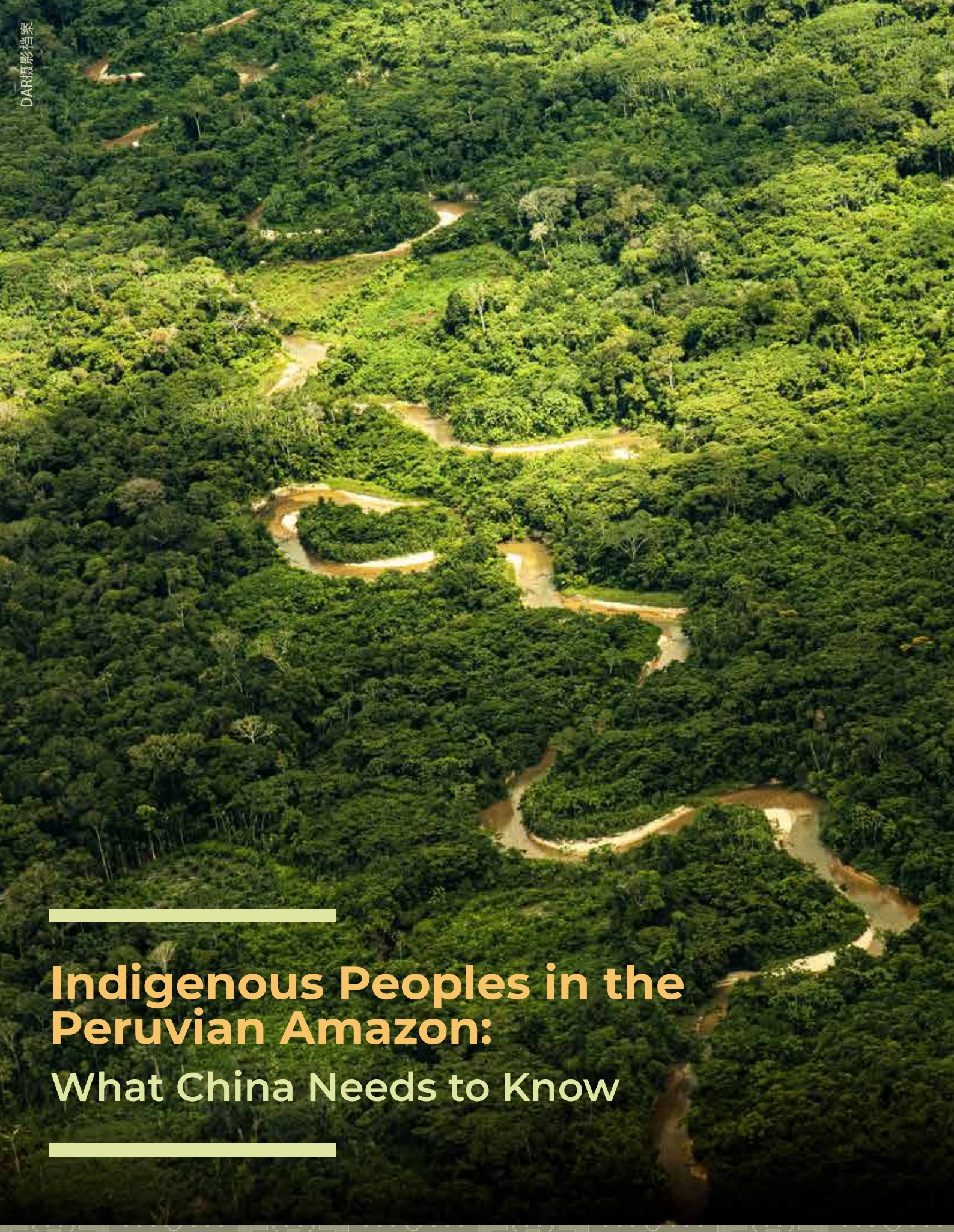


# Indigenous Peoples in the Peruvian Amazon:

## What China Needs to Know

秘鲁亚马逊地区的土著人：中国投资者需要了解的事项

**Indigenous Peoples in the Peruvian Amazon: What China Needs to Know**

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秘鲁出版

# Indigenous Peoples in the Peruvian Amazon:

## What China Needs to Know


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*Photo: Stephen Goddard*

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# EXECUTIVE SUMMARY

The relationship between China and Peru dates to the mid-19th century when Chinese workers, along with Japanese and East Indian migrants, entered Latin America and the Caribbean as contract workers. Since then, the relationship between Latin America and China has remained steady with Peru leading the way through the signing of the China-Peru Free Trade Act in 2009. Since the agreement took effect, Peruvian exports to China have amounted to a total of US$76 billion. In 2019, Peru joined China's Belt and Road Initiative, which promotes the integration of the Americas with Asia. While there is much optimism in Peru regarding the relationship with China, there is also concern regarding the effect these developments will have on indigenous populations and their way of living.

There are approximately 4 million indigenous people currently living in Peru, distributed among 55 different indigenous groups. Infrastructural developments in areas inhabited by these groups are threats to these indigenous groups' ways of living. With these concerns in mind, this handbook provides background information on some of the groups living in Peru to provide just a few examples of their diversity and traditions. It is essential that investors appreciate their unique status and their contributions to Peru's rich heritage. We then elaborate on the legal frameworks that grant them special rights and protections from a macro level, looking at the multilateral agreements of the United Nations which focus on the primacy of sustainable development and the championing of human rights. We then move to the rights that are codified in regional legal frameworks that protect indigenous livelihoods and the lands they live in. Lastly, we examine the national legal frameworks that enshrine the laws that govern indigenous territories in Peru.

We then present four case studies of Chinese-backed projects that have come in conflict with indigenous groups. The projects are the Amazon Waterway Project, the Las Bambas Copper mine, the Lot 58 natural gas field near Cusco, and the Bi-Oceanic Railway Integration corridor. We offer recommendations for how these conflicts can be addressed and note that they are likely to continue to evolve.

The handbook provides a primer for Chinese investors who might have plans to pursue development and extraction projects in these areas. It provides a guide for how they can proceed ethically in ways that are mindful of the legal rights of the indigenous people who have long inhabited the Peruvian Amazon. Such understandings are essential if the harmonious and mutually beneficial relationship between China and Peru is to continue now and into the future.

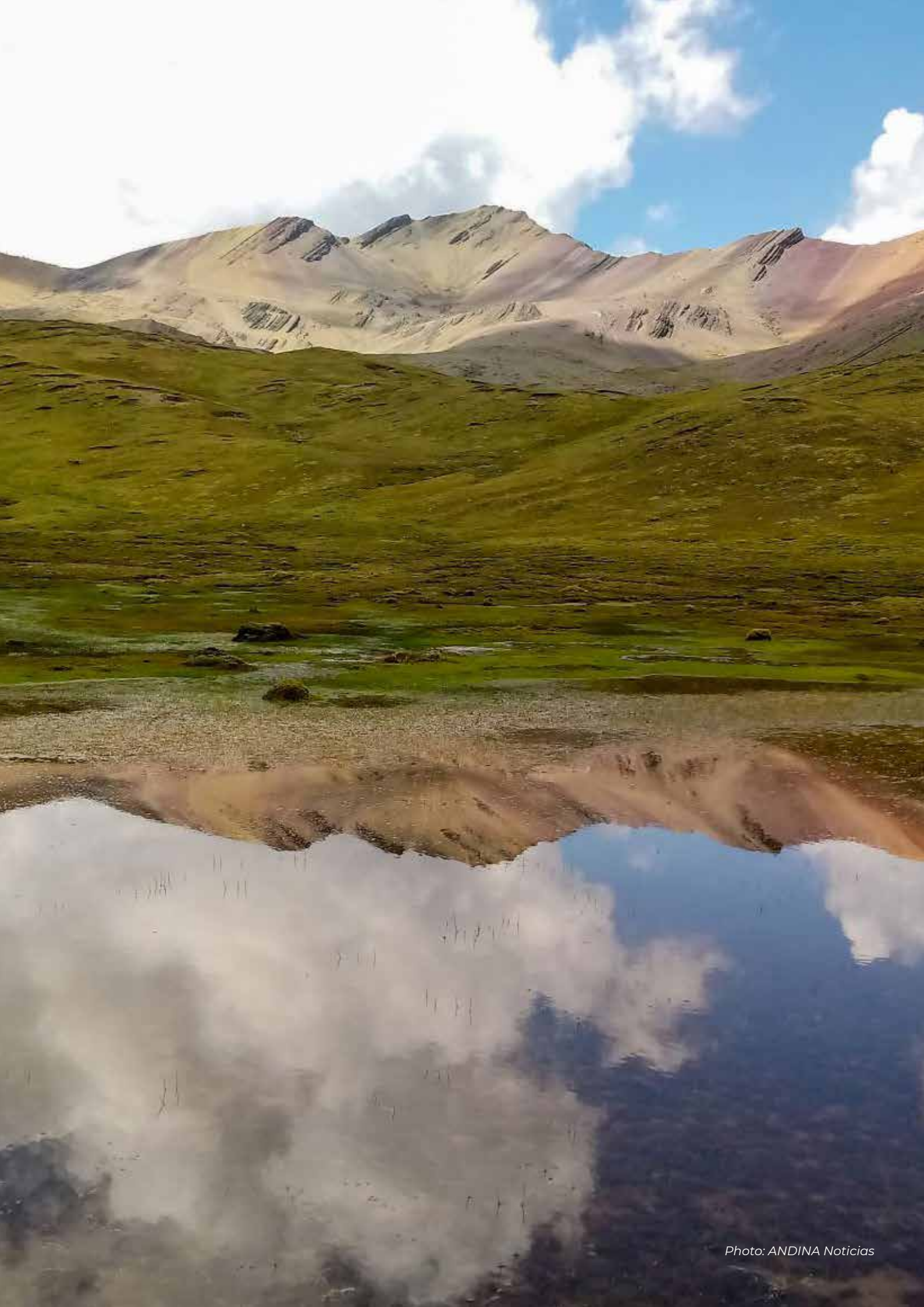

*Photo: ANDINA Noticias*

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# PREFACE

This Handbook explores how indigenous communities in Peru are affected by investment and development projects, particularly those funded by China. The intention is to help Chinese readers understand the particular legal and cultural challenges that external investors encounter when proposing and implementing projects on territories that indigenous people claim as their homelands. Since the concept of indigeneity is unfamiliar in the Chinese context, the conflicts over projects on their lands have often come as a surprise to Chinese investors. Moreover, many indigenous groups assert distinctive connections to nature and the non-human world, and some of those belief systems are starting to be recognized in legal systems in Latin America using terms like “rights to nature” and “rights of nature.” It is important to understand the basis for these legal concepts and, perhaps, to be inspired by them.

The Handbook was written by a team of American University graduate students from the School of International Service as a Capstone Practicum project. It was written at the request of Chinese environmental and human rights attorney Jingjing Zhang, for her China Accountability Project. The Project is working in partnership with Derechos Ambientes y Recursos Naturales (DAR) in Peru to provide legal resistance to the Amazon Waterway Project (AWP) which intends, with Chinese financing, to dredge parts of the Amazon to improve shipping, risking great expense to the natural environment and to the local indigenous people. DAR is also mounting resistance to the drilling for natural gas in the jungle on Lot 58 in Southern Cusco, led by the China National Petroleum Corporation (CNPC). We wrote this Handbook with the intention not only of assisting those who are trying to ensure that the projects abide by existing legal frameworks and are sustainable in the long term, but also to inform the selection of future projects such that they are selected and implemented only with the full consultation and support of the indigenous people who best understand the land.

The Handbook is divided into four main sections. First, it provides a brief introduction to indigenous groups in Peru, including their history, social structures, cultures, and ways of living. It also gives examples of how their environment has been affected by investments and development projects and it details specific efforts of indigenous groups to stop the exploitation of their land and assert their rights.

Photo: Rolando Mondragón/ DAR

Second, we provide a brief overview of Sino-Peruvian relations, from colonial times to the Belt and Road, including Chinese immigration to Peru and both diplomatic and economic relations.

Third, the legal framework is explained as it pertains to indigenous rights, with particular attention to Peru. The framework is presented in three parts, the international level, the regional level, and the national level:

The International legal system includes the United Nations Declaration on the Rights of Indigenous Peoples, United Nations Declaration on the Right to Development, Rio Declaration Principle 22, Agenda 21, and International Labour Organization (ILO) Convention 169.

The Regional legal framework includes declarations administered by the Organization of American States (OAS), a body of countries in the Western hemisphere formed to enhance peace and cooperation throughout the region. The OAS has established and promulgated declarations of human rights and indigenous rights for the region. Specific cases of alleged violations of such rights are examined.

The National level covers the legal framework within Peru that enumerates protections for indigenous and ecological rights. The section also includes an overview of China's history and investment in Peru. It then introduces the national-level legal concepts of rights to nature and rights of nature as they are recognized by neighboring national governments of Bolivia, Ecuador, and Colombia.

The fourth section presents informative cases and examples of China-funded projects that have come into conflict with indigenous groups. The cases include the Amazon Waterway Project, half of which is to be funded by Sinohydro; the Las Bambas copper mine partially owned by China's Mining and Minerals Group (MMG); Lot 58 funded by China National Petroleum Corporation (CNPC), and the Bi-Oceanic Railway Integration Corridor funded by the Development Bank of Latin America, with a potential future as part of China's Belt and Road Initiative. Finally, the handbook provides a concluding section with Observations, Recommendations, and Next Steps, with reflections on current Chinese development in Peru as it affects indigenous people.

*Photo: Persnickety Prints on Unsplash*

Sectione one

# The Indigenous Peoples of Peru

The adjective indigenous describes native people who are the first human inhabitants of a region. The term defines them as people who have a "connection to specific lands who have been adversely affected by incursions by industrial economies, displacement, and settlement of their traditional territories by others" (First Nations & Indigenous Studies Program, n.d., n.p.). Although there are various types of indigenous groups, they usually share a history of colonialism, and often struggle to maintain their cultural identity and survive the impacts of modern society.

By contrast, ethnic minorities are usually defined as groups of people that are of a "particular race or nationality living in a country or area where most people are from a different race or nationality" (Cambridge University, n.d., n.p.). According to the United Nations, an ethnic minority group fits specific criteria: "it is numerically smaller than the rest of the population; it is not in a dominant position; it has a culture, language, religion or race that is distinct from that of the majority; and its members have a will to preserve those characteristics" (United Nations, 2018, p. 97). Ethnic minorities differ from indigenous communities in that they are not necessarily the original inhabitants of the land.

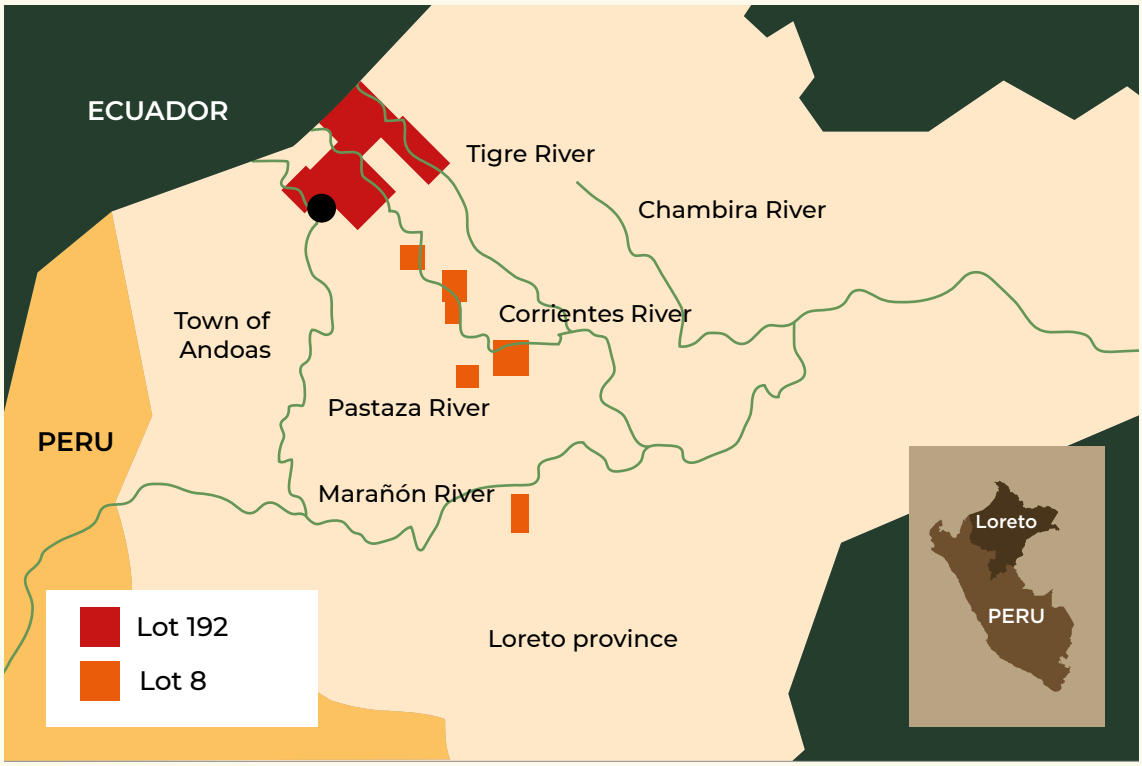
Indigenous people comprise a large portion of the Peruvian population. Out of approximately 30 million Peruvians, more than 4 million are indigenous people (IWGIA, n.d.). They belong to 55 different groups and speak 47 languages (IWGIA, n.d.). Most of the indigenous groups have various denominations within the group and are grouped as either an Amazon or an Andes village (BDPI, n..d.). In Peru, there is a nominal difference between peasant communities, which would include the Quechua community and others that inhabit the Andes, and the native communities, which are those that inhabit the Amazon. This difference is important because there are legal differences as well, despite the fact that both groups are recognized by criteria such as existence before the State and their cultural ties to the land.

This Handbook presents a background on just a few major indigenous groups so as to give readers a general sense of their deep cultural differences and long-standing traditions, as well as an understanding of their relationship with the land and the beliefs that guide their use of resources. At the outset, we discuss the widespread problems with land tenure rights, which lie at the root of many of the conflicts between indigenous people and outsiders, including foreign investors. We also introduce the key concept of Free, Prior, and Informed Consent which is supposed to govern outsiders' activities on indigenous lands, but which is often implemented poorly. A third key concept that we explain at the outset is that of uncontacted people, who are indigenous groups with little or no interaction with the modern world. These people are particularly vulnerable to disease for which they have no immunity and their languages and cultures are particularly precious and endangered.

# Land Tenure

Land title is a perennial problem for many indigenous communities whose presence on the land predates modern legal systems and has often been poorly recognized. In one case, the Quechua village of Nuevo Andoas in Loreto province (image below) became a construction site for oil companies, for whom the area was simply known as Lot 192 (Reuters, 2018). The Peruvian government viewed the land as "property of the state" (Oxfam, 2016) and refused to consult with the community. The fact that indigenous people were not able to gain collective title over their land allowed the Peruvian government to exploit their territory, and Lot 192 became the largest oil site in Peru (Zaitchik, 2017). While the Quechua people in Nuevo Andoas had demanded title to their territory, instead they were compensated with 3.5 million Peruvian soles, which was equivalent to about US $1 million (Oxfam, 2016).

The land rights of indigenous people continue to be challenged by the Peruvian government's attempt to change the legal status of the Kugapakori Territorial Reserve, Nahua, Nanti (RTKNN) from "Territorial Reserve" to the weaker category of "Indigenous Reserve." Through a Supreme Decree in 2003, the RTKNN was guaranteed territorial protection from outside exploitation and economic activities. However, this protection is under threat with the move to make it an "Indigenous Reserve," which would allow future resource exploration on the land if the government deems it a "public necessity" (DAR, 2019a).




**Map of Loreto Province.** *Image source: The Intercept (Zaitchik, 2017)*

## Free, Prior, and Informed Consent

Free, Prior, and Informed Consent (FPIC) is a specific right that is supposed to be guaranteed to all indigenous people and is recognized under the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Based on the International Labor Organization's Convention 169, the law grants indigenous communities the right to be consulted on infrastructure projects that affect their communities and livelihoods. However, the law has been criticized by indigenous groups for not granting veto power over projects that could significantly impact their livelihoods, and it is also bedeviled by a lack of clarity regarding which groups qualify as indigenous.

