

15 July 2022

Secretariat

Committee on the Elimination of Racial Discrimination (CERD)

Office of the High Commissioner for Human Rights (OHCHR)

UNOG-OHCHR

CH-1211 Geneva 10

Switzerland

Via: ohchr-cerd@un.org

**RE: Early Warning and Urgent Action Procedures:
Request for urgent action to respond to violations of the
territorial rights of the Kichwa people by exclusionary
conservation and carbon trading on their traditional lands
in the department of San Martín, Peru**

Dear CERD Members:

INTRODUCTION

1. The Ethnic Council of the Kichwa Peoples of the Amazon (CEPKA), the Federation of Indigenous Kichwa Peoples of Chazuta (FEPIKECHA) and the Federation of Indigenous Kichwa Peoples of the Lower Huallaga of the San Martin Region (FEPIKBHSAM), as well as the Coordinator for the Development and Defense of Indigenous Peoples of the San Martin Region (CODEPISAM), organisations of the Kichwa people in the San Martin region of Peru, along with Forest Peoples Programme (FPP) and the Institute for Legal Defence (IDL), as institutions that collaborate in solidarity with Kichwa communities and their organisations, respectfully submit this application to the Honourable Committee on the Elimination of Racial Discrimination of the United Nations (hereinafter "the Committee"). The submitting organisations request that the Committee consider the escalating threats posed by the imposition of a protected area and carbon trading project over Kichwa territories under its early warning and urgent action procedure at its 107th session (see para. 18 for specific requests).
2. In 2018, the Committee issued Concluding Observations on the combined 22nd and 23rd periodic reports of Peru and expressed its concern about the grave rights violations against Indigenous peoples. It recommended that the State, inter alia, ensure the protection of Indigenous peoples' rights to secure tenure over their traditional lands, territories, and resources; ensure that Indigenous peoples are consulted and their free, prior and informed consent ("FPIC") sought prior to the adoption of measures affecting their rights; and investigate and prevent acts of harassment, threats, and violence against Indigenous rights defenders.

The State has directly contravened the clear recommendations of this Committee and the rights violations against Indigenous peoples have continued to proliferate and escalate over the past four years.

3. In March 2022, FEPIKECHA, the Kichwa Native Community of Anak Kurutuyacu, the Kechwa Native Community of Santa Rosillo de Yanayacu, FPP and IDL submitted a request for urgent action to the Committee to reinforce a shadow report presented by the submitting organisations in 2018 and to respond to an increase in acts of structural discrimination by the Peruvian State. The 2022 request reported that, despite the recommendations issued by this Committee in 2018, Kichwa collective territories remain unprotected and no action has been

taken to move titling processes forward. Furthermore, the request exposed widespread and persistent structural racism by public officials against the Indigenous Kichwa peoples, resulting in intimidation, threats, and attacks against Kichwa defenders. Since the start of the pandemic, fifteen Indigenous leaders have been assassinated and the State has failed to investigate or punish the perpetrators in a single one of these cases. In addition, the State has continued to ignore the multiple complaints filed regarding the deforestation and destruction of untitled Kichwa territories.

