions during its February session to encourage the Government to take all necessary measures to remedy this matter immediately and respond promptly to any outstanding matters it has not briefed the Committee's prior requests for information. At a minimum, we request that the Committee recommend to the State that it:

- a. take immediate steps to fully implement the Dorissa agreement;
- b. provide, consistent with paragraph 8 above, further information to the Committee as to the steps it has taken to improve the health of the Achuar people and their environment and to avoid such harms in the future (this should include a qualitative analysis of the actual impacts of these activities);
- c. consult with FECONACO and Racimos on legislative and policy reforms to address the deficiencies in the internal legal framework related to consultation and consent of indigenous peoples to matters that affect them; and
- d. order a moratorium on additional exploration in the Achuar indigenous lands until full titling of their territory takes place and the activities which have caused them harm and threaten continued irreparable harm are properly addressed.

11. Once again, we thank you for the attention to this urgent and grave situation. If the Secretary or Committee members require any additional information, please do not hesitate to notify the undersigned.

With great respect and appreciation for your work,



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**ANNEX A**  
**Questions Asked of the Government by the  
CERD Committee Members on 6 August 2008<sup>2</sup>**

1. Has the Government of Peru established the impact of the pollution in Rio Corrientes to the environment of the nation and does the Government have a nation-wide platform related to its policies and the directives under Kyoto? What consideration have you given to the development of sustainable economic activities as an alternative to oil exploration? (COMMITTEE MEMBER name unknown to drafter [GOUTES?])

2. Please provide more information about the current implementation status of the various provisions of the Dorissa Agreement? (SICILIANOS)

3. The Government indicated that prior to beginning oil companies activities informational workshops and prior consults are conducted. Please advise whether these take place after the oil lot has been defined by the Government and it has signed a concession with a company so that the important decisions have already taken place? (CALI)

4. As interpreted previously by this Committee, Article 5 of the Convention provides that indigenous peoples have the right to free, prior and informed consent, good faith consultation with a view to arriving at agreement or achieving consent is also required by ILO 169. We would like to know more about the consultations that Peru has conducted with indigenous peoples. Were they conducted according to Article 5 and ILO 169 prior to the taking of decisions and in good faith? Please also tell us what information was shared with the affected communities during these consultations? (CALI)

5. We understand that in March of 2006 you passed a regulation requiring oil companies to now re-inject the production waters in the wells from which they were drawn. Is this law retroactive, does it apply to oil operations that were already in operation at the time of the law's adoption? (CALI)

6. The Government spoke of a Health Plan with respect to the Rio Corrientes area and the Achuar People, and described it as largely implemented. Is this true? Was there a proper understanding by the Committee that the plan is 10 years old but that Peru only implemented it in the past 2 years? Can you provide the level of funding that has been dedicated to this plan? (CALI)

7. We understand that the production waters discharged into the Rio Corrientes have salt levels much higher than the sea as well as other derivatives of the oil production creating an environmental disaster that may not be recoverable so easily. How does the Government propose to recover this environment in just one year—as stated during the delegation's presentation before the Committee? (CALI)

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<sup>2</sup> All attempts were made to present the question as offered by the Committee member.