The FPIC law is supposed to allow indigenous peoples to give or withhold their consent to any activity or project that may affect them or their territories (FAO, 2016). Moreover, even once indigenous communities have given their consent, they may choose to withdraw it at any subsequent stage of the activity. Therefore, FPIC gives indigenous communities the ability to monitor and evaluate how activities on their territories impact them, and protects them from damages that may occur. FPIC also allows indigenous communities to negotiate the conditions under which activities on their territory will be designed, implemented, monitored, and evaluated (FAO, 2016). FPIC is required when indigenous people's rights, survival, dignity, and well-being are affected by activities on their territories. Under Article 19 of the UNDRIP, "States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them" (United Nations, 2007). However, there is no clear consensus as to when FPIC must be obtained, with some arguing that any activity concerning indigenous communities demands FPIC, while others argue that only matters of vital importance demand it (Portalewska, 2012).

## Uncontacted People

Uncontacted people are indigenous people who are not connected to the world outside of their communities. The global majority live in the Amazon region (Survival International, 2019), including pockets of remote communities in Peru. Many purposefully avoid such contact in order to avoid diseases, protect their environment from exploitation, and preserve their culture from foreign influence. In Peru, these communities mostly live in the forest, in areas of Madre de Dios, Ucayali and Cusco. They are believed to speak dialects of the Pano language family, although there are no written records. Because their environment contains valuable resources, oil and mining companies often seek to exploit their land and they become vulnerable.

There are many accounts of harm towards uncontacted people due to exposure to outsiders. One example is when commercial companies and missionaries' outreach to the jungle-dwelling Yora indigenous group in 1970-1980 resulted in widespread death from disease (Bedoya, 2004). A more recent example is in 2012, when Canadian oil company Pacific E&P started prospecting the land of the Matsés people, who reside in the Amazon jungle near the border of

Brazil. After pressure from indigenous organizations, the company withdrew in 2017 (Survival International, 2017). Uncontacted people won protectection that year. In December 2017, a multi-sector commission recognised "the existence of the indigenous peoples in isolation" (Hill, 2018, n.p.). The commission represented Peru's Ministry of Economy and Finance, Ministry of Development and Social Inclusion, Central Reserve Bank, Bank of the Nation, and the banking, pension-fund and insurance supervisor (BBVA Microfinance Foundation, 2014). The Peruvian government is creating two reserves in the Amazon, Yavari-Mirin and Yavari-Tapiche, specifically for uncontacted people. This process has taken years and is credited to the work of indigenous advocacy organizations such as CEDIA (Centro para el Desarrollo del Indígena Amazónico).

The Indigenous Peoples in Isolation and Initial Contact (PIACI) of the RTKNN are also under threat of exposure from the outside world. Due to the Peruvian government trying to change the legal title of the RTKNN, the reserve will open to economic activities (DAR, 2019a). As a result, the Inter Ethnic Association for the Development of the Peruvian Jungle has submitted a request for protection for the reserve (DAR, 2019c). We now turn to an examination of several other indigenous groups who do not belong to the "uncontacted" category, the Quechua, the Ashaninka, and the Aguaruna. These are just a few of numerous such peoples found in Peru.

Other indigenous groups include Achuar, Aymara, Shipibo, Huambisa, and Machiguenga (Minority Rights Group International, n.d.). Many of them have also experienced resource exploration. The Machiguenga people in the Amazon region ran into issues with international oil companies backing the Camisea Gas Project, where oil pipelines have leaked on their land multiple times (Hearn, 2007). In another case, the Shipibo people won over gold miners in Peru's Constitutional Court, which affirmed indigenous people's right to control who has access to their land (Survival International, 2012). Indigeneity is very diverse in Peru, but the Handbook will focus on the Quechua, Ashaninka, and Aguaruna people.

*Photo: COMARU*

# THE QUECHUA

*Photo: ANDINA*

One of the largest indigenous groups in Peru is the Quechua, who live in Peru, Ecuador, and Bolivia. The Quechua make up approximately 80% of the indigenous population in Peru with about 3.4 million people (IWGIA, n.d.). The Quechua primarily inhabit mountain regions, with a portion of the population migrating towards urban areas (Ministry of Culture of Peru, n.d.). While the quechua language has been used to distinguish this group from other indigenous groups, the Peruvian government specifies that language should not be the only identifier of indigenous persons and is not an "essential condition" for being indigenous (Ministry of Culture of Peru, n.d.). In the late 1960's during the military government under Juan Francisco Velasco Alvarado, the term used to describe the Quechua and a majority of indigenous groups shifted from indio (Indian) to campensino (peasant), when the government started to classify indigenous groups by class instead of ethnic background (Saroli, 2011).

## Governance

The Quechua have developed their pre-Hispanic community organization (known as ayllu) into a form of collective and territorial organizations known as 'comunidades campensinas' or peasant communities (Saroli, 2011; Skar, 1988). According to Peru's Ministry of Culture, through La ley de comunidades campensinas (Law of Rural Communities of 1970), the leadership in these collective organizations democratically elects new leaders every two years. They are responsible for governing collective affairs and maintaining communication with the national government. Community leadership comprises between eight and fourteen positions including a president, secretary, treasurer, and a community prosecutor. The community leaders must respond to the community assembly, which meets at least twice a year and has the highest decision-making power. These communities hold collective ownership of their territories and allow members access to land for cultivation of crops and as pasture for animals. Through the use of provincial or regional authorities, many Quechua communities bring together community associations and organizations from the local to the national level (Ministry of Culture of Peru, n.d.).

Quechua people are further divided into a set of sub-identities, which include Cañaris, Chankas, Chopccas, Huancas, Huaylas, Kana, and Q'eros. During the Inca empire, they did not have a centralized government. The organization changed through colonialism, whereby the Spanish forced them to settle into "Indian villages" in order to assimilate them into Spanish forms of government for political and social control. Today, they have evolved a local organizational system that consists of "varayoqs," or people wearing traditional embroideries (BDPI, n.d.). This system includes roles for community members to tend fields, practice rituals, and hold political positions. Despite colonialism, Quechua people have retained many elements of their culture and continue to preserve it through ritual practices of music, dance, religion, and healing (Coombs, 2011).

## Language

The Quechua language is spoken by at least seven to eight million people in South America, three million of whom reside in Peru (Rivera, n.d.). It is the most widely spoken indigenous language in Peru (IWGIA, n.d.). The language has at least nine dialects and is grouped into two categories: Quechua I and Quechua II, represented by geographic locality. The first group is located in the center of Peru and the second in the northern and southern regions. However, the language has faced challenges in being maintained as a result of colonialism.

## Impacts of Colonialism and Efforts for Quechua Restoration

The Quechua population has decreased due to colonial violence inflicted upon the community by the Spanish, who ruled Peru from 1532- 1821 (Peru Information, n.d.). Moreover, since Quechua is mainly a spoken language,

there are few written records. As a result of societal pressures, it has been difficult for the indigenous group to preserve their language. Native Quechua speakers tend not to teach younger family members how to read, write, or even speak the language. In the early 1900's, about 60% of the Quechua population spoke Quechua, which decreased to only 15% in the early 2000s (BDPI, n.d.). UNESCO has declared the Quechua language as vulnerable, even endangered in some parts of the country (The World Bank, 2014). In recent years, Quechua people have organized themselves to teach their language and indigenous knowledge in their schools (Huaman and Valdiviezo, 2014). The Peruvian government has tried to be more accessible to Quechua speakers by creating a helpline for Quechua and Aymara speakers (Saroli, 2011). There have also been proposals to amend the Peruvian Constitution to include "an autonomous Quechua-speaking and Aymara-speaking zone in the southern department of Puno" (Saroli, 2011, p. 325), where the indigenous language is declared the official language of the area and outlines "the state's obligation to protect and promote these languages" (Rousseau and Dargent, 2019, p. 171).

The legacy of colonialism is responsible for racist depictions of indigenous people in the Peruvian media as well as their lack of representation more generally. The majority of television producers are of European heritage and portray mainly white characters. When indigenous characters are included in television shows, they are mocked and wear stereotypical attire that homogenizes all indigenous people. Oftentimes non-indigenous actors with light skin will play indigenous roles (Pagán-Teitelbaum, 2012). However, while the Quechua people have struggled for representation in Peruvian society, there have been some positive changes recently. In 2016, a national news broadcaster aired a show in Quechua called Ñuqanchik (all of us) (Collyns, 2016). This was created to increase Quechua representation in the media (Al Jazeera, 2018). This platform in a native language offers news to Quechua people who are neglected by mainstream media.

*Photo: ANDINA Noticias*

使用盖丘亚语的人口情况（70-74岁）
(2007年人口普查)

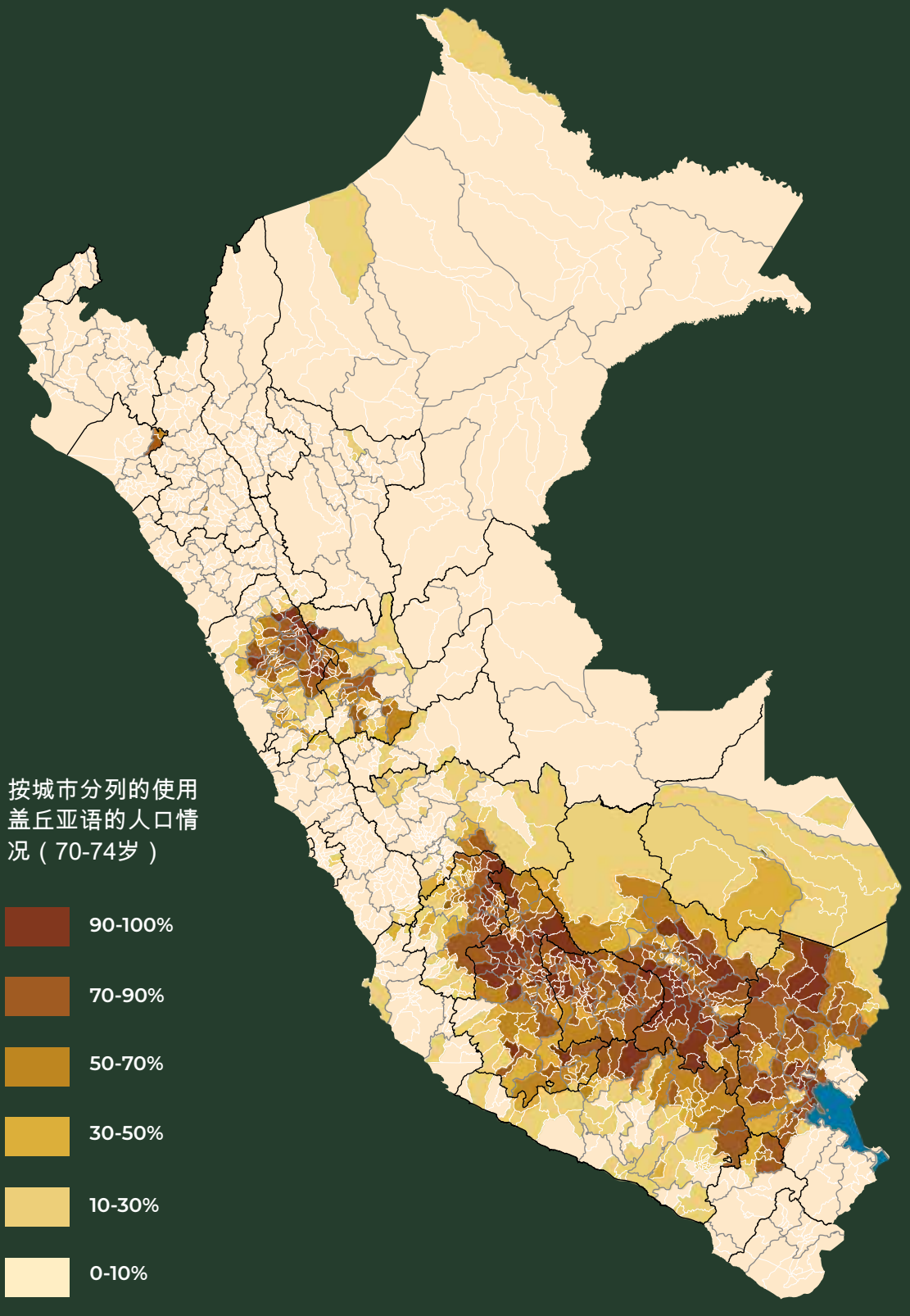


*Photo: ANDINA Noticias*

## Quechua and Nature

The natural environment is an important value in many indigenous cultures. For Quechua people, "pachamama," "Apus," and "mamacocha" (meaning Mother Earth, spirit of the hills, and mother of the waters), are considered to be supernatural beings (BDPI, n.d.). The Quechua people turn to these spirits when practicing their rituals and magical healing.

In modern times, the Quechua people have suffered from exploitation of resources on their land since the 1970s. In particular, companies conduct oil-drilling activities, which have led to detrimental effects to human health and environment. Contaminated waste water and crude oil have been disposed into the rivers, polluting the water system (Oxfam, 2016). As noted above, Loreto, the largest region of the Amazon rainforest in Peru, has been especially vulnerable to oil extraction. Due to the exploitation of their land and resources, the Quechua people protested against this in 2017. Along with other indigenous groups the Achuar and Kichwa, they pressured the Peruvian government to sign the FPIC agreement which provides indigenous people the right to consultation on activity on their land, a commission to clean the site, and health care to those affected by contamination (Land Rights Now, n.d.).


**Source:** (Only Peru Guide)

# THE ASHANINKA

The Ashaninka people are one of the largest indigenous groups in South America. Their name means “our kinfolk” or “our fellows.” They are also known by the name “Campa,” although this is considered derogatory since it is derived from the Quechua word “thampa,” which means dirty (Salles-Reese, n.d.). This group is considered to be pre-Inca (before 1200 AD) and has an estimated population of anywhere from 10,000 to 50,000 (Pimenta, 2005). The variety in estimates is mainly due to the strong migratory trends that are typical of Ashaninka society. The majority of the Ashaninka reside in Peru, but there are some in Brazil as well. Most Ashaninka people survive through agriculture by growing coffee, achiote, and cocoa, as well as selling wood, hunting, and fishing. The Ashaninka belief system is deeply ingrained in a connection to the natural world, shamans, and faith in the spirits in the land (Buesst, 2016).

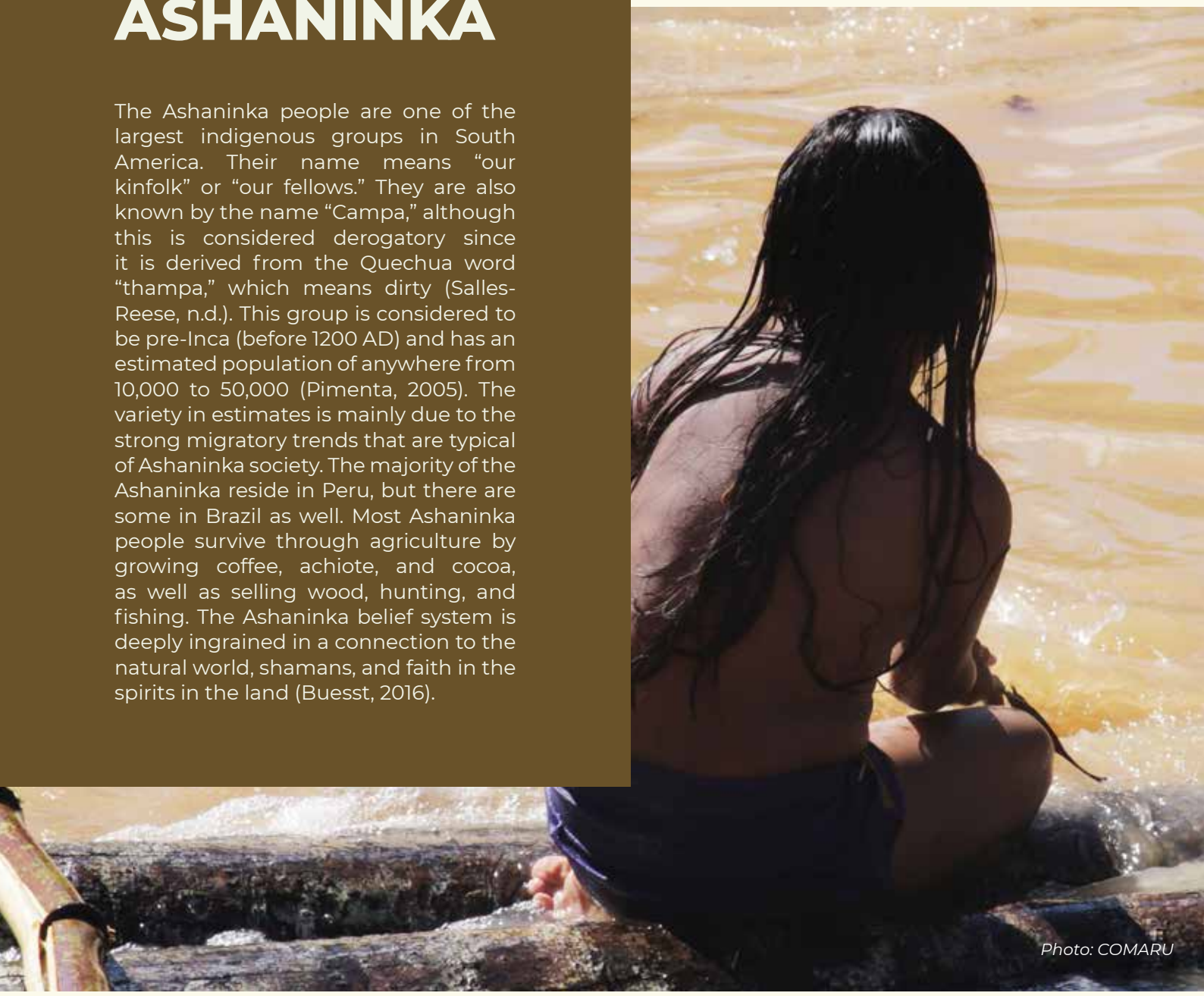


*Photo: COMARU*

## Governance

Originally, Ashaninka land rights were subject to parental ties but today, according to CARE, each community “constitutes a unitary construction, and each member enjoys the same rights to take advantage of resources and open plots throughout their territory.” They have their own Communal Government structure. The three branches are the Board of Directors, the Self Defense Committee, and the General Assembly. The Self Defense Committee handles security functions and sanctions, while the Board of Directors is in charge of operational activities and represents the group for the Peruvian State or other organizations (CARE, n.d.).

## Language

The Ashaninka language is considered to be a part of the pre-Andean Arawak linguistic family (Pimenta, 2005). This is the largest language family in South America, and encompasses several dialects. It is the official language of Ashaninka people alongside Spanish in some regions. Most of the population remains monolinguistic until they attend school, where Spanish instruction is given. Despite this, the literacy rate among Ashaninka ranges from 10% to 30% (Salles-Reese, n.d.).

## Impacts of Colonialism

The Ashaninka have been known to be aggressive and successfully defended their land and culture from the beginning of the Spanish colonization of Peru. First contact with the group was made in 1595, and there were numerous attacks by the Ashaninka on missionaries over the period of the next hundred years and the Spanish had little success to conquer them. For most of the next century, Ashaninka territory remained unknown and inaccessible to Spanish colonizers (Pimenta, 2005).

## Period of Violence

During the 1980's and 1990's, Ashaninka territory was the site of battles between the Maoist insurgent group called the Shining Path and the Peruvivan armed forces. The Ashaninkas were ruled by the guerrillas for most of the conflict, which resulted in devastating losses (Pimenta, 2005). A Truth and Reconciliation Commission published its findings in 2003, estimating that 6,000 Ashaninka had been killed, 10,000 had disappeared, 5,000 had been captured by the Shining Path, and 40 communities had ceased to exist (Buesst, 2016).

As a result of this violence, in 1993 CARE (Asháninka Central of the Ene River) was created in order to "build a political instrument to organize the recovery of abandoned territories and to rebuild their lives." This organization represents 18 Ashaninka communities and 33 annexes of the Ene river basin. Since 2005, the organization has focused on "promoting socio-economic development through the management and sustainable use of their natural resources, based on principles of justice, equity, solidarity, innovation and respect for the knowledge and skills of the native communities in the Ene river basin" (CARE, n.d.). The conflict disrupted the traditional social organization of the Ashaninkas and they shifted from living in large nomadic family groups in the forest to living in established settlements.