4. The State's continued disregard for the rights of Indigenous peoples is evidenced in the situation of the Cordillera Azul National Park (“PNCAZ”) and REDD+ carbon offsetting project of the same name (“the REDD+ Project”), which affect at least 28 Kichwa communities (“the Communities”). Recent developments highlight how the State’s failure to comply with its obligation to protect and guarantee the Kichwa’s rights to property over their ancestral territories is being exploited for large-scale carbon trading, in order to perpetuate an exclusionary conservation model imposed on the Communities. These Kichwa Communities face structural discrimination, particularly with regards to the following points:
 - The failure over many years of the Government of Peru to legally recognise the Kichwa Communities’ existence, to uphold their collective rights as Indigenous peoples, including to self-determination, and consequently impeding them from being able to effectively exercise these; and in turn, the corresponding failure to delimit, demarcate and title the customary territories of the Kichwa people, including those Communities whose territories are now partially covered by the PNCAZ.
 - The imposition of an exclusionary State-protected area, the PNCAZ, since 2001, overlapping the territories of Kichwa Communities, resulting in significant restrictions on their use and access of natural resources within their customary lands, without the effective participation (including consultation and FPIC following the conduct of an environmental and social impact assessment) of the Kichwa Communities and other affected Indigenous peoples, including Kakataibo and Shipibo communities.
 - The violation of the Kichwa Communities’ right to benefit from conservation activities and participate in the administration and management of natural resources in their territories, as demonstrated by the failure to establish any benefit sharing mechanisms for the PNCAZ, and the failure to provide any compensation to the Communities for the infringements on their rights to use, manage, control, and access their lands and resources.
 - The imposition of a REDD+ Project since 2008 intended to finance the management of the PNCAZ via sales of carbon credits to national and international buyers and the subsequent sales of 30,778,542 credits for around US\$ 80,546,251.01 between 2008 and 2022, without the Kichwa Communities’ effective participation and without any benefit sharing. In particular, the Government of Peru authorised the sale of 16,880,000 carbon credits for US\$ 84,740,000 to Total Nature Based Solutions in March 2021, detailed below.
5. The submitting organizations therefore submit this request under the Committee’s Early Warning and Urgent Action Procedures (A/48/18, Annex III) to request that the Peruvian State take immediate measures to fulfil its obligation to guarantee the legal recognition of the Kichwa Communities’ traditional lands, including those overlain by the Cordillera Azul National Park and REDD+ Project; and suspend the imposition of restrictions on access to and use of the Park unless and until they have carried out adequate and appropriate consultations and sought and

obtained FPIC, including agreement on management arrangements, equitable benefit sharing and reparations for the damages caused.

VIOLATIONS OF THE KICHWA'S COLLECTIVE RIGHTS AND TERRITORIES RELATED TO THE IMPOSITION OF THE CORDILLERA AZUL NATIONAL PARK

6. After many years of constant struggle by the Kichwa Communities and in spite of this Committee's repeated recommendations, the Peruvian State, through the Regional Government of San Martin (GOESAM) and in particular its Regional Agrarian Directorate (DRASAM), still has not fulfilled its obligation to guarantee the protection of their territorial rights. The creation of the Cordillera Azul National Park has provided another avenue by which the State denies these territorial rights.
7. The State avoids accountability for failing to respect the Communities' territorial rights vis a vis the PNCAZ by refusing to recognise the Communities' existence. In fact, the State had not formally recognised any "*native communities*" in the vicinity of the park prior to the PNCAZ's creation¹, and its National Service of Natural Areas Protected by the State (SERNANP) continues to affirm that "*the PNCAZ does not overlap with any native community*"².
8. The PNCAZ was created in 2001 without a proper consultation process seeking the FPIC of those Communities whose ancestral lands the Park overlaps, including at least 28 Indigenous Kichwa communities, as well as Kakataibo peoples living in isolation. In the process of establishing the Park, there were weak social impact surveys that included a few unsystematic workshops carried out in the cities of Tarapoto and Tocache. Furthermore, the Park's limits were established in a top-down way, drawing from satellite maps and records of property titles by the former National Institute of Natural Resources (INRENA) and the Peruvian Association for the Conservation of Nature (APECO).
9. When the PNCAZ was created, Peru had already ratified ILO Convention 169 in 1995, so proper consultation was an obligation since then. In fact, the Constitutional Court of Peru, in foundation 23 of its sentence STC N°00025-2009-PI, subsequently clarified this obligation, therefore declaring as null all administrative and regulatory acts issued between 2 February 1995 and September 2011, the date on which Peru's Prior Consultation Law was enacted, which had omitted this consultation requirement.
10. One Kichwa community, Chambira, which the State only legally recognized as a "*native community*" in 2008, received a 'title' document in 2018. The community denounced this as a stark violation of the community's right to property because the community received the entirety of the lands recognised in the form of a "*cesión en uso*" leasehold use agreement, and not as property.³ Furthermore, the process for demarcating Chambira's traditional lands excluded all of the community's forest fallows, ancient forest trails and other traditional areas