8. In Peru, who is control of this dialogue about development with indigenous peoples that must take place at every stage of the production process including the design, the conception of the project, the implementation, oversight, the distribution and redistribution of the benefits of what is being mined, remediation and compensation? (DIACONU)
9. When there is no agreement and the indigenous peoples seriously object to the activities – would the state and the companies involved abandon the project? Are there examples where the state and the companies, after considering indigenous peoples concerns about a particular drilling or mining activity, have cease to carry out that activity because of local population concerns? (DIACONU)
10. Why is the situation in Rio Corrientes still so serious from an environmental view and also very serious for the indigenous peoples living in these territories, if truly all of these Actas (laws) and measures and rules and regulations the Government described in its presentation have been enacted? Have they actually been put in practice or are they just laws on paper? (AVTONOMOVO)
11. With respect to the various federations and organization referred to by the State, do they represent all or just parts of the indigenous peoples concerned? The Committee understands that there are different organizations that work together with different communities with different interests and they can have different opinions. How does the state ensure that the dialogue is effective and that all those affected are properly represented? (AVTONOMOVO)
12. Please provide information about the actual *application* of the legislative framework the Government described to the Committee during its 73rd session. (THORNBERRY)
13. Please describe more fully the issues around participation in project development (including through traditional governance structures and which groups are being consulted) as well as the Government's treatment of the issue of free, prior and informed consent, community compensation, the remediation of damages, and respect for indigenous lands. (THORNBERRY)
14. Please describe more fully the organization and the mechanisms for dialogue between indigenous peoples and the state and in particular those employed with the Achuar communities. (MARTINEZ)
15. Are damages paid to indigenous peoples and indemnification when their lands are stripped from them or damaged? Can you give me an example of indemnification? (ABOUL-NASR)
16. Do the indigenous peoples of Rio Corrientes currently participate in the management and administration of the lands in which they live and were they granted indemnification for their lands? How does this take place? (ABOUL-NASR)

## **ANNEX B**

### **Additional Questions that can be placed before the Government for Treatment in its Pending Periodic Report**

- 1) In light of the re-injection commitments in the Dorissa Agreement for PlusPetrol's operations in the Rio Corrientes area, please inform the Committee as to the re-injection and discharge requirements for production waters in other oil operations currently being exploited throughout the Peruvian Amazon. Are all other operating lots currently re-injecting 100% of their production waters or are they discharging the waters directly into the environment as was the practice for lots 1AB and 8 for the past three and a half decades?
- 2) Please inform the Committee as to when the environmental assessments are done to establish the viability of carrying out an oil operation in a particular area. What provisions are there to include affected indigenous communities in the drafting of that assessment, and is there a separate social assessment completed, by whom, and via what process? Who carries out these studies -- government agencies, company parties or independent experts?
- 3) The Committee has received reports demonstrating that there have been significant oil spills in the Rio Corrientes area over the last two years. Please explain the Government's contention that the contamination and negligent practices are all historic?
- 4) We understand that under the Dorissa Agreement the indigenous organization of FECONACO conducts independent monitoring. Consistent with this agreement, what is the Government doing to facilitate this monitoring and ensure free access by PlusPetrol and no interference? Please inform the committee if there have been any instances when access for FECONACO to a site was restricted and if so, for what reasons and under what provisions of the Agreement?
- 5) The Government of Peru declared that all oil operations, including in Rio Corrientes, are currently being conduct in accordance with Peru's laws. Please explain what aspects of Peru's current environmental laws and laws regarding the rights of indigenous peoples permit oil exploration in protected areas, indigenous reserves, and areas reserved for uncontacted and voluntarily isolated peoples.
- 6) We understand that other countries, for many years and as a standard industry practice, have been re-injecting production waters resulting from oil activities. Please explain why the Government of Peru has been permitting these practices in indigenous territories for over three decades?
- 7) The Dorissa Act requires the State to conduct a thorough analysis of the health status of the members of the Achuar People and conduct an Epidemiological study. Has this work been completed and if so, can you please provide this Committee with a copy of the

reports? If it has not been done, what steps is the Government taking to complete this work and when does it expect to have these studies finalized?

8) During the Peruvian delegations presentation to the Committee on 6 August, it was mentioned that 48 informative workshops with indigenous peoples have been held to date with respect to the six new lots that were granted with respect to the Rio Corrientes area. Please provide the Committee with written information regarding the time and place of each of these informative workshops, the participants, the information that was provided (orally and in writing), the comments and observations of the participants, and the manner in which the Government and company responded to the comments and observations and considered them in its decision-making.

9) During its presentation the Government delegation reinforced its commitment to the rights of indigenous peoples, including their rights to their communal lands. Please provide documentation evidencing the free, prior and informed consent of indigenous communities within whose land a petroleum company is currently operation and if such exists, the additional agreement on compensation, mitigation, and benefit sharing that was reached with said communities.