# THE AGUARUNA

*Photo: DAR*

The Agurana are a native people of the upper Amazon, centered around the Alto Mayo region, a protected forestland of northern Peru. While the origins of the Aguaruna are unknown, permanent settlements along the Alto Mayo region and the Alto Mayo forest have been used as hunting territory since the early parts of the twentieth century. Most Aguaruna settlements are found in the lowlands and lower highlands along the rivers and smaller tributaries (Brown, 2007). The native population is essentially river dependent and houses are clustered by the banks. The typical form of travel is by canoe and balsa raft. The Aguaruna subsistence system relies on a mixture of agriculture, fishing, and a collection of forest products (Siverts, 1972).

A majority of Aguaruna homes are organized so as to form neighborhoods. Women in the house typically end up feeding more people than just those living there, as visiting and sharing are common. Aguaruna communities are linked by family and marital ties, and kinship networks form within the Aguaruna clusters. Breaks in kinship chains occur only because of manslaughter or an ongoing feud. Within these communities, political authority is formally vested in a village headman who represents the community in inter-village meetings and in relations with government agencies (Siverts, 1972).

Among Indians and non-Indians, the Aguaruna have a reputation for ferocity. This kept them from being incorporated fully into Peruvian national society until the late 1950s. The Aguaruna were among the few Peruvian groups that were never conquered by the Incans. Their reputation for ferocity is rooted in cultural values that put a primacy on adventure and heroism (Medina, n.d.). For Aguaruna men, exposure to danger

Photo: COMARU

and a contempt of death are prized virtues. A similar attitude is expected of women. Freedom is highly valued within Aguaruna society; Aguaruna come and go as they please. Hunting and war are frequent pursuits, and these endeavors are carried out communally. Given the primacy that the Aguaran put on community, labor and work are also meant to be communal activities. People are invited to participate in work projects such as building or moving and at the end, masato, a fermented drink made from yuca, is consumed in a masateo—a masato-drinking, singing and dancing feast (Siverts, 1972).

The Aguaruna have become increasingly involved in mainstream Peruvian culture and have moved to producing cash crops such as rice, coffee, and cocoa. Unfortunately, they are also involved in many land disputes which put them in contention with the Peruvian government. While the Peruvian Constitution grants citizenship to all persons born within the national territory, there are many bureaucratic barriers to citizenship. Legal confirmation of individual rights and obligations is based on conditions impossible to fulfill by the majority of Indians in tropical forests. Often the Aguaruna have to contend with colonizers, who are immigrants granted title to a plot of land which does not have recorded title. The Aguaruna see the colonists as having no right to their native land. Protestant and Catholic institutions have operated in the area and tried to offer primary school education programs that provide indigenous children with knowledge of Spanish and other useful skills (Siverts, 1972).

*Photo: ANDINA Noticias*

Section two

# The Chinese-Peruvian Relationship

China and Peru have a longstanding relationship dating to the mid-19th century, with the influx of Chinese workers to Peru. This section delves into the history of the Chinese diaspora in Peru. Then, we discuss the political relationship between China and Peru and its implications for trade and the economic investments of Chinese companies in Peru. We conclude with concerns about the Belt and Road Initiative for indigenous people and the environment.

# The Chinese Diaspora: History of the Chinese Community in Peru

In the mid-19th century, large numbers of Chinese, Japanese, and East Indian migrants came to Latin America and the Caribbean. Most of the Chinese migrants went to Cuba, Mexico, Peru, and parts of Central America (Hu-Dehart, 1995). The decline of the African slave trade and rise of capitalism increased the flow of Chinese workers into Peru. Between 1849 and 1874, more than 100,000 Chinese "coolies" or contract workers, in substitution for the slave laborers who were emancipated in 1854, migrated to Peru (Coolie Trade in the 19th Century, 2015). Under British rule, Peru needed cheap labor (Hwang, n.d.). Great Britain's termination of the slave trade to Peru in 1810 was a reason for the limited labor force in the country. Between 1839 and 1851, 450,000 pesos were paid by the government to subsidize immigration at the rate of 30 pesos per immigrant. China was a good source of laborers because the Chinese government was relatively weak and unable to protect its citizens from the harsh conditions of contract labor overseas (Hwang, n.d.). In 1876, Peru counted a significant number of Chinese people, 49,956 out of the overall 2,699,160 population; however, nearly half of the Chinese people brought to Peru died of ill treatment, suicide, or exhaustion (Hwang, n.d.). The majority of Chinese workers came under eight-year contracts and were male. Many of the first coolies worked to collect guano, or bird excrement, off the coast; guano was valued by the British as natural fertilizer for sugar and cotton plantations. Afterwards, Chinese contract workers worked in these plantations (Hu-Dehart, 1995).

In the 1870s, Chinese workers who had finished their contracts worked at plantations, and some escaped coolies cleared the Peruvian Amazon for land cultivation; they introduced rice, beans, sugar, and other crops (Hu-Dehart, 1995). They helped build the Amazonian city of Iquitos and served as culture brokers between the newcomers (mostly Europeans) and the indigenous people. In general, the government of Peru was unconcerned about the abuses of Chinese laborers. But in 1874, Peru and China signed a Treaty of Friendship and Commerce which ended the human trafficking of coolies and gave Chinese migrants legal status in Peru (Lausent-Herrera, 2012). In 1887, a special commission made up of Chinese and Peruvian officials inspected the living conditions of Chinese workers in plantations (Hwang, n.d.).

The end of the coolie trade gave rise to another kind of Chinese immigrant: merchants, artisans, and commercial employees (Lausent-Herrera, 2012). Chinese contract workers during the coolie trade had been the foundation of the Chinese community in Peru; then it became the Tusans, who were Peruvian-born with Chinese parents, and eventually the community of mixed blood (Lausent Herrera, 2012).

# New Chinese Immigration to Peru

Between 1950 and 1955, Peru limited the number of Chinese migrants into the country for fear of Communist ideology. In 1981, however, because of China's economic reforms and the international recognition of the People's Republic of China, a new wave of Chinese migrants began to arrive, mainly Cantonese who

arrived as tourists. Some of their statuses were legalized through purchase of national identity cards through corrupt Peruvian officials (Lausent-Herrera, 2012). Most of the Chinese migrants were undocumented.

There are multiple identities for the Chinese living in Peru. One of the identities is the mixed-blood Chinese-Peruvian identity, as well as the "old" and "new" Chinese identity. The "new" Chinese immigration to Peru is identified through the 1993 census; the "new" Chinese immigrants tended to have fewer children than the "old" migrants. The integration of the labor market was also different; the "new" migrants tended to be independent and self-employed as compared with the "old" migrants (Lausent- Herrera, 2012).

## Political Relations

The diplomatic relationship between the PRC and Peru was established in 1971 (Flannery, 2013). Since then, a comprehensive strategic partnership between the two countries has been recognized, and there have been frequent exchanges and high-profile visits. These have enhanced economic cooperation and trade. The Free Trade Agreement (FTA) was officially approved in 2009 by China and Peru and went into effect on March 1, 2010 (Xinhua, 2016). In 2015, bilateral trade hit an upward trend at a record of approximately US $15 billion (Xinhua, 2016). The bilateral ties have strengthened as a result of China's appetite for Peru's natural resources and this relationship made China supersede the United States as Peru's biggest trading partner as of 2011 (Aquino, 2018). The 2013 meeting between Peruvian president Ollanta Humala and Chinese President Xi Jinping further strengthened the partnership. Recently, Peru's trade minister defended China's trading activities after then-US Secretary of State Rex Tillerson cautioned Latin American countries against too much dependence on economic relations with China, accusing it of unfair trade practices (Aquino, 2018).

Ongoing issues threaten the China-Peru political relationship. The one that surfaces the most frequently is miscommunication between Chinese investors and local groups. Although Chinese investors have attempted to adapt their approaches to political and social conditions in the towns where they operate, and occasionally donate money to the local government for public facilities such as schools, hospitals and other public goods and services, communication between Chinese companies and the local people is often very poor (Flannery, 2013). Managers in Chinese companies have often failed to engage in dialogues with indigenous people; this has resulted in a dramatic rise in social conflicts between indigenous communities and Chinese investors. The discontent among the Peruvian indigenous groups has gradually slowed the China- Peru political relationship and over the years weakened the growth of trade activities. Data derived from Trading Economics indicate that China's manufacturing growth rate in Peru fell from 7.7% to 7.5% in June 2013. That year, the slow growth of Chinese companies combined with the intense resistance of the indigenous people of Peru led President Humala to pressure Chinese investors to pay more attention to protesters' demands. Nonetheless, heated demonstrations concerning Chinese companies are ongoing (Flannery, 2013).

| Type/Sector | US$ Millions | | | | | | | | | Trade in 9 years | | Ann. overall % |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Year 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | US$ Millions | % | |
| Total | 5,579 | 7,321 | 7,484 | 7,858 | 6,652 | 7,409 | 9,445 | 11,451 | 13,636 | 76,835 | 100% | 13.5% |
| Traditional | 5,308 | 6,984 | 7,128 | 7,462 | 6,186 | 7,106 | 9,173 | 11,051 | 13,123 | 73,521 | 95.7% | 13.6% |
| Agriculture | 0.9 | 2.8 | 5.3 | 5.1 | 6.3 | 18.3 | 9.2 | 13.6 | 10.6 | 72.1 | 0.1% | 36.1% |
| Minerals | 4,395 | 5,724 | 6,367 | 6,289 | 5,692 | 6,079 | 8,117 | 10,025 | 11,468 | 64,157 | 83.5% | 15.1% |
| Fishery | 778 | 1,218.9 | 755.6 | 1,109 | 487.8 | 950.4 | 942.3 | 973.6 | 1,514 | 8,730 | 11.4% | 8.1% |
| Natural gas and petroleum | 135 | 37.8 | - | 58.1 | 0 | 58.6 | 104.1 | 38.6 | 130.5 | 562.7 | 0.7% | -3.8% |
| Non-traditional | 270.9 | 337.4 | 355.6 | 396.5 | 465.9 | 303.5 | 271.8 | 199.5 | 512.8 | 3,314 | 4.3% | 11.4% |
| Livestock | 25.6 | 33.7 | 60.2 | 86.4 | 109.2 | 81.5 | 68.4 | 112.5 | 151.5 | 729.1 | 0.9% | 31% |
| Artisanal | 0 | - | - | - | 0 | 0 | - | 0 | 0 | 0 | 0.0% | 0% |
| Lumber/Paper | 81.8 | 56.7 | 52.7 | 59.8 | 62.3 | 56.6 | 59.7 | 56.7 | 52.9 | 539.1 | 0.7% | -3.5% |
| Metal for machinery | 1.1 | 2.9 | 1.4 | 3.9 | 1.2 | 0.9 | 1.0 | 1.7 | 2.0 | 16.2 | 0.0% | 20.3% |
| Non- machinery metal | 0.2 | 1.7 | 0.7 | 0.3 | 1.3 | 0.3 | 1.0 | 1.5 | 0.9 | 7.8 | 0.0% | 36.6% |
| Fishery | 95.7 | 169.6 | 178.3 | 169.4 | 228.8 | 121.3 | 86.8 | 128.8 | 218.1 | 1,387 | 1.8% | 28.3% |
| Leather | 0.5 | 3.4 | 2.1 | 4.1 | 4.1 | 10.6 | 10.2 | 8.5 | 1.2 | 44.6 | 0.1% | 28.3% |
| Chemical | 38.2 | 39.3 | 31.0 | 30.6 | 22.2 | 9.3 | 18.5 | 23.1 | 30.0 | 242.1 | 0.3% | 2.3% |
| Iron & steel | 5.2 | 9.5 | 9.9 | 18.9 | 5.0 | 3.5 | 2.7 | 3.5 | 2.7 | 61.0 | 0.1% | -6.0% |
| Textiles | 22.4 | 20.3 | 19.2 | 23.0 | 31.6 | 19.3 | 23.4 | 62.3 | 52.8 | 274.4 | 0.4% | 10.0% |
| Misc (incl. jewelry) | 0.1 | 0.2 | 0.2 | 0.2 | 0.2 | 0.1 | 0.0 | 0.8 | 0.6 | 2.5 | 0.0% | 23.1% |

**Table extracted from:** Ministry of Trade and Tourism of Peru's Study of the China - Peru FTA
**Source of data:** SUNAT
**In collaboration with:** MIMCETUR/DGIECE/DEE

# Economic Relations

Peru and China have led the way for economic relations between Latin America and China. In 1994, China and Peru signed an agreement, “Encouraging and Mutual Protection of Investment” between each country. That agreement provides guidance on the protection of investments of each country. The Parties agreed the investments can't be expropriated unless four criteria are met: for public benefit; in accordance with domestic laws; non-discriminatory, and the compensation equal to the value of the investment property to the concerned government. The agreement also provides a dispute mechanism with a six-month negotiation period to resolve any conflicts. If the conflict cannot be resolved, an arbitration panel will include members from each country. In this temporary arbitration court each party can appoint one arbitrator to allow equal representation. If the conflict is resolved within the six-month period, it will not go to a permanent arbitration court like the International Investment Dispute Settlement Center.

On April 28, 2009, Chinese President Xi Jinping and former-Peruvian Vice President Luis Giampietri Rojas signed the China-Peru Free Trade Agreement (FTA), making it the first comprehensive FTA that China signed bilaterally with any Latin American country (China-Peru FTA Network, n.d.). In 2019, China and Peru met to see how to optimize their FTA to also include issues such as rules of origin, intellectual property, and e-commerce, and the governments implemented a Joint Action Plan. In 2019, China and Peru renegotiated the FTA to include rules of origin, intellectual property, and traditional knowledge based on the Convention on Biological Diversity. In addition, in this process, civil society organizations sued for inclusion of an environmental chapter in the updated bilateral trade agreement (DAR, 2019b).

According to the Peruvian government, in the last decade since the FTA has been in effect, Peruvian exports to China amounted to a total of US $76 billion, with the majority of exports coming from the fishing and mining industries (Ministry of Trade and Tourism of Peru, 2019). Chinese imports increased by 12.9% with an overall total of US $73 billion. China has been a staple for Peru for imports, as 12% of their overall imports come from China, primarily in raw materials (15.3%) and consumer goods (13.4%) (Ministry of Trade and Tourism of Peru, 2019).

While trade is robust, the Peruvian government has had difficulty in diversifying exports due to the original export model of large-scale, unprocessed raw materials like ores and anchovies being strengthened, often at the expense of local communities, and nature. DAR and other civil society organizations in Peru have developed key recommendations to improve the current FTA between China and Peru:

1. Incorporate an environmental chapter, similar to the environmental chapter found in the FTA between the European Union and the United States.

2. Establish protocols for companies to implement channels of dialogue, exchange of information, and cooperation with national and regional organizations representing indigenous populations of the Andes and the Amazon (DAR, 2019b).

DAR suggests that these actions will help legitimate Chinese investments in the region, prevent conflicts between investors and affected populations, and generate economic relations that will respect the needs and development priorities of these populations. Following these guidelines would support the success of Chinese-led investment projects (DAR, 2019b).

## Peru Joins the Belt & Road Initiative

In April 2019, Peru announced that it was signing a memorandum of understanding (MOU) to join China's Belt and Road Initiative (BRI). In 2017 during a summit in Beijing, Peru had expressed optimism about the BRI allowing for the integration of the Americas with Asia (Andina, 2018). One of the initial projects planned to connect the northern seaport in Peru, located in Paita, to the Amazonian region. However, there has been concern about the effects it would have on indigenous populations in their way of living (Collyns, 2019b).

*Photo: Rolando Mondragón/ DAR*

*Photo: DAR*

Section three

# Legal Frameworks and Mechanisms

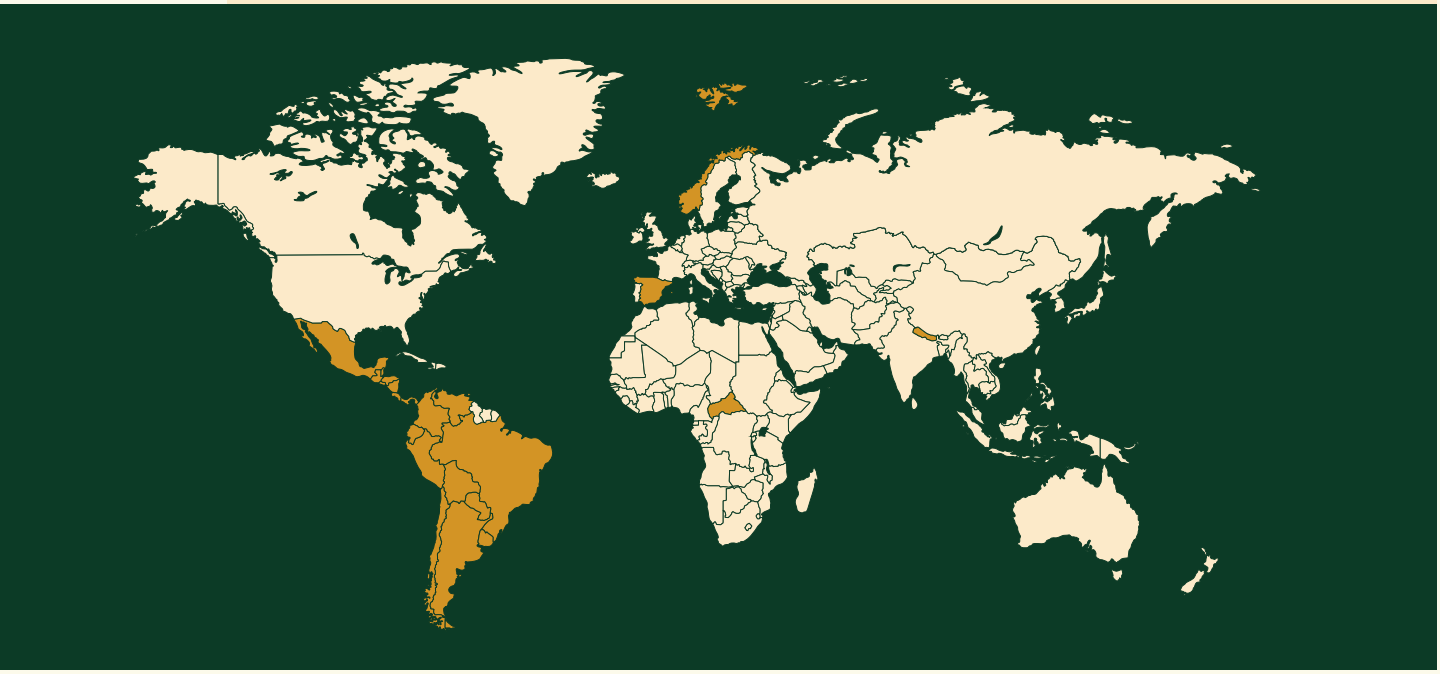
We turn now to the legal frameworks that govern indigenous territories, including international frameworks, regional frameworks, and Peruvian national laws. While not all frameworks are rigorously implemented in Peru, it is essential that investors appreciate the unique status of indigenous groups and the particular care that international, regional, and national institutions have taken to articulate special rights and protections for these groups. If there are violations of indigenous rights, there can be legal repercussions. Indigenous groups and advocacy organizations can file complaints and lawsuits, which are reviewed and adjudicated by the respective governing body. Investors should be aware of the indigenous rights discussed below in order to avoid legal ramifications.

# International Frameworks and Mechanisms

International frameworks and mechanisms establish significant moral obligations for the world despite often being non-binding and unenforceable. Here, we outline some of the most important multilateral United Nations frameworks and action plans for international law and their goals, such as universal sustainable development and the championing of human.

## ILO Convention 169 - Indigenous and Tribal Peoples Convention

The Indigenous and Tribal Peoples Convention 169, a revision of the 1957 Indigenous and Tribal Populations Convention (ILO Convention 107), was adopted by the General Conference of the International Labor Organization on June 27, 1989 and entered into force on September 5, 1991 (Swartz, 2019; International Labor Organization, n.d.). Its central aim is to protect the human rights of indigenous groups, including economic, socio-cultural and political rights (Hanson, 2009; Swartz, 2019). Importantly, while not explicitly using the term "self-determination," the convention requires actions that resemble support for this right, including consultation of indigenous groups, their participation in decision-making in "elective institutions and administrative and other bodies responsible for policies and programmes which concern them" (C169, 1989, Art. 6) and support for indigenous communities' own institutions (Swartz, 2019). While other documents in international law support indigenous peoples' rights, ILO Convention 169 is the only legally binding one; this means that it is enforceable law in the countries that have ratified it (Hanson, 2009; Swartz, 2019).