¹ In line with the provisions of Decreto-Ley No. 22175 (Ley de Comunidades Nativas y de Desarrollo de la Selva y la Ceja de Selva), formal recognition as a "native community" is currently the primary established means by which Amazonian Indigenous peoples can obtain legal recognition by the Peruvian State.

² SERNANP response in CARTA N° 014 - 2022-SERNANP-AIP to access to information application lodged 31/01/2022 (CUT: 002692), File Tupa N° 0023-2022.

³ For a more complete legal analysis of the Peruvian State's use of such *cesión en uso* contracts, see the submitting organisations' 2018 shadow report to the Committee, specifically section *A.i. The discriminatory application of the "legal" framework of leasehold use contracts to indigenous lands – limiting, if not extinguishing, their property rights without due process.*
https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/PER/INT_CERD_NGO_PER_30812_E.pdf

which all remain within the boundaries of the PNCAZ.

11. Under the guise of maintaining the protected area, the Peruvian State has also imposed inappropriate restrictions on the use and access of Kichwa Communities to their customary territories. The Kichwa have reported many incidents when required to request permission to enter PNCAZ, where they have traditionally asked permission only from the natural landscape itself. This severely reduced access to their lands has limited the Kichwa Communities' ability to engage in a range of customary activities, including hunting, fishing, gathering of food and medicinal plants, and visiting spiritually significant sites. Kichwa Communities also face prohibitions on traditional practices such as hunting and *purmeo*, a form of agroforestry that involves rotation of crops and the formation of fallows. As a result of these restrictions, Kichwa communities are prevented from caring for the environment in the way that they have been doing for centuries and are also prevented from passing on traditional ecological knowledge to the next generation. These restrictions therefore exist in direct contravention of the Convention on Biological Diversity (preamble and Articles 8j and 10c), the AICHI targets related to protected areas (target 18), and other international agreements that acknowledge the essential role of Indigenous knowledge in effective conservation. Meanwhile, the State has not compensated the Kichwa communities for loss of their property rights or for the loss of use and access of their lands.

12. Attempts by Communities to secure judicial redress have proven ineffective. This situation is illustrated by the case of the Kichwa community of Puerto Franco. Puerto Franco has - like all the Communities impacted by the PNCAZ - suffered from the imposition of the State-protected area on their traditional lands since 2001, and was only legally recognised as a "*native community*" by the State in 2016. Considered now merely as a "neighbour" of the PNCAZ, Puerto Franco brought an *amparo* lawsuit against the State before the Bellavista Mixed Court in 2020, demanding that SERNANP:

i) carry out a consultation process to obtain FPIC for Supreme Decree 031-2001-AG that establishes the PNCAZ and its Master Plan (the administrative tool used to run the PNCAZ);
(ii) comply with the right of the native communities with which the PNCAZ overlaps to benefit from conservation activities in their territories;
(iii) instruct park rangers to allow community members from Puerto Franco and other affected communities to access their lands and natural resources and carry out their traditional subsistence activities until the consultation process is carried out;
(iv) comply with the right of the native communities over which the PNCAZ overlaps to participate in the management of the area in accordance with the right to self-determination, autonomy and self-government, recognized in international human rights law and international jurisprudence, including the American Convention on Human Rights and ILO Convention 169.

Despite having filed this case in the lower courts two years ago, the lawsuit remains pending with no timeline set for a hearing or decision.