The convention comprises 44 articles organized into ten categories which recognize "the aspirations of [indigenous] peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live" (C169, 1989, Preamble). Its central articles include indigenous communities' right to participate in decision-making on matters that might impact their territories or societies (C169, 1989, Art. 6), the right "to decide their own priorities for the process of development" (C169, 1989, Art. 7), the right to fair and equal vocational training and employment opportunities (Art. 20-23), the right to adequate health care (Art. 25), and the right to education in their own indigenous languages (Art. 28). As of March 2019, only 23 countries have ratified ILO Convention 169, most of them in Latin America.

## Implementation of ILO Convention 169 in Peru

Peru ratified ILO Convention 169 in 1993 and is one of the countries that has made the greatest progress in passing laws and establishing government bodies to implement it. While this process was initially marked by controversy over which groups were to be defined as indigenous, Peru's Constitutional Court eventually ruled that indigenous groups do not need to be registered or formally recognized. Peru then undertook significant steps for complying with the convention's consultation requirement, passing the Free, Prior, and Informed Consent or "consulta previa" (prior consultation) law in 2011. As noted above, this law guarantees indigenous communities' right to "free, prior, and informed consent to any projects affecting them and their lands," (Survival International, 2011, n.p.) and has been celebrated as a milestone for indigenous rights in Peru. In the following period from 2012 to 2015, twenty-three consultation cases were heard and resolved (Global Americans, 2020; Survival International, 2011).

Despite Peru's progress in signing ILO Convention 169 into domestic law, implementation is lagging and overall insufficient, as a result of which Peru continues to be in breach of the convention's terms. The Amazon Waterway project (AWP) and the Las Bambas mine discussed in later sections of this handbook provide examples of this.

## United Nations Declaration on the Right to Development

The UN Declaration on the Right to Development was promulgated on December 4th, 1986 and is composed of ten articles outlining the fundamental right to development for every person. The Declaration formalizes the notion that every person is entitled to development and places the focus of the development process on the people. The Declaration was widely supported with 146 votes in favor of it, including Peru, with the only dissenting vote coming from the United States (OHCHR, 2016).

In Article 1, paragraph 1, the Right to Development is extended to every human person and entitles them to participate in, contribute to, and enjoy economic, social and political development, through which all human rights and fundamental freedoms can be achieved (OHCHR, 1986). The Right to Development enables all

people to participate and enjoy the benefits of development as well as allowing them space to contribute should national projects be deemed harmful to them. Article 2, paragraph 1 of the Declaration identifies the human person as the central subject of development while Article 2, paragraph 3 enumerates the responsibility of the State to create national development policies that seek the improvement of the well-being of the entire population and all persons (OHCHR, 1986). This is highly relevant in Peru since the state has arguably failed to extend the benefits of development to all persons while concurrently preventing them from fully participating in decision- making processes.

Several other international agreements and institutions further codify the right to development as a core human right in present times. The 1948 Universal Declaration of Human Rights helped lay the foundation for the later Declaration on the Right to Development. Article 1 of the 1966 International Covenant on Economic Social and Cultural Rights, Article 23 of the 2007 Declaration on the Rights of Indigenous Peoples, and Article 7 of the 1989 ILO Convention 169 are salient as they help enumerate the fundamental rights of indigenous groups in Peru (Minority Rights Group International, n.d.).

Additional relevant international legal instruments include the 1992 Rio Declaration, the 2000 Millennium Development Goals (MDGs), The Future We Want that emerged from the 2012 UN Conference on Sustainable Development (Rio+20), and the 2015 Sustainable Development Goals (SDGs). All of these emphasize the importance of the environment within the development sphere (OHCHR, 2016). While the UN Declaration on the Right to Development does not enumerate a clear protection of the environment within itself, Article 1, paragraph 2 states that the people have the "...inalienable right to full sovereignty over all their natural wealth and resources" (OHCHR, 2016). This, coupled with Article 1, paragraph 1, creates an avenue for people to participate and contribute to how their country's natural resources are used.

## Right to Development

Peru's national economic development has seen great strides since the country's vote for the Declaration. However, in 2017, former UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein noted that Peru must further strengthen the rule of law and the protection of human rights to solidify its developmental gains. Al Hussein noted that while there had been progress made in consulting indigenous groups on mining, energy and other development projects, more needed to be done so that they might consent to development projects that would impact them (OHCHR, 2017). Al Hussein noted that civil society groups felt development decisions affecting people's lands and lives had not involved sufficient consultation with local communities, and he urged businesses to reach out to local communities and indigenous groups to hear their concerns.

## Rio Declaration and Agenda 21

The Rio Declaration on Environment and Development was produced at the Rio Earth Summit in 1992. This Declaration set out 27 guiding principles to promote

development throughout the world while ensuring environmental protection. Each principle was designed to create new levels of cooperation among states, key sectors of society, and the public. For example, Principle 16 states that polluters are obligated to pay for environmental damage and Principle 22 states that indigenous peoples have a vital role to play in environmental management (United Nations, 1992).

Agenda 21 is another non-binding UN action plan released at the Rio Earth Summit in 1992. It is divided into subsections relating to the Sustainable Development Goals. These sections are Social and Economic Dimensions, Conservation and Management Resources for Development, Strengthening the Role of Major Groups, and Means of Implementation (United Nations, 1992). Since its initial release, Agenda 21, has been modified five times to fit the world's changing development needs. To implement Agenda 21, the Commission on Sustainable Development as well as the UN Division for Sustainable Development laid out guidelines for member states; the member states are then expected to write their own plans "within the context of" Agenda 21 to fit country-specific needs. Because Agenda 21 was meant to be implemented at the international, regional, national, and most importantly, local levels, there are many programs referred to as "Local Agenda 21" that are. based on international guidelines.

For example, in 1993 in Cajamarca, Peru, this Local Agenda 21 framework was implemented as the "Inter-Institutional Consensus-Building for a Sustainable Development Plan" (ICLEI, 1996). The Provincial Municipality of Cajamarca (IDRC, 2.3.2), which is in part inhabited by indigenous peoples, has jurisdiction over the entire province, with 55% of the population living in rural areas and the main economic activities being agriculture and livestock production. Due to increased demand for milk products, cattle farmers began grazing on marginal lands and significantly increased environmental degradation such as watershed damage and soil erosion. In addition, increased population and unplanned growth impaired the municipal government's ability to provide services to the people. In response and in accordance with Agenda 21, Cajamarca implemented a "Regional Sustainable Development Plan" to address local issues relating to resource acquisition and population growth. The Provincial Council divided the city and countryside into smaller regions and created local authorities for each region. General elections were held to increase representation at a smaller scale and strengthen the whole community. This is just one example of how a large international framework can be applied in a manner that is both effective and context-specific despite Agenda 21 being non-binding and seemingly far removed from the local level.

## The UN Declaration on the Rights of Indigenous People

The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly on September 13, 2007. While a majority (144 states) voted in favor, 4 states voted against it (Australia, Canada, New Zealand, and the United States). Since 2007, these four countries have reversed their position and now support the Declaration.

The Declaration is the most comprehensive international instrument on the rights of indigenous people. It establishes a universal framework of minimum standards for the survival, dignity and well-being of the indigenous peoples of the

world. It also elaborates on the existing human rights standards and fundamental freedoms as they apply to the specific situation of indigenous peoples (United Nations, n.d.). There are approximately 370 million indigenous peoples in around 90 countries around the world. The Declaration is an expression of their rights and place in the global community.

Earlier efforts to deal with the protection of indigenous peoples worldwide date back to 1982, when the Working Group on Indigenous Populations was established by the United Nations Commission on Human Rights. The Working Group stemmed from a study by José R. Martinez Cobo on the problem of discrimination, oppression, marginalization, and exploitation faced by indigenous peoples throughout the world (United Nations, n.d.).

The first draft declaration was submitted to and approved by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities in 1994. The Declaration was finally adopted by the United Nations General Assembly in 2007. From all regions of the world, 182 states reached a consensus on the final document in April 2009 in Durban, South Africa (United Nations, n.d.).

The Declaration consists of 46 articles that describe specific actions that governments must take to protect the rights of indigenous people. It is also a valuable guide on how to implement other human rights agreements or conventions that affect indigenous people, such as the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination. Seventeen of the 46 articles focus on indigenous culture and how to protect and promote it, while 15 are about indigenous peoples' participation in all decisions that will affect their lives, including meaningful participation in a democratic polity (United Nations, n.d.).

The Declaration addresses individual and collective rights, cultural rights and identity, rights to education, health, employment, language, and other areas. The Declaration states that all indigenous peoples have the right to fully enjoy, as a collective or as individuals, all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and the rest of the international human rights laws. Essentially, the Declaration outlaws discrimination against indigenous peoples, promotes their full and effective participation on all matters that concern them, and provides their right to remain distinct and to pursue their own visions of economic and social development.

Within the United Nations, various mechanisms promote and protect the rights of indigenous peoples. Among these are the United Nations Permanent Forum on Indigenous Issues, which is the main office managing indigenous peoples' issues at the UN. Since its establishment in 2000, the Forum has held an annual two-week session that discusses and calls for action on issues affecting indigenous peoples such as proper health services, discrimination, children's participation in armed conflict, among others (United Nations, n.d.).

Generally, UN Declarations are not legally binding; however, they represent the dynamic development of international legal norms and reflect the commitment of states to move in certain directions and abide by certain principles (United Nations, n.d.). The Declaration provides an interpretation of the human rights that are enshrined in other international human rights instruments of universal resonance as these apply to indigenous peoples and individuals. The Declaration is a significant tool for eliminating human rights violations committed against

more than 370 million indigenous people worldwide and assisting them as well as nations in combating discrimination and marginalization.

## 2018 Universal Periodic Review of China

The Universal Periodic Review (UPR), first established in 2006, is a formal review of the human rights records of all UN member states which takes place in 4.5 year cycles. The UPR is a state-driven process whereby states are given the opportunity to demonstrate what actions they have undertaken to improve the human rights situations in their countries and what they have done to fulfill their human rights obligations. The 2018 UPR of China contained several recommendations regarding the country's transnational relations and areas of concern. Ecuador recommended measures that ensured development and infrastructure projects abroad and were fully consistent with human rights, respected the environment, and led to the sustainability of resources (China UPR, 2019). Peru suggested that the establishment of a legal framework would guarantee that Chinese companies protect and adhere to human rights abroad (China UPR, 2019). Similar to Peru, Haiti recommended that a regulatory framework be established by China to assess the human rights and environmental impacts of Chinese corporations (China UPR, 2019). Kenya recommended that China continue extending its national laws, regulations and standards to Chinese companies operating beyond Chinese borders (China UPR, 2019). Altogether, the recommendations by these four countries illustrate a need for China to extend its legal frameworks to govern the actions of Chinese companies abroad.

***Source:*** *Atlas of Humanity (Medina, n.d.)*

# Regional Frameworks

Indigenous people also have rights codified in interstate regional frameworks. Such frameworks include the Organization of American States (OAS) and the Escazu Agreement, about which more below. We also provide examples of cases brought before regional commissions.

## Background of OAS and Regional Documents

The OAS is one of the oldest regional cooperative institutions in the world, consisting of countries across North and South America that affirm their dedication to peace and order. The OAS began as a conference in 1889-1890 and created the Charter of the OAS in 1948, but it was not fully institutionalized until 1951 (OAS, n.d.).

Under the OAS, there are two main governing bodies concerning human rights: the Inter-American Commission of Human Rights, based in Washington, D.C., and the Inter- American Court of Human Rights, based in San Jose, Costa Rica. The Inter-American Commission of Human Rights articulates foundational rights for all human beings in the member states and monitors human rights violations. It provides annual reports that review human rights situations in each country and suggests recommendations. The Commission processes petitions and complaints of alleged abuses and submits them to the Inter-American Court of Human Rights if deemed necessary. The Court then reviews cases of human rights violations and applies provisions based on the rights in the Convention.

To date, 25 countries across North and South America have affirmed adherence to the American Convention of Human Rights which governs the Inter-American Court. The Court is responsible for interpreting the articles of the convention and ensuring that countries are abiding by the principles set out in the document. A state may accept the jurisdiction of the Court in full, which means it agrees that the Court can rule on certain cases when it ratfies the American Declaration on the Rights and Duties of Man, at a later date, or on an ad hoc basis for a particular case.

The human rights framework of the OAS was established through two basic documents: the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights. The American Declaration on the Rights and Duties of Man was adopted in May 1948, the first international treaty on human rights (London School of Economics and Political Science, n.d.). The American Convention on Human Rights was signed in November 1969 and emphasizes member states' obligation to enforce the basic human rights listed (Inter-American Commission of Human Rights, 2010). Although these texts do not specifically mention indigenous or environmental rights, they provide the foundation for Additional Protocols on the basis of the "right to culture" (Inter-American Commission of Human Rights, 1948). Adopted in 1988, the Additional

Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights established the right to a healthy environment. It declares that member states must "promote the protection, preservation, and improvement of the environment" (Inter American Commission of Human Rights, 1988, p. 67).

The protection of and respect for indigenous people are important themes for the Inter- American Court of Human Rights. In a 1972 ruling, the Court held that for "historical reasons as well as moral and humanitarian principles, states have a sacred responsibility to protect indigenous people" (Madariaga Cuneo, 2005, p. 53). Since this ruling, the In Such development projects have often proven detrimental to indigenous people's health. Throughout the Amazon, indigenous people already have limited access to clean water needed for drinking and sanitation. This becomes exacerbated through pollution from extraction projects. Oil spills have caused health risks such as hepatitis, which has led to deaths in indigenous communities. In one case, 27 children died due to hepatitis from oil spills in Cuninico and Vista Alegre communities, in Loreto and Trujillo provinces respectively (Inter American Commission on Human Rights, 2019). Gold mining has also created negative effects on the health of indigenous people. During this process, mercury contaminates the sediments, waterways, and the atmosphere, leading to pollution (Swenson et al., 2011).

Numerous complaints and petitions have been sent to the Inter-American Commission on Human Rights to review cases on alleged indigenous rights violations. One example is a petition first submitted in 2003 on behalf of the indigenous people in Quishque-Tapayrihua in the Tapairihua district of the Aymaraes province. The complaint was that the indigenous people did not receive prior consultation for the Los Chancas mining project (Inter-American Commision on Human Rights, 2014). In another case, Quechua indigenous community members sent a petition to complain that the Conga mining project in Peru had damaged their water resources (Inter-American Commision on Human Rights, 2015). The Commission requested the Peruvian government to adopt the petitioners' request for precautionary measures and to investigate the situation.

Elsewhere in the region, a case in 2014 was launched by the Kalina and Lokono Peoples vs. Suriname. In 2015, the court found the country of Suriname responsible for multiple violations of the American Convention on Human Rights due to its failure to recognize and guarantee the legal personality and territorial rights in connection with bauxite mining. Restrictions on the nature reserves on which the indigenous people lived were put into place on behalf of the government and associated mining companies. The Court concluded that, "respect for the rights of the indigenous peoples may have a positive impact on environmental conservation" and therefore, "the rights of the indigenous peoples and international environmental laws should be understood as complementary, rather than exclusionary, rights." It then ruled that "the criteria of a) effective participation, b) [at the least] access and use of their traditional territories, and c) the possibility of receiving benefits from conservation … are essential elements to achieve this compatibility" (Forest Peoples Programme, 2016, n.p.). This instance showed the Court's ability to rule in favor of indigenous people against foreign investment on their lands.

In a recent legal case argued in the Superior Court of Lima, Peru, indigenous groups living in voluntary isolation became the first instance of such a plaintiff winning a lawsuit against oil companies. In 2020, the judge ruled that the

government must exclude an indigenous region near the border of Brazil from any oil exploration and exploitation. The win marked the end of a long struggle to prevent oil and mining projects from taking hold of their indigenous land. “This ruling is historic because it is the first in favor of indigenous people in voluntary isolation against oil companies. A court ruling in favor of people in voluntary isolation sets a powerful precedent for countries throughout the region. Decisions such as this one are watched closely by neighboring countries and provided a base for future rulings through the Amazonian region. Almost 98 percent of the territory of the indigenous people in voluntary isolation was above three oil lots,” said Maritza Quispe, a lawyer for the Institute of Legal Defense (Japan Times, 2020, n.p.). The decision came after a 2017 lawsuit by the Regional Organization of Indigenous Peoples of the East which demanded that the government and state energy agency, Perupetro, suspend authorization of the development of three oil lots in the Loreto region in Peru’s northern Amazon. Although controversy continues with respect to oil exploration concessions outside these lots, some of which have been ceded to China, the win on behalf of the indigenous population meant that a strict protection zone has been established elsewhere in the region, setting a precedent that may be followed in the future.

## National Legal Frameworks

National legal frameworks are formed not only by specific laws governing the territories of indigenous people, but also by underlying legal concepts. Peru’s governance of indigenous people is influenced by neighboring countries of Latin America as well, since many of these groups straddle international borders. Below, we introduce key concepts and laws that Peru.

### Right of Access to Nature

The concept of the right of access to nature was proposed in May 2010, in the UNEP Draft Declaration on the Environment and Human Rights. The purpose was to recognize the importance of the overall well-being of individuals, human rights, and their relationship to the environment (Scannell, 2010). The European Council on Environmental Law concluded after investigating and testing states’ practice that access to nature is a fundamental human right. Right of access to nature is defined as a right of passage to nature through natural areas like uncultivated land, forests, and mountains. This right is a key element of an individual’s well-being, which includes physical and psychological health (Scannel, 2010). Although human beings have the right of access to nature,

individuals also need to be mindful when in nature. In articles 66 and 67 of the Peruvian Political Constitution (1993), it is established that the state is responsible for promoting the sustainable use of natural resources and therefore determines national environmental policy (Political Constitution of Peru, 1993). According to the Constitution, the state has the responsibility to protect and to sustain the right of access to nature.

## General Environmental Law

The General Environmental Law of Peru (No. 28611) passed in 2005 further established the right of all people of Peru to live in a balanced and adequate environment for life development. In addition, Peru is bound by international agreements like the Convention on Biological Diversity and UN Framework Convention on Climate Change (Environmental Law 2019, 2019). In terms of the right of access to nature, Article 1 states that individuals have a duty to protect the environment to ensure people's health, the conservation of biological diversity, and the duty to protect sustainable usage of natural resources (General Environment Act, 2005). Article 2 establishes that every person has the right to obtain information about governmental policies that might directly or indirectly affect the environment. Article 3 further states that individuals have a right to participate with the state in the decisions and actions for the management of the environment. In addition, Article 4 establishes that individuals have a right of access to environmental justice; individuals have the right of access to quick and effective judicial practices to protect the environment and its components (General Environmental Act, 2005).

In the case of Peru, the right of access to nature not only includes an individual's right to nature, but an individual's duty to protect nature. It is in the best interest of individuals and the State to protect nature and its sacred being. The National Environmental Policy and Environmental Management regulation was founded under the General Environmental Act. It includes the rights of indigenous people and their relationship with the environment. Its objective is to provide the legal framework for environmental management in Peru (General Environmental Act, 2005). Article 11d establishes the right of sustainable development of urban and rural areas and the conservation of cultural lifestyles of indigenous people in Peru (General Environmental Act, 2005). Articles 70, 71, and 72 recognize the rights of the indigenous people in Peru. Article 70 states:

"The rights of the indigenous peoples, peasant communities, and native groups recognized in the Political Constitution and in the international treaties ratified by the State must be safeguarded in the design and application of the environmental policy, and particularly in the environmental land use regulation process. The public authorities promote their participation and integration in environmental management" (General Environmental Act, 2005).

The State is responsible for the protection of indigenous peoples' rights to the environment and access to nature. Article 72 establishes the protection of the indigenous people's right of access to nature; the development of land must prevent devastating effects on the indigenous people living on the land. Article 72.2 states:

"For projects or activities to be pursued within lands belonging to indigenous peoples and native groups, the public comment procedures are preferably oriented toward the establishment of agreements with their representatives, with the aim of safeguarding their rights and traditional customs, as well as prescribing benefits and compensations for the use of resources, knowledge, or lands belonging to them pursuant to the pertinent legislation" (General Environmental Act, 2005).

Article 72.3 establishes that indigenous people have a preferential right to claim the sustainable use of natural resources. However, on state reserves or on the exclusive right of third parties, indigenous people are then able to claim equitable share to the economic benefits of usage of the natural resources (General Environmental Act, 2005).

The General Environmental Act protects the utilization of sustainable natural resources of Peru as well as the rights of indigenous people with regard to the right of access to nature. The State has an obligation to listen to indigenous people about the usage of natural resources and should not ignore the claims of indigenous groups. The right of access to nature is a fundamental human right for all people in Peru, especially for the indigenous and native people.

## Enforcement Mechanism

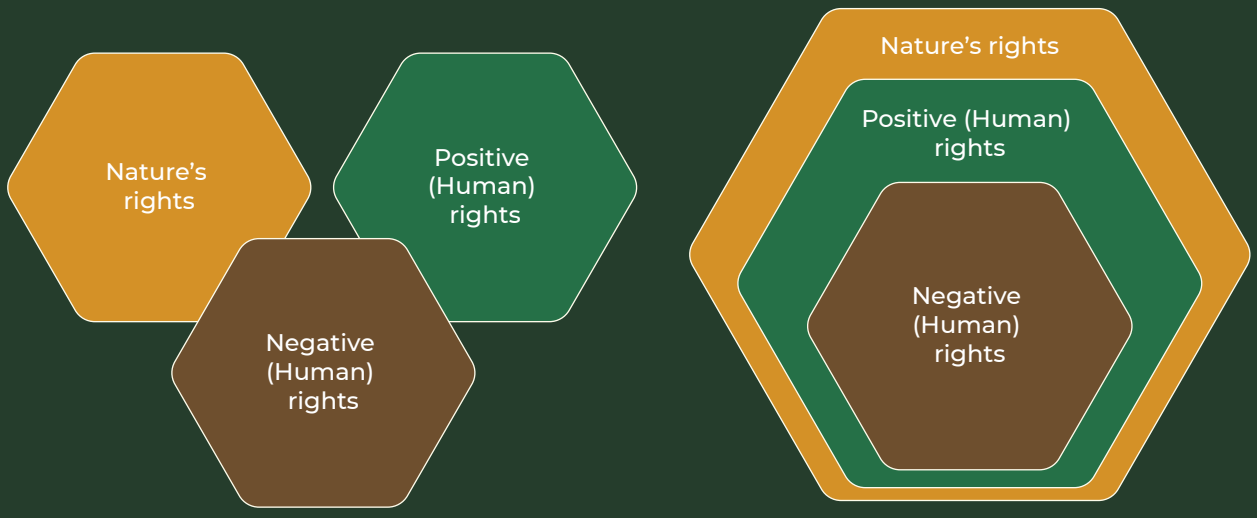
In 2008, the Ministry of Environment or Ministerio del Ambiente (MINAM) was created. MINAM focuses on three key strategic areas: Peru Clean, Peru Natural, and Peru Inclusive. Its objective is to create a public society for sustainable use, conservation of natural resources for the benefit of the people (Ministerio del Ambiente—¿Qué hacemos?, n.d.). The Environmental Assessment and Control Agency or the OEFA under the Ministry of Environment is in charge of overseeing the requirements of the Environmental Impact Assessment (EIA) and other regulations (Environmental Law 2019, 2019). There are liabilities and sanctions enforced against companies according to infringement upon the environment and people. Regarding monetary sanctions, imposed fines cannot be higher than 10% of the gross annual income of the offender (Environmental Law 2019, 2019). In some instances, the government can temporarily confiscate goods, suspend company permits, or temporarily close down a facility (Delgado et al., 2017). If the infringement continues, the OEFA can continually impose a higher fine until the problem is fixed. Under Law 30230 published in 2014, OEFA has been instructed to prioritize preventative and corrective action during a period of three years following any breach (Delgado et al., 2017).

Right of access to nature is very much alive in Peru's legal framework. It protects not only the people living in Peru, but also prioritizes the importance of the relationship between the environment, culture, and the rights of indigenous people. Although individuals have the right of access to nature and natural resources, the State as well as the people have the responsibility to protect the environment.

## The "Rights of Nature" in the Amazon Region: Peru and its Neighbors

The "Rights of Nature" differ from Rights to Nature in that the entity that holds the rights is held to be nature itself, rather than a human being or a group of people (Global Alliance for the Rights of Nature, n.d.). Although the "Rights of Nature" is a relatively new legal concept, since its first formal adoption in Ecuador in 2008, a number of countries around the world have chosen to include it in their constitutions or environmental protection laws. These countries include Ecuador, New Zealand, and India, among others (Cordon, 2019). Inclusion of "Rights of Nature" language can be understood as that country recognizing and asserting that nature, in all its forms, has a right to exist and persist and to regenerate its vital cycles (Global Alliance for the Rights of Nature, n.d.). This challenges common legal principles which view nature as a type of property. Though "Rights of Nature" is a type of environmental protection law first and foremost, it can also be considered as a means of protecting indigenous groups whose prosperity is inextricably linked to the well-being of the environment. If the environment has a right to be sustained and these rights require that people act in accordance with its protection and wellbeing, then indigenous communities who depend on these environmental resources for livelihoods and cultural values are also protected. We explore three countries in the Amazon Basin that have recognized the concept of "Rights of Nature." We then examine the case of Peru, which does not currently have "Rights of Nature" legislation. Even without this legislation, it is important for the government of Peru and companies partnering with it to understand the "Rights of Nature" and how extractive activities may interact with them as this legal principle may well be more commonly adopted in the future and is already prominent in neighboring countries.

**Visual representation that conceptualizes the differences between a traditional understanding of nature and its relationship to people (left) and rights of nature approach (right).**
Source: Halstead, 2018



## Ecuador

In 2008, Ecuador became the first country to recognize the "Rights of Nature" in its Constitution, which states that societal harmony with nature is a priority for the country as a whole. There is language referencing a greater "Mother Earth" figure and the delineation of three distinct rights of nature: (1) the right to integral respect, (2) the right to maintenance and regeneration, and (3) the right to restoration. Building on these three tenets, the Constitution asserts that nature has the right to exist and persist in all its forms, with no statute of limitation (Pietari, 2016). The people of Ecuador are considered to have the obligation and legal authority to enforce these rights, including the right of protection and restoration, on behalf of nature.

While nonprofits and individuals have standing to act upon this obligation by representing nature in a legal case, the Government of Ecuador also has the responsibility to prevent activities that may negatively impact ecosystems and their natural cycles. Related to this, the Government of Ecuador, in the event that it is unable to protect or restore natural systems, is also required to compensate individuals and communities that depend on them (Foundation for Democracy & Sustainable Development, 2015). Despite being the first country to formalize the "Rights of Nature," Ecuador's law is quite extensive; it even includes specific language that bans introduction of organisms and material, organic or inorganic, that may alter the country's genetic assets. It also establishes that, in cases of ambiguity, all laws involving environmental issues should be interpreted in favor of nature's protection (Foundation for Democracy & Sustainable Development, n.d.).

Lastly, Ecuador's "Rights of Nature" calls upon all citizens to act in environmentally responsible ways. In practice, the strength of the Constitution's articles on "Rights of Nature" and affiliated laws can become muddied, though they have been successfully used to bring and win cases on behalf of the environment, such as the 2011 case of the Vilcabamaba River (Greene, n.d.). In this case, the widening of the Vilcabamba-Quinara road, which had been in construction for three years without an appropriate environmental impact assessment, caused large quantities of rock and dirt to fall into the Vilcabamba Ricer. The rock and dirt deposits impacted river flows and made the area more susceptible to seasonal floods. Based on this, a constitutional injunction against the Provincial Government of Loja for violating the rights of nature, namely the river, was brought. Ultimately, the Provincial Court of Loja ruled in favor of nature and gave the Provincial Government 30 days to propose a remediation and rehabilitation plan for the Vilcabamba River as well as the areas and population affected.

## Bolivia

In 2010, Bolivia followed suit in adopting official, legal language regarding the "Rights of Nature." In addition to the country's role in developing the "Universal Declaration of the Rights of Mother Earth," Mother Earth and her protection are elevated in the Constitution's preamble, in which the protection and defense of the whole are emphasized (Community Environmental Legal Defense Fund, n.d.). Adoption was born out of a resurgence of an indigenous Andean

spiritual worldview which views humans as equal to other living beings. What is significant about this case is the inclusion of all abiotic, or nonliving, and biotic, or living, components of Mother Earth. With specific language relating to both the abiotic and biotic components of the environment, this national law encompasses plant and animal species in addition to elements such as soil, water, air quality as well as the cycles and processes that connected them all (Global Alliance for the Rights of Nature, n.d.). The aforementioned declaration and its associated commitments to holistic environmental protection calls for a radical transition in Bolivia's economy and society, though the ways in which this will translate into practice remain unclear.

The declaration and its associated commitments to holistic environmental protection call for a radical transition in Bolivia's economy and society, though how this will translate into practice is unknown. Bolivia has had a tumultuous relationship with environmental protection. The Confederación Sindical Única de Trabajadores Campesinos de Bolivia, the social movement that helped author the Rights of Nature law, directly blames the mining industry for the environmental degradation that threatens the country's natural resources and indigenous communities (Vidal, 2011). The law calls for protections from the effects of mega-infrastructure and development projects, namely those from companies mining tin, silver, and gold. However, these companies also earn Bolivia nearly onethird of its foerign currency, over US $500 million annually (Vidal, 2011). Therefore, despite the adoption of Rights of Nature legislation, tension still exists. To date, there have not been any successful examples of Rights of Nature being used to bring a case against any of these mining industries operating in Bolivia.

## Colombia

Although not explicitly "Rights ofNature" legislation, the Supreme Court of Colombia recognized the legal rights of the Amazon River ecosystem in 2018. In its public statement, the Supreme Court not only recognized the Amazon River as an entity in and of itself, but also as one that possesses rights. A similar recognition of rights was previously made in 2016 for another Colombian river, the Rio Atrato, near the country's border with Panama (IUCN, 2018). The Supreme Court of Colombia seems thus to be building a strong case towards "Rights of Nature" overall, or at least rights of river systems. As an extension of these two cases, the national and local governments are now obligated to act in accordance with the rulings.

After the decision on the Amazon River, the Court ordered the creation of an "Intergenerational Pact for the Life of the Colombian Amazon" to assist governmental entities in integrating the new legal standing of the river. This made the next phase of implementation more tangible as it provided clear recommendations based on principles of environmental law and ethics within the context of Colombian and international law (IUCN, 2018). While the Court's decisions may guide the Colombian judiciary on how to begin tackling additional complex environmental issues such as deforestation and climate change, as in the case of Bolivia, application in practice has yet to be seen.

## Peru

Unlike the three countries listed above, Peru does not currently recognize the "Rights of Nature"as they are broadly understood nor the rights of any specific ecosystem or natural entity. Nonetheless, Peru hosted the second annual International Rights of Nature Tribunal in 2014 (Global Alliance for the Rights of Nature, n.d.). This Tribunal provides a forum for people from all over the world to speak on behalf of nature and its protection. With a strong indigenous focus, the forum enables groups to present cases that advocate legal action and support for nature.

At this meeting, a number of cases from Peru were detailed. One of these brought by the Kukama Kukama indigenous community pertained to pollution from the Conga Mine, which threatened four Andean mountain lakes, threatening both human health and indigenous spirituality. Another case presented by Federación Cocama-Cocamilla, led by the Kukama Kukama, concerned tributaries to the Amazon River that have been experiencing ongoing oil contamination, thus degrading ecosystems and impacting human systems (Global Alliance for the Rights of Nature, n.d.). Given the geographic proximity of Ecuador, Bolivia, and Colombia and the close ties among activist, indigenous, and legal communities, the impact of the Rights of Nature conversation on Peru will continue to evolve. Environmental impact assessments are already a mandatory requirement for investment projects and it is highly likely that regulations like this will continue to shape development activities and extractive industries within the country.

As we have seen, there are a number of countries in the greater Amazon Basin that have legally recognized the "Rights of Nature" or the rights of the Amazon River system, including Ecuador, Bolivia, and Colombia. Typically, these laws tend to draw upon allusions to "Mother Nature" or pachamama, as she is known by in several Andean countries, and the duty that people and states have to ensure her protection and ability to regenerate. This includes all biotic and abiotic features of the environment as well as the cycles integral to her continuation. From the number and severity of Peruvian cases that were brought before the second annual conference of the International Rights of Nature Tribunal, it is clear that the omission of "Rights of Nature" language in Peruvian law is not due to a lack of interest or support. While Peru does have extensive environmental protection and management laws which outline the access rights and sustainable use of the country's natural resources, these are often not sufficient to protect ecosystems and the human groups that directly depend on them. This is especially pertinent to conversations about indigenous groups in Peru.

*Photo: ANDINA Noticias*

Section four

# Case Studies

In this section, we present four case studies of projects involvingChinese companies that have come into conflict with indigenous groups. This is done with the goal of elucidating the tangible impacts that failure to consider the rights of indigenous groups and the environment can have on both these protected groups and Chinese companies. Included in this section are the cases of the Amazon Waterway Project, the Las Bambas copper mine, Lot 58, and the Bi-Oceanic Railway Integration Corridor. Many of these conflicts are ongoing and likely to evolve beyond the discussion we provide here.

# Case #1: The Amazon Waterway Project

The Amazon Waterway project (AWP) is a major development project aimed at improving the efficiency of the river transport system in the Peruvian Amazon, reducing travel time and costs, and fostering trade and regional integration. However, the area affected by the AWP is home to 424 indigenous communities, including the Achuar, Asháninka, Awajún, Bora, Kapanawa, Kichwa, Kukama-Kukamiria, Murui-Muinani, Shawi, Shipibo – Konibo, Tikuna, Urarina, Yagua, and Yine (Ccoillo, 2019). Due to lack of information on the project's environmental impacts, coupled with a consultation process that was fraught with corruption, the AWP has the potential to threaten indigenous communities' food security, health, and way of life.

This section begins with an overview of the AWP and its expected benefits, followed by an assessment of the project's impact on the environment and the indigenous communities that will be affected. The case indicates that the project is at high risk for violating indigenous rights.

## Background on the Amazon Waterway Project

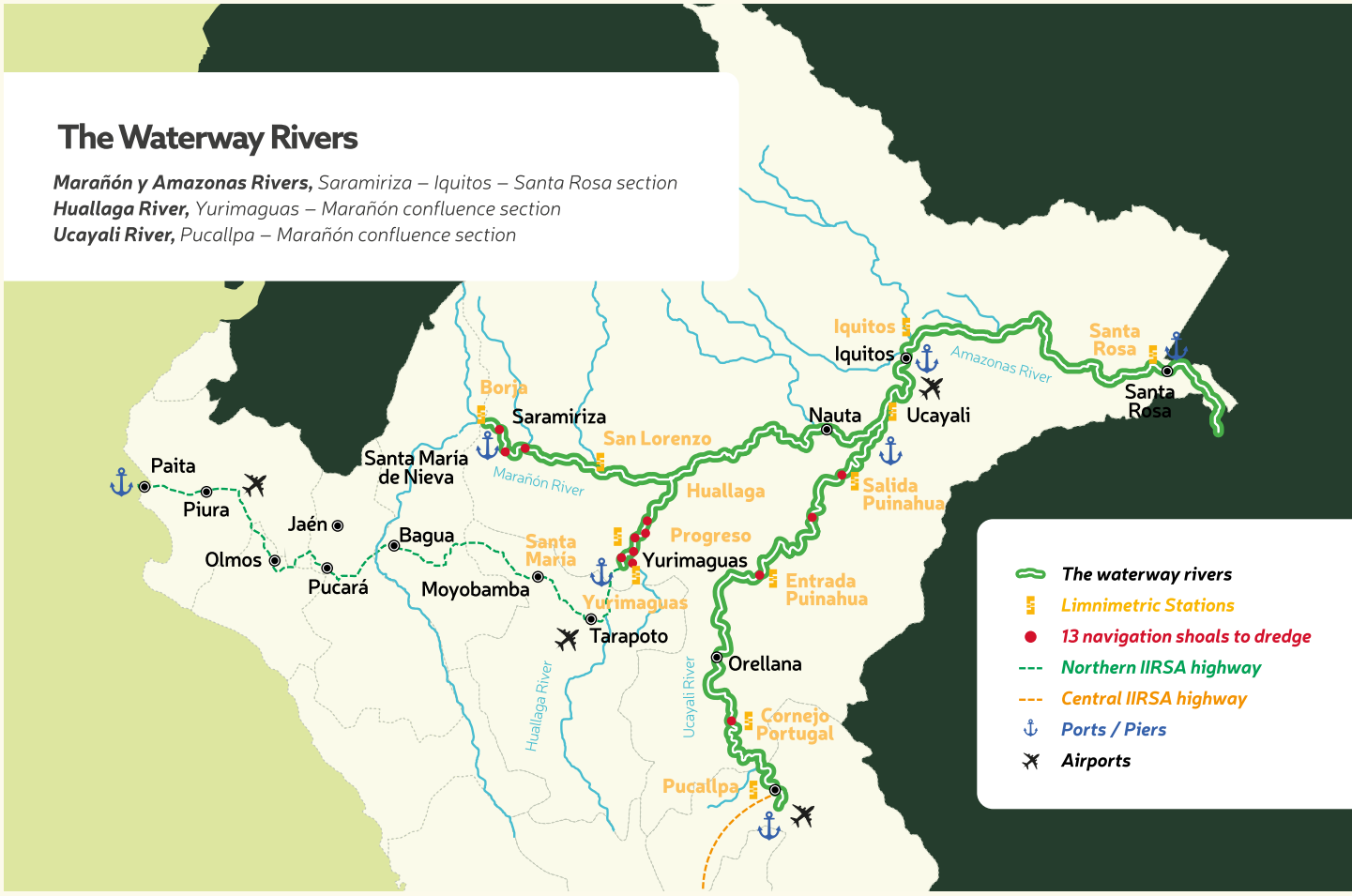
First proposed in 2014, the Amazon Waterway project (AWP), also known in Spanish as "Hidrovía Amazónica," is an initiative by the Government of Peru (GOP), which intends to improve river transport capacity through four major rivers in the Peruvian Amazon: Amazonas, Huallaga, Marañón, and Ucayali (HIDROVIA AMAZONICA, n.d.). According to the Peruvian government, the AWP will link these four rivers, guaranteeing a safe routing along 2,600 kilometers of waterway throughout the year (Bnamericas, 2017; HIDROVIA AMAZONICA, n.d.). In addition, the project seeks to connect the Peruvian Amazon to neighboring countries like Brazil, Colombia, and Ecuador, allowing for the creation of an "Amazon Norte Multimodal Hub" (HIDROVIA AMAZONICA, n.d.). Together, the AWP and the creation of this hub would work to support the Initiative for the Integration of the Regional Infrastructure of South America (IIRSA), a regional effort by South American governments to construct new infrastructure networks throughout the continent.

In 2017, a consortium led by the Chinese State-owned Enterprise Sinohydro, the world's largest hydropower construction company, won the construction concession for the AWP. Pending approvals, construction is expected to start in 2022 with a total project lifespan of 20 years (Collyns, 2019b). Over these 20 years, an annual return of US $24 million is expected. While this may seem like a significant return on investment, the AWP is expected to have an annual maintenance cost of US $17.8 million (Collyns, 2019c).

## Project Goals and Benefits

These significant expenditures have expected benefits. The following outcomes were predicted from the investments into AWP:

- Improved trading activities via the reduction of cargo traffic (Bnamericas, 2017), Reduction of the cost and risk of passenger navigation through the Amazon river, Removal of rocks and sediment from the bottom of the rivers allowing larger boats easier passage,
- Aid in the development of communities in the Peruvian forest by connecting them to previously inaccessible markets, Reduced loss of perishable goods due to less travel time, and,
- Reduced need for transshipment, or shipping via an intermediary destination, resulting in reduced costs for transport (Forsyth, 2019).