13. Instead, the judiciary has been complicit in these rights violations, as Kichwa hunters have faced judicial proceedings for attempting to access their traditional lands and the confiscation of products obtained within the boundaries of the protected area.

IMPOSITION OF THE PNCAZ REDD+ PROJECT AND EXCLUSION OF KICHWA COMMUNITIES FROM DECISION MAKING REGARDING MAJOR CARBON SALES ON THEIR ANCESTRAL LANDS

14. Reduction of Emissions from Deforestation and Forest Degradation (REDD+) is a framework developed by the UNFCCC aimed at curbing forest-based emissions and implementing the Paris Climate Agreement in practice. At an international level, REDD+ consists of policy approaches and financial incentives for reducing emissions through conservation, sustainable forest management and forest carbon stocks; at the national level, it consists of governmental policies and interventions to facilitate the implementation of greenhouse gas reduction practices in the forestry sector. The PNCAZ REDD+ Project, launched in 2008, awards carbon credits to corporations and aims to protect a large expanse of lower montane forest in Peru. However, prior to the project's launch, FPIC was not obtained from any of the Indigenous Kichwa Communities involved, who have seen their collective—but untitled—lands lost to a “green” campaign on their ancestral homeland with few methods of recourse available. The Park is managed by Centro de Conservación, Investigación, y Manejo de Áreas Naturales—Cordillera Azul (CIMA) in conjunction with the Peruvian State, through SERNANP, with no leadership or managerial roles for Kichwa people. Outside of the managerial roles, the main actors are large international corporations, who buy carbon credits to “offset” their emissions elsewhere in order to avoid reducing pollution through their own business practices. Since 2014, more than \$30 million carbon credits were sold to corporations including Shell, BHP, and others. Of the more than \$80 million traded in carbon credits from the PNCAZ, no distribution of funds to local Kichwa Communities has occurred, and transparency regarding where the money has gone is non-existent.
15. In March 2021, CIMA entered an agreement with Total Nature Based Solutions SAS (TNBS) - part of the Total Energies corporate group, one of the largest oil companies on the planet—to purchase 16,880,000 tons of CO² in the form of Verified Carbon Units (VCUS) from PNCAZ. TNBS intends to hold these credits as a means of reaching “carbon neutrality” across its operations and has offered US \$84,740,000 to finance them. This represents the largest sale of carbon credits in Peru, and the largest to date among private buyers in the world. The contract, however, was drafted and signed between CIMA and TNBS without the knowledge or FPIC of the Kichwa peoples, other Indigenous communities in the region or representative Indigenous organisations at regional or national levels. Furthermore, despite the contract stipulating that CIMA is required to “*respect the internationally recognized human rights during the performance of activities within the Park, respecting those most vulnerable groups, including, inter alia, indigenous communities with respect to Free Prior and Informed Consent (FPIC)*” and “*carry out permanent due diligence activities to identify, prevent, mitigate, and implement contingency actions to address any adverse human rights impacts*”,⁴ this has not happened. The territorial rights, cultural survival and way of life of the indigenous peoples who live from the forest classified as the PNCAZ are to be put at stake in order for TNBS, a French oil mega-corporation, to be able to claim “carbon neutrality”. The contract also stipulates that surplus income from the carbon units will be deposited by CIMA into a trust fund as part of “financial sustainability” arrangements for the Park. However, it is unclear if Indigenous peoples will be beneficiaries to this fund, or if they will remain excluded from all aspects of the project, as they have been thus far.

⁴ 7.1, (h) and (i) of the “EMISSIONS REDUCTION PURCHASE AGREEMENT” between CIMA Cordillera Azul and Total Nature Based Solutions SAS, 3 March 2021.