**Source:** DAR (Collyns, 2019A)

## Environmental Impacts of the Amazon Waterway Project

For any major infrastructure project like the AWP, it is important to assess the potential environmental impacts. An understanding of these environmental effects helps stakeholders make informed decisions regarding the value and sustainability of a project or activity and if needed, identify mitigation measures or weigh possible alternatives. One of the most widely used tools to gain this essential information is called an environmental impact assessment (EIA). Typically, an EIA is utilized to determine if a project complies with laws and environmental standards and ultimately, to decide whether or not the project should be continued and under what conditions.

The AWP had an EIA submitted and approved by Peru's environmental certification service SENACE (Servicio Nacional de Certificación Ambiental para las Inversiones Sostenibles) in May 2019, incorporating two indigenous federations (ORAU and CORPI) as interested third parties. However, the approval came only after previous drafts had been rejected by SENACE. (Collyns, 2019a). Despite the approval of the current EIA, a number of concerns were raised about its ability to serve project stakeholders in the aforementioned ways. Lu (2019) documented the Peruvian state's record of approving incomplete or insufficient EIAs, thus failing to protect historically marginalized groups. In particular, these groups were not protected from the environmental degradation caused by many of the extractive industries operating within the country (Li, 2009; Jaskoski, 2014; Lu, 2019). As Ebisemiju (1993) suggested, this lack of protection may be driven by issues related to political interests undermining environmental due diligence; for example, improving the navigable waterways of the Peruvan Amazon was declared a national interest in 2009, before the EIA was conducted. Ebisemiju (1993) documented that this timeline led many people to believe that the GOP's interest in the project predated the EIA's approval - without any real interest in what the assessment was going to reveal.

Lu (2019) also revealed that there were a number of concerns regarding the technical integrity of the project and the limited scope of the EIA. Although the AWP only targets 13 points along the river system to dredge, its effects are expected to be far more extensive than just these isolated areas, with an expected 34 million cubic meters of material displaced in the total lifespan of the project. Despite this, the field sampling that later informed the EIA's conclusions only focused on the 13 points. The field sampling was also confined to the rainy season, the time of least concern for negative impacts to the ecosystem and native peoples in the area. Because of this, the study should have been conducted during the dry season in order to gather data that is closer to the climatic conditions of when the dredging would take place (Lu, 2019). Ultimately, the limited temporal and geographic sampling did not provide a comprehensive idea of what the environmental impacts might include nor how they would interact with other ecological factors.

As asserted by Lu (2019), the main issue with limited sampling is that it may inadvertently omit important biological indicators and how they will be impacted by the AWP. These potential omissions raised concerns amongst environmental protection and justice groups, especially those concerned about the impacts on indigenous people. There was a lack of consideration for the possible effects on the abiotic aspects of the river system, including water quality, sediments, and

erosion (Lu, 2019). While the individual impacts on any one of these indicators may not be harmful in and of themselves, this data is important to understand the cumulative impacts of the project on local species and biodiversity. Being able to predict the effects of the AWP's discharge on species, especially aquatic ones, is critical to ensuring their migratory and reproductive cycles remain unaffected.

The lack of these biological considerations in the EIA is especially concerning because the AWP occurs in a biodiversity hotspot, or a geographic region with significant biological richness that is already threatened with destruction or degradation. Most infrastructure projects that cover fragile ecosystems of biological importance are subject to heightened environmental scrutiny, but the opposite approach was taken in the case of the AWP. Without the appropriate information about the biological and ecological impacts of the AWP, Lu (2019) argued that the EIA was not able to provide a guarantee for the protection of the physical and biological environments. Since this is typically considered a mandatory component of an EIA, it was determined that the AWP's EIA was unsatisfactory.

The failure to incorporate a comprehensive view of environmental impacts over time was deemed another shortcoming of the EIA. The term "drag effect" refers to the economic stimulus brought by investment in public infrastructure projects like the AWP. By using the drag effect, economic estimates of the long-term returns on these investments can be made. While economic projections consider the long-term, the same does not apply to environmental impacts. Unfortunately, as Ebisemiju (1993) noted, the type of infrastructure projects that are associated with the drag effect often justify environmental degradation as a means of development. Applied to the case of the AWP, the waterway expansión is predicted to expand single-crop farming and other extractive industries (Fearnside, 2001). At the surface, economic development is a worthwhile pursuit. However, the EIA of the AWP does not consider the long-term costs to environmental services, biodiversity, and human health. Therefore, the AWP could not be deemed a sustainable development project (Lu, 2019).

While there was an EIA conducted for the AWP, a number of key issues made it unsuitable to assist decision-makers in the way it was originally intended. Beyond the technical and sampling gaps, the omission of impacts on the ecosystem as a whole and the lack of integration of potential impacts throughout the project's lifetime made the original EIA insufficient. An updated EIA was submitted in October 2019, but it has yet to be approved or denied.

## Impact on Indigenous Communities

The environmental impacts discussed above will have severe consequences for indigenous populations. The territory affected by the AWP is home to 424 native communities belonging to 14 ethnicities, many of whom rely on the Amazon river for their water and food supply (Giardino, 2018). According to the Interethnic Association for the Development of the Peruvian Rainforest (AIDESEP), Peru's largest indigenous organization, there is a general lack of information regarding the amount of sediment that will be moved, and how this will affect piscine populations (El Universo, 2019). From the limited information that is available, a number of indigenous communities have voiced concerns that dredging

and the removal of quirumas, submerged tree trunks where fish gather and reproduce, could disrupt fish migration and reduce their quantity and variety. This is alarming as these aquatic fish species are the main source of food for many indigenous communities (Collyns, 2019a; Giardino, 2018). In addition, the project EIA does not take into account the relationship between the diversity of fish and lateral connectivity from the river (DAR, 2020).

To address these concerns, the Peruvian government launched the Plan de alerta mijano (Mijano Alert Plan) in August 2019 (Ministry of Transport and Communications of Peru, 2019). The plan envisions that local experts will monitor and provide information on the state of fish migration in order to prevent the AWP from having negative effects on migration patterns. To introduce the plan, the government held a series of public hearings from August 5 to 10, 2019 for communities in the area where the AWP will be constructed. In those meetings, the government presented their EIA and argued that the Plan de alerta mijano will ensure that artisanal fishing will not be affected by the AWP (Ministry of Transport and Communications of Peru, 2019).

In addition, the project EIA does not take into account the relationship between the diversity of fish and lateral connectivity from the river (DAR, 2020). To address these concerns, the Peruvian government launched the Plan de alerta mijano (Mijano Alert Plan) in August 2019 (Ministry of Transport and Communications of Peru, 2019). The plan envisions that local experts will monitor and provide information on the state of fish migration in order to prevent the AWP from having negative effects on migration patterns. To introduce the plan, the government held a series of public hearings from August 5 to 10, 2019 for communities in the area where the AWP will be constructed. In those meetings, the government presented their EIA and argued that the Plan de alerta mijano will ensure that artisanal fishing will not be affected by the AWP (Ministry of Transport and Communications of Peru, 2019). In addition to concerns regarding fish migration and food security, studies conducted by several institutions, including the Wildlife Conservation Society and Lima's University of Engineering and Technology, have found that dredging will release toxic substances such as arsenic and nickel into the water system. Once released, these substances might accumulate in fish tissue, putting indigenous communities who eat them at risk of toxic exposure (RPP Noticias, 2019; Rodríguez, 2019). Another direct impact on indigenous populations can be found in the threat of more frequent flooding events due to a wider and faster river channel. This flooding is an environmental security concern as much as it is a food security concern as flooding may impact the production of seasonal crops (Giardino, 2018; Fraser, 2015). Indigenous communities also worry that a stronger current and increased river traffic could pose a danger to inhabitants using canoes to navigate the river. Larger vessels might cause canoes to capsize, and the large waves they produce could cause homes along the rivers to flood, especially during the rainy season (Fraser, 2015).

The AWP could also have severe consequences for indigenous communities' cultural heritage. For example, the Kukama Kukamiria people regard the rivers as the center of the cosmos and home to various spirits. The rivers are also home to the boa snake, which is believed to have given birth to the first Kukama person (Fraser, 2015). According to a declaration published by AIDESEP and its regional member organizations in November 2019, the AWP poses a threat to spiritual beings, including the anaconda, the yacumama - a 100 foot long mythical serpent believed to be the protective spirit of the Amazon river (Peru. info, 2019) - and the yacaruna - mythical water men (El Comercio, 2016;

CAAAP,2019). Therefore, the AWP not only threatens the food supply, health, and traditional means of transportation of the affected indigenous communities, but also has the potential to endanger and erase their cultural heritage.

To ensure that infrastructure projects like the AWP do not threaten indigenous communities' food security and way of life, in 2011 Peru's President Ollanta Humala signed into law the Free, Prior, and Informed Consent legislation. However, the consultation process surrounding the AWP, which is the first implementation of consulta previa for a major development project, has been especially problematic and fraught. Citing a lack of consultation, indigenous groups filed a complaint with the Constitutional Court in Nauta, which led to the initial suspension of the project in February 2015 (Fraser, 2015). To meet the prior consultation requirement, the Peruvian State sent experts and translators to more than 300 affected villages to discuss the project (Giardino, 2018). When the process started in May 2015, some indigenous leaders had only recently heard about the project. After the first round of discussions, many of the indigenous organizations and communities wanted the process to return to the information stage, arguing that the information they had been given lacked details regarding both the environmental and cultural impact of the project, and therefore failed to allay their concerns (Fraser, 2015). Furthermore, according to the Federation for Ucayali and Afluentes Native Communities (FECONAU), the Ministry of Transportation provided "overly technical information" (Giardino, 2018, n.p.) at its legally mandated public forums, contributing to indigenous communities' lack of information about the project and its consequences (Giardino, 2018).

The agreements on terms of reference for the concession contract and the environmental impact study were ultimately signed in September 2015 following two rounds of meetings and internal evaluations (Fraser, 2015). However, FECONAU representatives claim that the agreements were only signed as a result of strategic bribery. According to the organization, the Ministry of Transportation offered indigenous communities infrastructure and social projects in exchange for their approval, and was thereby able to avoid providing more detailed information (Giardino, 2018). According to Guimaraes, the AWP "is a complicated issue for communities to understand. [They] had legal advice about their rights, but lacked technical or engineering assistance for understanding possible environmental impacts of the project" (Fraser, 2015, n.p.). While there are significant concerns regarding the effects the AWP will have on indigenous groups' food security and way of life, the prior consultation process failed to provide them with sufficient information.

## Conclusion and Recommendations

While the AWP provides a number of potential benefits, including access to new markets, regional integration, and reduced travel time, critics have found that the potentially significant impacts of this project have not been assessed sufficiently. The EIA, meant to ensure that major infrastructure projects like the AWP comply with the laws and environmental standards, is insufficient because of the gaps and omissions of the project's impacts on the ecosystem. Critics argue that the AWP could significantly affect the food security, health, and way of life of indigenous communities. Despite Peru having a "consulta previa" in place to ensure that affected indigenous communities are notified of projects of

this kind, the AWP's consultation process was fraught with corruption and has failed to provide affected communities with the necessary information to make a well-informed decision. Overall, critics agree that the AWP is characterized by a severe lack of information about its consequences and should not enter the construction phase prior to addressing these issues. Instead, the AWP's EIA should be revised so as to provide a comprehensive assessment of the AWP's impacts.

The lack of information on the AWP's environmental impacts and resulting consequences for the indigenous population are the most problematic issues surrounding the AWP. To address this problem, Sinohydro and CASA need to rework the EIA to:

- Expand the temporal and geographic scope of their field sampling,
- assess possible effects on the abiotic aspects of the river system,
- consider how the AWP's effects could be further exacerbated by climate impacts,
- and assess the long-term costs for the environment.

In addition to being essential for understanding the AWP's impact on the environment, this information will be of great importance for the affected indigenous communities, making it possible for them to assess how the AWP's environmental impacts will affect their food security and way of life.

This case also indicates that Sinohydro and CASA must improve community engagement. They should step up their efforts in engaging affected indigenous communities throughout the various stages of the project to help these communities understand how the AWP will affect them and their livelihoods. In doing this, they must improve implementation of the prior consultation requirement, including combating corruption. While the Peruvian government has undertaken efforts to implement the prior consultation process mandated by law, the experts sent to the communities affected by the AWP failed to provide sufficiently detailed information and used bribery to receive indigenous communities' approval. Halting such practices should be of immense importance for Peruvian decisionmakers to guarantee compliance with the prior consultation law and ILO Convention 169.

In conclusion, the EIA data-gathering and approval process is deeply flawed. The AWP's EIA was approved despite significant technical and sampling gaps. Furthermore, letting political interests override environmental concerns undermines the purpose and effectiveness of EIAs and can have severe consequences for Peru's biodiversity and population.

*Indigenous leader Robert Guimaraes (center) calls the waterway project a threat to native food security.*
***Source:*** *(Giardino, 2018)*

## Case #2: Las Bambas

The Las Bambas copper mine is one of Peru's most famous cases of conflict between investors and indigenous people over environmental problems and lack of respect for rights. The construction of the Las Bambas copper mine began in 2004, twelve years after a period of international public bidding which resulted in Swiss company Xstrata purchasing rights to develop the project. In 2011, the project gained state approval of its Environmental Impact Assessment. In 2013, Xstrata was acquired by the British multinational company, Glencore. In 2014, the mine was sold to MMG Ltd. Consortium - a company led by Chinese capital - for US $5.85 billion (Riseborough and Penty, 2014).

Glencore is a British company (headquartered in Switzerland) that initially specialized in marketing ferrous and non-ferrous metal, minerals, and copper. It was founded in 1974 and in 1990 acquired Xstrata; it completed the merger with Xstrata in May 2013 (Las Bambas, n.d.). It is described as one of the world's largest global natural resource companies. China is one of the biggest buyers of copper and was concerned that Glencore would control the copper market ("China buys $6bn Glencore Peru mine," 2014). With the merger, Glencore-Xstrata controlled 7% of the global copper supply and China speculated that it would control more of the copper supply in the future (Chon, 2013). To secure approval of the merger,

Glencore offered to sell Las Bambas (Chon, 2013). Under this agreement, Glencore had three months to begin the process of selling Las Bambas to a Chinese company and find a buyer before August 2014 (Ferreira-Marques, 2013).

In general, it was the best deal for Glencore; it allowed Xstrata to successfully merge with Glencore as well as use the US $5.85 billion from MMG to reduce its debts ("China buys $6bn Glencore Peru mine," 2014). Furthermore, it could have been worse for Glencore if it had held onto the copper mine due to the political instability and protests after MMG acquired Las Bambas ("Glencore's sale of Las Bambas now looks timely," 2015).

The Las Bambas copper mine entered commercial production in Apurímac, Peru in July 2016. It is one of the world's largest copper mines, and employs nearly 8,000 people, including contractors who occasionally visit the site ("Las Bambas," n.d.). According to MMG's website, 99% of employees are Peruvian nationals, about 20% of whom are from the Apurímac region. Chinese involvement began as a joint venture between MMG (Mineral and Metals Group) which owns 62.5% and is a wholly owned subsidiary of Guoxin International Investment Co. Ltd (which owns 22.5%) as well as China's CITIC Metal Co. Ltd ("Las Bambas," 2020). The mine has an estimated life of 20+ years, and mainly produces copper alongside byproducts of gold, silver, and molybdenum concentrate through open-pit mines. Although more than 40% of Peru's territory has been used at some point for extractive activities, in the Las Bambas case 89% of the Cotabambas territory and 72% of the Grau territory have been concessioned to mining. Although Peruvian law requires local involvement and consent, these territories were leased without consultation of local indigenous groups (Estrada, 2015). This has led to protests by local indigenous groups and their allies who do not support the mining operations' harmful effects.

Foreign mining investors are infamous for prioritizing the potential values of extracting natural resources over environmental damage or human health and life. Over the years, Peru has become the most attractive country for mining investment in all of Latin America (Andina, 2018). Investment growth has unleashed tensions in territories of indigenous communities, and has led to distrust from indigenous communities due to a pattern of false promises and misleading documents, such as when Environmental Impact Assessments were quietly rewritten.

## Project Benefits for China

In general, MMG's stated vision for Las Bambas is to create the world's most respected base metal company as well as create wealth for their host communities, and shareholders (PDAC 2016, 2015). China has been heavily spending on natural resources and Las Bambas is expected to produce 450,000 metric tons of copper annually, making it one of the largest such mines in the world (Yap, 2014). MMG Ltd., officially advocates for a Co-Responsible, Multiple Agent, Leveraged (MAC) approach in which it promotes equal participation across all people in Peru into social development. The company also supports

the Las Bambas Social Fund (FOSBAM) which carries out social development for local communities to benefit the residents of Cotabambas and Grau provinces (Mine for Progress, n.d.).

The economic impacts of Las Bambas can be seen through the mine's positive impact on Peru's GDP. The Las Bambas project is credited with increasing the overall GDP in 2016, when the GDP grew by 3.9% as compared to a 3.3% in 2015 (Economic Survey of Latin America and the Caribbean, 2017). With the growth of GDP, Las Bambas has contributed to an increase in national employment. Las Bambas accounts for 16% of Peru's copper output. Over the next 20 years, it is expected to contribute about US $5 billion in tax revenues and royalty payments to the government (DuPée, 2019).

In September 2019, MMG along with China's Guoxin International Investment and CITIC Co Ltd., signed a contract to enable digitalization and automation projects in the southern-central region of Apurímac; this contract will help connect and improve existing wireless services and allow Las Bambas to put in place additional safety measures (Ruiz-Leotaud, 2019b). This contract entails the building of a private LTE network 4,600 meters above sea level to connect all the workers and the equipment; mining operations need to have a comprehensive reliable network to improve safety (Nokia, 2019). The contract was signed as of September 2019, but it is difficult to say if the increase in digitalization will improve working conditions of the mine. Cotabambas province where Las Bambas is located is home to around 32,000 Quechua, who make up 85% of the provincial population, with an approximately 62% working age population (age 15-64) (Brinkhoff, 2018). Illiteracy rates remain an outstanding problem for almost a quarter of the population. Many Quechua do not receive proper educational resources to enter the labor force.

## The Roads of Las Bambas

The core reason for the recent protests and blockades is the trucks coming and going from Las Bambas. Originally, the roads were not supposed to be used to transport copper to and from the mine. Instead, a pipeline was to be constructed that would connect the mine to the port of Arequipa on the coast (Baird, 2019). However, when MMG took over the mine, it cancelled the pipeline project. Local communities protested, saying that they had not been consulted over the decision to use the unpaved road, which causes air and dust pollution from the unceasing transportation of copper on trucks. Trucks on the Southern Runway, in particular, produce massive amounts of dust that cover the farmers' lands, killing crops and livestock and adversely affecting the locals' health (Baird, 2019). While the government and MMG have been willing to sit down with the protesters to discuss their demands, they have also labelled the demands as unachievable and even outside the scope of Peruvian law (Ruiz-Leotaud, 2019a). Protesters have asked that traffic along the Southern Runway be stopped until proper consultations and a permanent solution has been reached. The conflict stems from a Supreme Decree issued by the Peruvian government which made the Southern Runway a national, and therefore public, road beyond local control. Local communities have alleged that this Supreme Decree was issued in order to accommodate Las Bambas.

## EIA and its Shortcomings

The official 2010 Las Bambas Environmental Impact Assessment provided information on various aspects of the project including: climate, geology, water quality, air quality, soil quality, wildlife and vegetation. The Assessment measured how the project has affected the health of these aspects of the environment surrounding Las Bambas Mine. It comes to the overall conclusion that the presence of the mine has not caused harm to the surrounding environment or health of the municipalities surrounding the region.

In regards to the socio-economic impacts, MMG concludes that fewer than a third of community members in areas surrounding the mine expect negative effects from mining. The formation of roads and increase in traffic to rural impoverished areas around the mine are expected to increase economic opportunities for locals. MMG has put into place an Environmental Management Plan with the objective, "to minimize the negative effects of the activity on the areas impacted by the exploration works, prevention, restoration and control activities will be carried out, following the guidelines of the relevant environmental standards for exploration" ("Las Bambas," n.d.). An additional point of contention is the newly adopted Euro IV vehicle emissions plan. The plan is predicted to reduce nitrous oxide emissions into the environment by 35% (UN Environment Programme, 2017). Furthermore, vehicles are to be limited and only allowed on the roads between the hours of 7 a.m. to 5 p.m. to reduce pollution. According to members of the community, none of these new laws have been respected (Jamasmie, 2020).

Some shortcomings of the EIA are that it is limited to the scope of the group publishing the assessment. This can lead to bias within the assessment. Furthermore, the last amendment to the EIA was made in 2014. The current EIA for Las Bambas mine is in need of revision from a third-party group to conduct the assessment in an unbiased way. While the EIA lays out a number of safety measures that are to be put in place for the protection of the communities and environment around the site, it has failed to carry out many of the original promises. These included better economic opportunities for towns surrounding the mine and roads leading to it, and sanitation systems for the towns and hospitals. All of these promises related to community development are listed on the Las Bambas website as a "Community Engagement Plan" which has supposedly reached 13,000 citizens and has funneled US $64.5 million into their economies ("Las Bambas," n.d.). Protests in one of the towns that was primarily affected, Challhuahuacho, ended with the government suspending civil liberties and putting in place an emergency decree to start building a sewage system and hospital that had been promised to the town. Nonetheless, citizens claim that the government owes money in reparations due to damages to their land. While the EIA has acknowledged safety practices that must be put in place to safeguard the ecosystem and indigenous people, the MMG has not followed through on safety measures or obligations to the indigenous communities near Las Bambas.

## Indigenous Impacts

When it was owned by Xstrata, Las Bambas enjoyed popular support from both national and local level authorities and communities. However, upon being purchased by MMG in 2014, the mine's EIA was modified and terms that had previously been agreed upon between the local communities and Xstrata were voided. The most significant change to the EIA was the method of transportation of the ores to Arequipa. Originally slated to be transported through a pipeline to a nearby mine, MMG eliminated the proposed pipeline in favor of a fleet of trucks. This change was not agreed upon by nor deliberated with local communities, resulting in a wave of opposition to the new method of transportation, which causes dust and noise pollution; there has been no compensation for the use of local roads (Vargas-Diaz, 2017).

The Las Bambas mine conflicts highlight a series of problems that local communities face in dealing with foreign companies and their own government. Significantly, the exclusion of local peoples from discussions regarding their community prevents them from voicing their concerns. Sadly, some protesters have been killed as a result of state intervention and Peru has declared a State of Emergency in the Las Bambas area several times.

On September 25, 2015, a protest began in Challhuahuacho in response to six irregular modifications to the EIA for the Las Bambas project between 2013 and 2015 (Vargas-Diaz, 2017). Each modification was approved by the state, and despite the project containing three open pits and a large highway posing risks such as dust, noise, and vibrations, indigenous groups were never consulted during the planning process.

On September 29, nearly 15,000 people gathered in Challhuahuacho to protest the US $7.4 billion mining project due to concern about environmental damage that operations would cause (BBC, 2015). Protesters were met by 1,500 police officers and 150 soldiers. Four people were killed and dozens injured in clashes between demonstrators and police. As a result, President Ollanta Humala declared a 30-day state of emergency.

Since then, these have been more protests, notably in February and August of 2017, which have resulted in similar states of emergency. These protests have been in response to MGM not fulfilling promises later made to the Challhuahuacho community, such as compensation for the use of a road in Mara (Vargas-Diaz, 2017). Even more recently, responding to large protests in January 2020, Peru's Deputy Minister of Territorial Governance Raul Molina urged protesters to be more realistic in their demands to the state and MMG, despite the government and corporation not adhering to the law or agreed-upon terms of the Las Bambas project (Ruiz-Leotaud, 2019a).

Protests by the local indigenous community have had a significant impact on the mine's business. Following the blockades by the community, MMG was forced to revise copper output estimates for 2019. In addition to the protests at Las Bambas, the mines Cerro Verde, Antapaccay, and Constancia have also been affected and shipments to port cities have been delayed (Aquino, 2019). While blockades have been on-and-off throughout the year, talks for a long-

lasting agreement have yet to succeed. While the terms of the negotiations are not known, MMG has called the protesters' demands exorbitant and unfeasible (Taj, 2019). As of February 2020, blockades continued and affected the operations of Las Bambas and other mines. These protests are rooted in the indigenous community's demands to recategorize the status of the roads used by the mining communities, which are now national thoroughfares (Las Bambas, n.d.). In addition, protesters continue to call on mining companies to meet outstanding social and environmental commitments, despite claims that the company has already fulfilled them (Las Bambas, n.d.). Las Bambas thus presents a case involving problems in company-community relations as well as government-community relations. The classification of the roads through indigenous communities' farmlands and the unmet commitments from the companies indicate that foreign companies are only part of the problem, and stronger government actions are needed to defuse tensions.

Environmental concerns stemming from mining activities directly affect local indigenous communities. In particular, these communities rely on farmland and local water resources in order to survive. Environmental damage can have devastating effects on their basic livelihoods. Peru is South America's most water-scarce country. Moreover, Peru has been identified as the world's third most vulnerable country to impacts of climate change, even without reference to impacts of mining on their pre-existing resources (Bebbington, 2018). While estimates are that mining uses only 5% of Peru's water resources, others have noted that this under-reports the true impact of the mining industry's water usage. Many mines are located in headwater areas of Peru, which significantly affects communities downriver when they become contaminated. Moreover, mining often adversely affects water quality, which can impact not only rivers, but also entire watersheds and aquifers (Bebbington, 2018). As a result, should water resources become contaminated, the impacts will last over time, affecting generations to come and further stressing the country's scarce water resources.

While Las Bambas provides tangible economic benefits for the economies of both China and Peru, they come with serious environmental concerns and issues regarding indigenous rights. Similar to the EIA of the AWP, Las Bambas' EIA was not only insufficient in its scope and impact assessment, but unilateral changes to the EIA without proper consultation with indigenous communities have further eroded the relationship between the company and the local community. Furthermore, the Supreme Decree issued by the Peruvian government declaring the local highway a national road has caused indigenous protesters to believe that the government is actively helping projects at the expense of the local indigenous communities.

# Case #3: Lot 58 in Cusco

Peru has over one billion square kilometers of sedimentary basin, and underneath the highly diverse environments are large reserves of oil and natural gas, some of which have been exploited since the 1930s (Rosell-Melé et al., 2017). At this time, the country's reserves contain over 12.5 trillion cubic feet of gas and 600 million barrels of oil ("History of Hydrocarbon Exploration Activity in Perú," n.d.). Peru's oil production boomed in the 1970s, and ever since then, there have been numerous oil and gas projects, with production estimates of 195 million barrels of oil per year ("History of Hydrocarbon Exploration Activity in Perú," n.d.).

Currently, Peru has the 7th largest crude oil reserve in Central and South America ("U.S. Energy Information Administration," n.d.). In January 2015, the country estimated to have 741 million oil reserves and 15 trillion cubic feet of natural gas, known to be the 4th largest reserve in Central and South America, following Venezuela, Mexico and Brazil ("U.S. Energy Information Administration," n.d.). Peru has six oil refineries, most of which are owned by the state company Petroperu, which is deeply involved in the production and distribution of oil across Peru ("U.S. Energy Information Administration," n.d.). Recently, the exploration and production of oil and natural gas have been limited due to widespread contamination from oil spills and wastewater discharges across the northern Peruvian Amazon (Rosell-Melé et al., 2017).

## Background of CNPC in the Region

China National Petroleum Corporation (CNPC), established in September 1988, is a state-owned enterprise under the Ministry of Petroleum Industry; the central government of China supervises most major decisions such as allocation of capital and strategic decisions on oil and gas exploration (Victor et al., 2011). In July 1998, it was reorganized to be an integrated group covering oil and gas upstream and downstream operations, oilfield services, and engineering construction ("History," n.d.). Its stated goal is to become the first-class international company in the oil and energy industry (CNPC, n.d.).

PetroChina is the major subsidiary and CNPC owns 86% of PetroChina's shares (Victor et al., 2011). PetroChina is listed on New York and Hong Kong's stock exchanges; stocks offered by PetroChina have allowed CNPC to engage in international markets (Victor et al., 2011). CNPC has been in Peru since 1993 and owns production lots 1-AB/8 and 6/7 in Peru's Talara Oilfield. In 2013, CNPC bought entire shares of Petrobras Energia Peru as well as lots 10/57/58. This purchase was made not only to expand CNPC's Latin American oil patch, but also to provide

nearly US $9 billion in funding for Petrobras to continue the development of offshore oil reserves in Brazil (Ferreira-Marques, 2013). Talara Oilfield is located in northwestern Peru. Block 6/7 was the first overseas oil development investment by CNPC and was acquired in 1993 and 1994. By 2014, production of oil exceeded 4,000 barrels daily. In 2003, CNPC signed a cooperation agreement with Pluspetrol on lot 1-AB/8; it had a 45% stake in the lot ("CNPC in Peru," n.d.).

## Environmental Impacts on the Region: CNPC Oil and Gas Exploration in Peru

Over the past four decades, there have been several extractions of oil and gas in Northern Peruvian Amazon; these have raised repeated concerns about the consequences of these operations for the environment (Rosell-Melé et al., 2017). China National Petroleum Corporation is set to acquire one million hectares across the Peruvian Amazon for the exploration of oil and gas; these hectares include areas of serious environmental concern (Hill, 2013).

As of 2012, PetroChina had discovered oil at Lot 58, which is 340,133-hectares large. Lot 58 includes highly sensitive areas of the Amazon region and is inhabited by the indigenous Machiguenga, Caquinte, Asháninka and Yine. According to James Anaya, the UN's Special Rapporteur on Indigenous Peoples, a series of environmental problems in this region as a result of oil operations have included water and soil contamination. This has had a significant effect on the indigenous people's health and food supplies (Hill, 2013). In addition, before CNPC moved to acquire Lot 58, the government of Peru declared three river basins close to the Lot to be an area of "environmental emergency" because of the life-threatening metals and hydrocarbons that were found in the soil, although this was caused by other extraction companies that operated in the neighboring areas such as Lot 1-AB and Lot 8 (Hill, 2013). Irrespective of the latter concerns, CNPC is still determined to explore for oil and gas and plans to spend US $2 billion on the development of Lot 58. The company will commence drilling 60 wells in order to tap into an estimated 3.9 million cubic feet of Peru's natural gas. This represents 27.7% of Peru's gas reserves (Slav, 2017).

Prior to the CNPC acquisition of hectares across the Peruvian Amazon, there were cases where the company was sanctioned for violating environmental laws, one of these being the violation of environmental laws in some Chinese cities (Mingh, Duanduan, and Jie, 2013). The company was banned because it failed to meet emission targets. According to the then-Ministry of Environmental Protection (MEP), CNPC lacked the essential equipment in building refineries or expanding already existing refineries (Mingh, Duanduan, and Jie, 2013). This record raises doubts about CNPC's ability to conduct extraction in an environmentally responsible way.

## Impact on Indigneous Communities in the North

As Peruvian oil becomes a dominant export, the people of the Northern Amazon have been deeply affected, and their experience may be instructive for those who live on Lot 58 in the South. The Achuar, Kichwa, Kukama, Quechua and Urarina indigenous peoples living in this region have suffered devastation to their communities due to unregulated and illconstructed drilling sites that have been developed on their ancestral lands (Hill, 2017). Peru's Northern Amazon has been split into a number of oil drilling lots which have been subsequently purchased, sold, and passed between a number of international drilling companies. For decades these countries have spilled oil and contaminated water from drilling sites into rivers, lakes, and land occupied by indigenous peoples in the region (Hill, 2017). A federation of indigenous peoples located in the Loreto region stated that "... lagoons with oil, contaminated animals, dead fish, knowledge loss, social disorder and the mistreatment of men, women and children, among other things" have been detrimental to the native population in the region (Hill, 2017, n.p.). An astounding 1.1 million hectares of land have been declared to be "environmental and health emergencies" in the Northern Amazon basin (Eqidad, 2017). According to a 2005 Health Ministry sample and report, 99% of Achuar men, women and children from the Corrientes basin had higher cadmium levels in their blood than permitted (Hill, 2017). An additional 66% of Achuar children from the Corrientes basin had higher levels of lead in their blood than permitted (Hill, 2017). Health problems and lack of recognition for indigenous land rights have been at the forefront of violations committed against Peru's indigenous population for years. With drilling sites being passed frequently between companies, reparation initiatives have not started as legal and ethical responsibility are difficult to establish.

In August 2019, a building in a Northern Peru town was set on fire in a protest against CNPC. The protestors representing the indigenous people in the region wanted CNPC to agree to a number of commitments to local development, such as jobs for young people, adherence to environmental protection standards, and preservation of local land rights (Taj, 2019). This was one of the first direct protests against CNPC's operations in Peru.

In January 2020, in a landmark court case for the indigenous people, "a Peruvian judge ruled that the government exclude an indigenous region of the Amazon near the border with Brazil from any oil exploration and exploitation" (Cervantes, 2020). This ruling was the first in favor of indigenous people in voluntary isolation against oil companies. This ruling suspends the development of three oil lots in the Northern Loreto region of Peru. The court has ruled that a strict protection zone around the Northern Amazon must be established, protecting the indigenous peoples' right to land and to the environment where they live.

While CNPC has assisted Peru's global economy through the extraction of oil, it has not so far respected the rights of indigenous people or the environment. The landmark court case in January 2020 is promising but it remains to be seen how this will affect Chinese plans to prospect and drill in the South in Lot 58 near Cusco.

# Case #4: Bi-Oceanic Railway Integration Corridor

The Bi-Oceanic Railway is a proposed development project aimed at connecting the Atlantic to the Pacific from the port of Puerto Santos in Brazil to Puerto de Ilo in Peru. The Railway was envisioned with the intent of ending the dominance of maritime shipment on trade through the creation of an alternative form of transportation. First conceived in 2013, the Railway would bring massive trade and economic benefits to South America; however, the impact it would have on the environment and indigenous groups has been criticized. The suggested path of the Railway would encroach on indigenous territories and threaten to further destabilize the Amazon Rainforest.

This overview of the case begins with a background of the project, followed by a section on the benefits of the project, concluding with the impacts of the Railway on the environment and indigenous groups.


*The proposed route of the Bi-Oceanic Railway,* ***Source:*** *Granma (Batista, 2017)*

## Background on the Bi-Oceanic Railway

The Bi-Oceanic Railway Integration Corridor is a transnational railway that is set to connect the Atlantic and Pacific Oceans across South America. The 3,858 kilometer-long railway would run from Puerto Santos in Brazil into Bolivia and end in Ilo, a port city in southern Peru. While Peru, Bolivia, and Brazil have already bought into the idea of a mixed railway to transport both passengers and goods, Paraguay is now also considering participating. Perhaps the most appealing part of the Bi-Oceanic Railway - not unlike some other case studies covered - is the impact it could have on shipping time. It is estimated that the railway would reduce the time it takes Bolivian and Brazilian goods to reach China and other Asian countries by over 20 days. The project is estimated to cost a total of approximately US $10 to 14 billion, and Peru alone is planning to contribute around US $7 billion (Grey, 2018; Bonachera, 2018). The Peruvian government has suggested that China could play an important role in financing this project as part of its Belt and Road Initiative (Campos Vélez, 2020; Jacques, 2019).

The idea for the Bi-Oceanic Railway has its origins in the Initiative for Integration of the Regional Infrastructure of South America (IIRSA), a 2000 agreement between Peru, Bolivia, and Brazil to integrate their road networks. The IIRSA was designed to foster trade between the three countries, but has so far failed to achieve this goal (Ortiz, 2017). It has not contributed to a greater diversity of products traded, and the trade between Brazil and Peru has only achieved anemic growth since the enactment of the IIRSA. With this outstanding need for better rail infrastructure integration in mind, Chinese President Xi Jinping visited South America in 2013 and discussed the idea of a multinational rail network with Bolivian President Evo Morales, and the concept of the Bi-Oceanic Railway was born.

Since then, several feasibility studies have been conducted, and all three countries involved have approved the project, which has an expected 2025 completion date (Grey, 2018). The project also has the support of several other regional entities, including the Union of South American Nations (UNASUR). Despite this support, work on the Bi-Oceanic Railway has not started and it is currently unclear if the project will be carried out (Berti, 2020). Setbacks include political instability in Bolivia and, most importantly, the apparent lack of interest in the project by Brazil's President, Jaír Bolsonaro. The Bolsonaro administration now appears to be preferring a route for Brazilian goods to be exported to China via Chile (Campos Vélez, 2020).

## Benefits

As was previously stated, the Bi-Oceanic Railway seeks to connect Brazil, Bolivia, and Peru by making access to both the Atlantic and Pacific oceans easier, and would dramatically reduce the time it takes these countries to export goods to Asia. Additionally, this project hopes to make Bolivia the "central hub" for the Bi- Oceanic Railway system; this would benefit the trade capacities of the landlocked country tremendously (CAF, 2019). Bolivia seems to be garnering

support as the Development Bank of Latin America (CAF) recently signed an agreement with Bolivia to fund a pre-investment and logistics study to improve the domestic railway connection. The logistics study also calls for additional analysis on Peru and Brazil, in order to better understand the "technical and regulatory, comparative and standardization" (CAF, 2019, n.p.) components of the railway system.

Similar to Bolivia, Peru is expected to benefit directly from the project. Peru specifically has struggled to reach buyers in Bolivia and Brazil. Subsequently, trade has been minimal, less than one percent of their total (Berti, 2020). The Bi-Oceanic Railway could lead to an increased percentage of Pervian exports landing in Bolivia and Brazil. Between the three countries, Peru is also seen as the best standing country economically to handle the project. Emerging Markets economist, John Ashbourne, has argued that Peru is likely to benefit significantly from the rise of copper prices that accompanies the rail's construction (Berti, 2020). Despite what Peru has to gain from a Bi-Oceanic Railway seeming limited, there seem to be a number of associated economic benefits expected for it.

While aiding in the export capacity of the countries involved is the primary goal of the project, there are also a number of projected benefits. Improved cooperation in the region, including collaboration on environmental issues and climate change, has been cited as an unintended benefit. For example, since negotiations regarding the Bi-Continental railway have begun, Peru and Bolivia have agreed to work together to decontaminate the shared lake of Titicaca (Climate Diplomacy, 2018). This collaboration, however, cannot fully be attributed to the rail's impact.

## Impacts

Though the Bi-Oceanic Railway has yet to undergo construction, serious concerns regarding its impacts on the environment and indigenous populations have been raised. When the project first began developing in 2016, the civil advocacy organization Derechos, Ambiente, y Recursos Naturales (DAR) found that four of the five possible route options for the rail would pass through either protected natural areas or indigenous reserves (DAR, 2019b). Environmentalists have raised concerns that the construction of the Railway would bear similar environmental and indigenous issues as the building of the Interoceanic Highway, which runs from ports in Brazil to Peruvian port of San Juan de Marcona (Grey, 2018). Indeed, other official bodies from Brazil and Peru have raised similar concerns as well. Valec, the Brazilian state-run rail operator, said construction would be a huge undertaking that would not only run through indigenous reserves but also damage sensitive ecosystems (Leal, 2016). Following FPIC principles, the Peruvian Ministry of Culture and Environment said that it was imperative that indigenous communities be consulted prior to the construction of the 5,000 kilometer railroad (Leal, 2016). Despite this call, César Gamboa, the director of Peru's Environment and Natural Resources Law, has also voiced objections to the lack of transparency regarding the economic and geopolitical implications the project would have (Grey, 2018).

The impact that the Railway would have on indigenous communities would be significant. First, the railroad would cut through indigenous reserves and concerns have been raised regarding the rail's potential to exacerbate ongoing problems such as illegal mining, illegal logging, environmental damage, and degradation of overall wellbeing of these communities(Ortiz, 2017). Indigenous communities often lack formal land titles, making it easier to dispossess these communities from their land in order to make way for the Bi-Oceanic Railway's construction (Ortiz, 2017). While the Peruvian government has affirmed the need to consult with indigenous communities, this would be an undoubtedly large undertaking given the complexity and scale of the project as well as the sheer number of indigenous communities that would be affected. The Institute of the Common Good estimated that more than 600 different indigenous communities, speaking several different languages, are likely to be directly impacted by the construction of this rail ("Brazil," 2015). Furthermore, at least 15 of these communities are uncontacted, which would complicate any effort to exercise FPIC principles.