16. Kichwa and partner organisations have faced immense difficulty accessing information regarding the REDD+ Project itself. A major example is when they tried to obtain the contract between CIMA and TNBS. In fact, the Kichwa only obtained details of this historic carbon deal recently in May 2022, after making repeated information requests to the Ministry of Environment, SERNANP and CIMA. After their initial requests were rejected, the Kichwa had to turn to a transparency court, which subsequently ordered that the information held by CIMA, as administrator of the PNCAZ, is public and that therefore it was obliged to share it. Nonetheless, when the information was obtained, it was consistently overly complex and difficult to understand. Currently, there is not even information regarding the areas within the Park where the REDD+ Project is being carried out. To date, the Kichwa Communities have no knowledge of how the money that reaches the PNCAZ is being spent, how many carbon credits have been sold, who the buyers of the credits are, who the beneficiaries of credit sales are, or if the communities located in the so-called buffer zone of the Park will receive any payments. This lack of information indicates the absence of accountability and transparency over implementation of conservation measures on the part of CIMA and SERNANP.

CONCLUSION AND REQUEST

17. The Kichwa Communities have tried in various ways to engage with the State to protect their collective rights. However, the State continues to act in defiance of this Committee and other human rights bodies' recommendations. Despite engaging in some discussions with communities, the State and particularly SERNANP continue to deny the Communities' rights to their traditional lands and resources and to effective participation in decision-making. Furthermore, attempts to use the judicial system to remedy this situation have made limited advances, and this situation is exacerbated by recent decisions by Peru's Constitutional Court which are contrary to international human rights law, indicating a lack of access to justice for Indigenous Peoples. Therefore, the situation demands greater international scrutiny to protect the Kichwa's collective rights and territories, prevent the loss of their cultural identity and ensure their survival as an Indigenous people.
18. In light of the above, and given the situation of structural discrimination by the Peruvian State experienced by the Kichwa Communities affected by the PNCAZ, the petitioners, on behalf of the Communities, urgently request the Committee to consider this situation during its 107th session and to take steps to communicate *urgently* with the State requesting that it *immediately*:
- 1) take immediate steps to fulfil its responsibility to recognise and protect the Indigenous territories of the Communities and take measures to protect these territories from actions by third parties, including its own officials, that would undermine their integrity, including ordering SERNANP and the Cordillera Azul National Park to allow the affected Kichwa Communities to proceed with the delimitation and demarcation of their traditional lands that have been overlapped by the Park;
 - 2) carry out a prior consultation process regarding the Cordillera Azul National Park and Cordillera Azul REDD+ Project, guaranteeing respect for the Kichwa Communities' free, prior and informed consent;
 - 3) take concrete steps to guarantee the effective participation of the Kichwa in the administration and management, including key decision-making roles and processes, of the Cordillera Azul National Park;
 - 4) ensure that Kichwa Communities and other affected Indigenous peoples share equitably in any benefits from the Cordillera Azul National Park, including compensation for the carbon

credits already commercialized and in progress, as well as recognition and compensation for the effective conservation role continuously played by the Communities through their territorial patrols and other forms of territorial protection and governance;

5) recognise and make reparations for the harms caused during 20 years of the exclusionary conservation model imposed by the Cordillera Azul National Park, by providing compensation for any losses incurred.

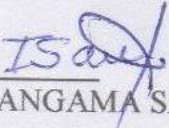
19. Furthermore, we request that the Committee notify the Special Rapporteurs on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, on the rights of Indigenous Peoples, on human rights and the environment, and on the promotion and protection of human rights in the context of climate change regarding this situation that we present, urging them to take immediate measures within their mandates to avoid this irreparable and imminent harm.

20. We thank you again for your urgent consideration of this matter through your Early Warning and Urgent Procedures. Please do not hesitate to contact us for further information and follow-up.



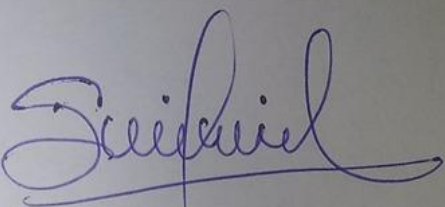
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