In addition to the indigenous communities, the railroad also threatens parts of the Amazon that contain some of the world's highest biodiversity (SALSA, 2015). While the loss of tropical rainforest due to land-use change is concerning in any context, loss of the Amazon Rainforest across three, potentially four, countries could have devastating effects. Not only does the Amazon Rainforest account for 10% of the world's biodiversity, but also houses a large number of endangered and endemic species, which cannot be found anywhere else in the world (WWF, n.d.). The Amazon ecosystem holds economic, social, and cultural value for the indigenous communities that live in harmony with it in addition to benefits for those that live further from it. A healthy Amazon is important for the region, and ultimately the planet, as it acts as a carbon sink, storing carbon that would otherwise be in the atmosphere (WWF, n.d.). Though the Bi-Oceanic Railway presents potential economic benefits, the complexity and scale of the project will likely have serious and irreversible impacts on both the environment and indigenous communities; these negative impacts should be considered just as heavily as the potential economic benefits.

Not unlike the other case studies explored in this Handbook, the infrastructure project of the Bi-Oceanic Railway promises a multitude of economic benefits for Peru and its regional partners. The most significant benefits include reduced shipping time to Asia and improved export capacity for the countries involved. However, these benefits would not come without a cost, specifically a cost to the sensitive Amazon ecosystem and the indigenous communities that live within it. Given the scale of the Bi-Oceanic Railway, serious consideration of the ways in which the estimated 600 indigenous communities would be impacted from both a human rights and legal perspective will be vital to the continuation of this project.

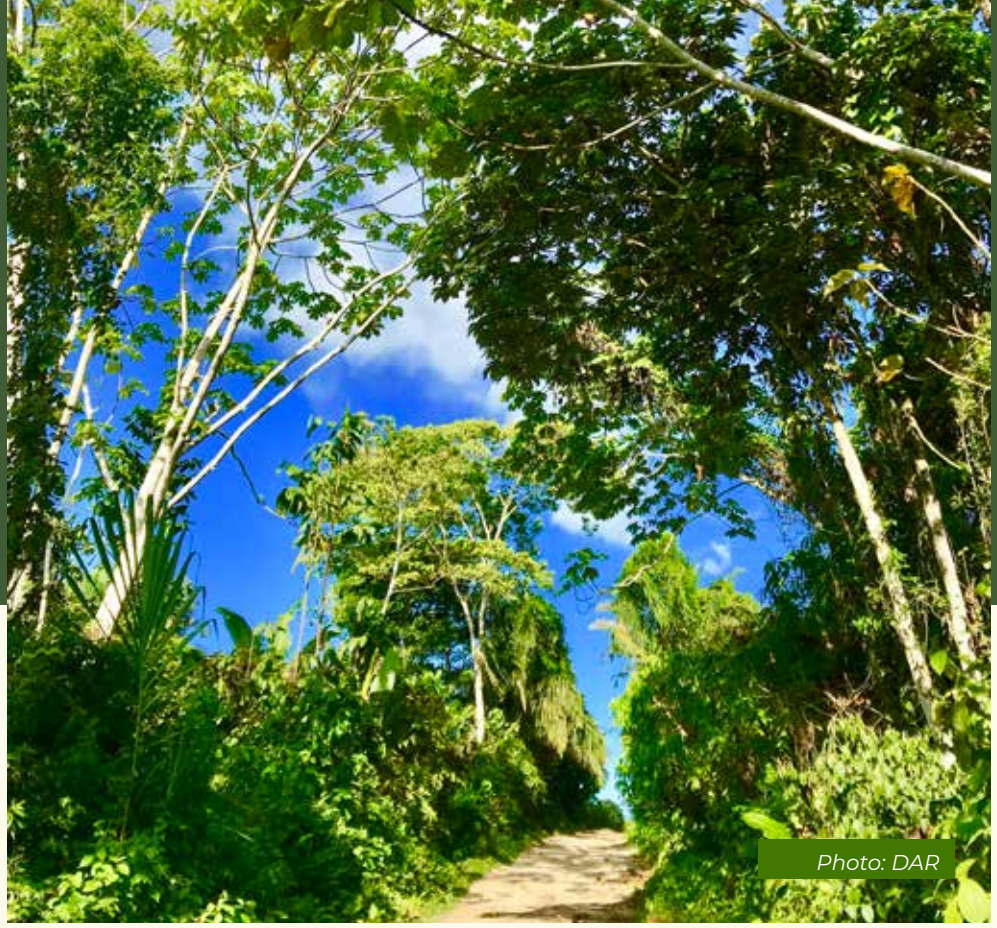


*Photo: DAR*

Section fourth

# Observations, Recommendations and Next Steps

The cases presented above demonstrate that there are tantalizing potential benefits for many stakeholders involved in the projects. However, it is also necessary to address present and potential issues regarding treatment of indigenous populations and respect for their rights.

First, parties interested in projects involving indigenous peoples or their territories should observe and respect the principles of Free, Prior, and Informed Consent. FPIC principles allow indigenous peoples to give or withhold their consent to any activity or project that would affect them or their territory. This consent can be rescinded should circumstances change. FPIC principles allow indigenous communities to negotiate with companies in order to determine how activities are designed and implemented as well as allowing them to monitor the impacts. Notably, they allow indigenous communities to revoke their consent should issues, such as environmental concerns, arise during the implementation of the project. While FPIC principles are not specifically found within the 1993 Peruvian Constitution, they are found in the United Nations Declaration on

the Rights of Indigenous Peoples, which Peru voted for in 2007. Additionally, the protection of all human rights is a principle found within the Peruvian Constitution, which should extend to FPIC principles.

Second, Environmental Impact Assessments should be carried out in accordance with FPIC principles as well as provide better, more comprehensive overviews of the environmental impacts of projects.

EIAs that do not have comprehensive analyses of the environmental impacts and consequences for indigenous communities will not allow affected people to make informed decisions according to FPIC principles and are therefore more likely to result in conflict in the future. Furthermore, comprehensive EIAs establish a relationship between companies and indigenous communities, allowing for improved community engagement and communication which would lead to a better, more cooperative relationship. Better transparency and reduced corruption between the parties involved would allow for Peruvian decision makers to better monitor and evaluate compliance with FPIC principles. Third, Chinese investors should be considering "Rights of Nature" and their affiliated protection for indigenous people when pursuing development projects in Peru. While Peru does not have formal "Rights of Nature'' language in its constitution at this time, the movement for these types of rights throughout the Amazon region is ongoing and Peru has shown interest and support, most notably through its engagement with the International Tribunal on the Rights of Nature. Though Peru does have extensive environmental protection and management laws which outline the access rights and sustainable use of the country's natural resources, these are often not sufficient to protect ecosystems and the indigenous groups that directly depend on them. Therefore, the onus is currently on investors and developers to employ the precautionary principle, erring on the conservative side in regards to their impacts on the environment and indigenous populations. Failing to consider their impacts on nature's ability to exist, persist, and regenerate not only has legal repercussions within the Peruvian context, but also within the region as a whole.

Finally, there is a need for joint collaboration between China and Peru to enhance current cooperation between the countries through the establishment of an intergovernmental working group. Chinese influence in Peru has continued to leave a mark culturally, historically, politically, and economically. As investment opportunities continue to grow, the need to have an intergovernmental institutional arrangement between China and Peru would benefit the successful completion or the beneficial restructuring of proposed projects. Creating a permanent forum for communication among the Peruvian government, NGOs, and indigenous groups along with the Chinese government and investors would allow parties to have more open engagement. Additionally, through intergovernmental working groups, each country would have a designated point of contact to facilitate communication to ensure transparency and encourage the support of appropriate initiatives that would affect Chinese investment in Peru.

# CONCLUSION

The longstanding relationship between China and Peru has continued to evolve through the 21st century with the signing of the China-Peru Free Trade Act in 2009 and most recently Peru's participation in the Belt and Road Initiative in 2019. These actions ensure that the two countries' relationship will continue to flourish. But while there have been tangible economic benefits to their cooperation, greater care and consideration must be given to Peru's indigenous populations, their way of life, and the environment in which they live. A multitude of international and regional legal frameworks create a structure for Chinese companies investing in Peru to understand indigenous and environmental issues. Greater adherence to these frameworks and principles, such as FPIC, would allow the two countries' relationship to continue while respecting indigenous and environmental rights and protections. The four cases outlined in this handbook demonstrated that key development projects involving Chinese companies have had substantial impacts on indigenous communities and their environment. Key observations, recommendations, and next steps were outlined in response to the issues that arose, demonstrating a path forward for both China and Peru in how they can approach indigenous and environmental issues. Although large-scale infrastructure and development projects are complicated and must deal with many stakeholders, greater consideration should be paid to indigenous and environmental rights to avoid problems and disappointment for Chinese investors and great hardships for Peru's indigenous people.

*Photo: DAR*

# ANNEX

## The Environmental Legal Framework for the Implementation of Investment Projects in Peru

The legal framework on management, exploitation and use of natural resources is based on the Political Constitution of Peru, as the Magna Carta of the Peruvian state, where more specific norms on institutionality and environmental management derive from, as well as the participation of each area of the State in the development and exploitation of resources.

Among the main regulations we can mention the General Environmental Law, the Sustainable Development Law, the Environmental Evaluation System (EES SEIA for its initials in Spanish) law, as well as norms for the creation of institutions and organisms that intervene in the management of Peruvian natural resources.As such, these standards provide for the development of environmental management and are framed in the National Environmental Management System (hereinafter SNGA for its initials in Spanish), whose governing institution is the Ministry of the Environment (MINAM[1] for its initials in Spanish), which includes sub-systems, norms, policies and environmental institutions to function in an orderly manner, based on this, we find norms that govern in a general way and specific norms for each sector, and others which are exclusive to evaluation and inspection institutions.

More specifically, to understand the process of approval of the environmental evaluation of investment projects , these are developed in the area of the Environmental Impact Assessment System (hereinafter EIAS), which is included in the SNGA, and is a core part of the National Service of Environmental Certification (SENACE for its initials in Spanish), whose objective is the evaluation of the environmental instruments of investment projects for all the sectors, which require mandatory compliance throughout the life of the project.

Likewise, there are institutions that oversee, control and sanction the performance of companies in terms of compliance or noncompliance with environmental norms and policies; the administration of these functions is held by the Environmental Assessment and Inspection Agency (OEFA).

Finally, there are autonomous institutions that act as evaluators, as well as a more specialized resource management such as the National Service for Natural Protected Areas (SERNANP for its initials in Spanish), the National Water Authority (ANA for its initials in Spanish), the Forest and Wildlife Service (SERFOR for its initials in Spanish). As well as directorates or organizations with specific functions, which depend on sectors such as transport, agriculture, commerce, energy, and others are Explained thoroughly below:

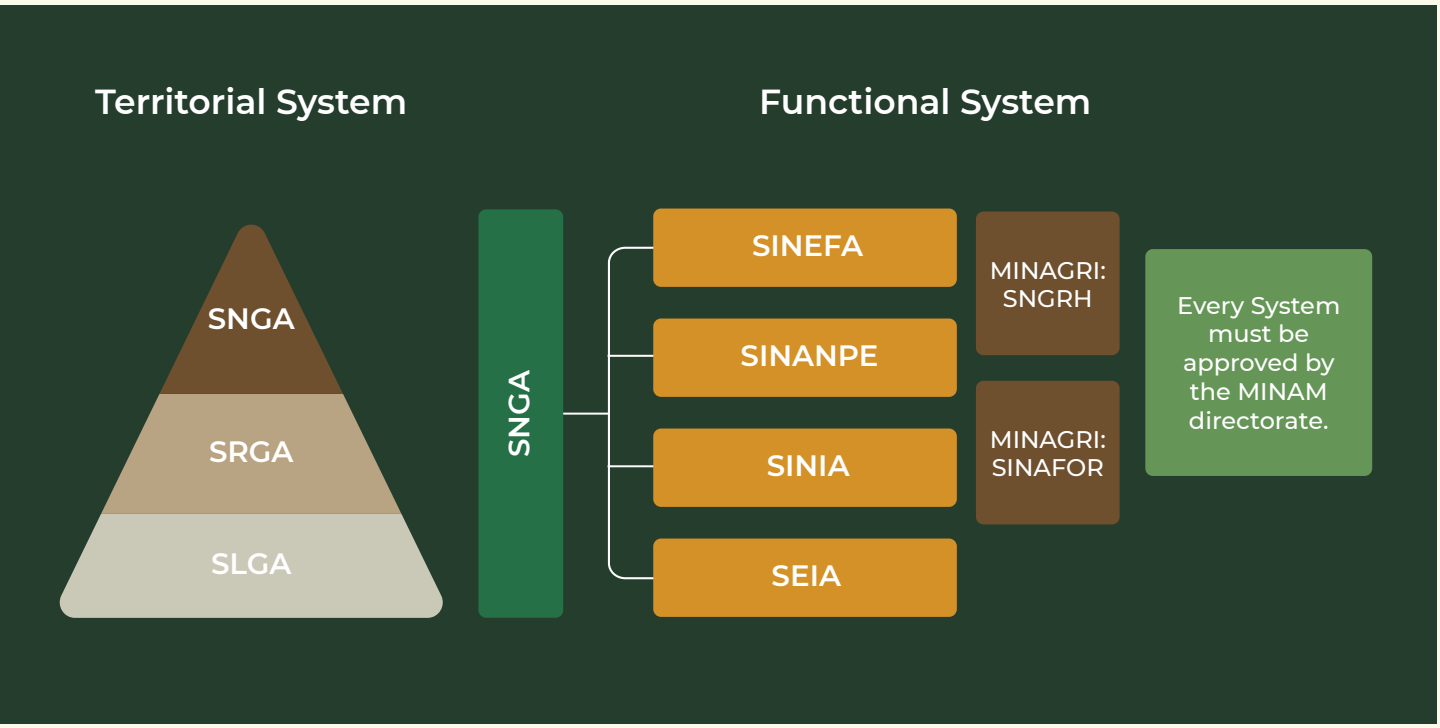
1. Creation Norm, Law N° 29157.

## The National Environmental Management System (SNGA)

The National Environmental Management System was created in 2005 (Law No. 28245) and its objectives are to command the actions of the Ministry of the Environment, and "To ensure the most effective compliance of the environmental objectives of public sector entities" (Art. 1).

The SNGA also operates according to two types of systems: 1) Functional, which contain the systems that are developed according to the competences of the sectors. There are six subsystems: National Environmental Information System (SINIA for its initials in Spanish), the National System of Natural Protected Areas (SINANPE for its initials in Spanish); as well as the Environmental Inspection System (SINEFA for its initials in Spanish), the Environmental Impact Assessment System (EIAS), the National Water Resources System (SNRH for its initials in Spanish), and the National Forest System (SINAFOR for its initials in Spanish); 2) Territorial, this system is developed according to the powers that the levels of government have within the framework of the Bases of Decentralization Law, Law N° 27783; According to this typology, regional systems come first, and then local systems.

At the same time, there are transversal strategic directions that operate to include priority issues in each of the systems, such as: Biological Diversity, Climate Change and territorial planning.



# Main environmental management institutions and their creation regularions

## The Ministry of Environment - MINAM (Legislative Decree No. 1013)

Is the environmental management governing institution of environmental management in Peru as decreed by the Framework Law for the growth of Private Investment, DL No. 757.- It promotes the legal security of environmental conservation, ensuring that each sector that makes use of natural resources has the approval of MINAM (Art. 51°, DL No. 757). Therefore, although it is true that MINAM is the governing body, each sector is responsible and are obliged to have the approval of MINAM.

## Environmental Assessment and Inspection Agency (Law No. 29325)

Is the public institution, specialized technicians' area, attached to MINAM and governing body of the National System of Environmental Assessment and Inspection (SINEFA). It is responsible for verifying compliance with environmental legislation by all natural and legal persons. In addition, it supervises that the functions of evaluation, supervision, inspection, control, sanctioning power and application of incentives in environmental matters that are carried out independently, impartially and in accordance with the provisions of the National Environment Policy[2].

Likewise, it develops monitoring programs of environmental control within its competences, in the same zones as those of the projects[3].

## The Environmental Certification Service (SENACE)

Within the environmental institutional framework, SENACE plays an indispensable role, as it is the governing institution, linked to MINAM, that classifies and evaluates the most complex environmental impact studies such as detailed EIAs from the transport, mining, hydrocarbons, energy sectors, among others. So, when a holder carries out an EIA-D process, he/she presents the information to said institution based on its sector regulations. In addition, it evaluates and supports the processes of citizen participation in the preparation of the EIA-d.

2. DAR, (2013), 2013 Diagnostic: Transparency in the Peruvian Energy Sector, p. 176.
3. DAR, (2013), "First Observations to the Citizen Participation Regulation for Hydrocarbon Activities".

# Main environmental regulations of Peru:

In Peru there are norms with general provisions that organize the SNGA, and its subsystems; and other specific norms that provide guidelines for each sector, and the evaluation, inspection and control process of each institution, mainly:

### The Sustainable Use of Natural Resources Organic Law, Law No. 26821

Said law regulates the conditions and modalities for granting natural resources to individuals, in accordance with the provisions of the Political Constitution of Peru. In turn, it establishes that the limit of use of resources is carried out"in harmony with the interest of the Nation, the common good and within the limits and principles established in this law, in the special laws and in the regulatory norms on the matter." (Art. 8 °).

Thus, the general powers that the state has as the owner and administrator of natural resources are mentioned in:

### General Environment Law (LGA for its initials in Spanish), No. 2861

It is the framework law that establishes the basic principles, as well as the political structure, management instruments, and evaluations that the SNGA ought to implement. Within the regulatory systematization, the GEL is the broadest main standard in the sector that makes express mention of the EIAS and all the instruments that its implementation involves.

### Regulation on Transparency, Access to Public Environmental Information and Citizen Participation and Consultation in Environmental

The Ministry of the Environment, through the D.S. N° 002-2009-MINAM, approved the mentioned Regulation, which purpose is to establish the provisions on access to public information and transparency platforms with environmental information, as well as to manage the mechanisms of citizen participation regarding environmental issues[4], which require mandatory compliance by both the public and private sectors.

Citizen participation for environmental matters, where the mechanisms for citizen participation are specifically provided in contexts such as the development of investment projects, or other matters that involve the use of resources. Then the norms of the following sectors can be mentioned:



4. DAR, (2013), 2013 Diagnostic: Transparency in the Peruvian Energy Sector, p.27.

**Hydrocarbons:**

Regulations for citizen participation throughout the duration of Hydrocarbon Activities (Supreme Decree No. 002-2019-EM).

**Agriculture**

Regulation of Citizen Participationfor the Evaluation, Approval and Monitoring of Environmental Management Instruments of the Agrarian Sector (Supreme Decree No. 018-2012-AG)

**The Escazú Agreement**

Peru is currently awaiting the ratification of the Escazú Agreement, which is the first regional instrument of environmental rights. And its objectives are to guarantee the full and effective implementation of the right to access environmental information; access to public participation in environmental decision- making processes; and access to justice in environmental matters, as well as building skills on the subject. In addition, the Agreement obliges States to protect individuals and groups that are dedicated to defending the environment[5].

**Framework Law for the National Environmental Management System, Law No. 28245**

Aims to organize the actions of the Ministry of Environment with other institutions, at a national, regional and local levels, these institutionsmust exercise competences and functions over the environment and natural resources. Thus, the MINAM governs the SNGA, and it is within this framework that all other subsystems are developed in accordance with the political and legal framework explained above.

**The EIAS Law and its Regulations**

EIAS Law, Law No. 27446, aims to carry out the environmental evaluation of investment policies, plans, programs and projects, whether in the extractive industries or infrastructure[6].

In practice, what the EIAS regulatory framework is looking for is the prevention of socio-environmental impacts that may come from investment projects, for which it has established a series of tools, called environmental management instruments (IGA) that compel project owners to present socio-environmental scientific information that provides full knowledge of the area where the project is located and consequently the necessary measures to take in order to prevent environmental impacts.

5. See: https://www.dar.org.pe/noticias/escazuahora20201/.
6. Art. 18 within the EESL Law.

It is worth mentioning that, for the prevention of socio-environmental impacts by investment projects, mainly Environmental Impact Studies are implemented, since they are most complete and comprehensive.

The EIAS regulatory framework has as a specific scope of action, which is to manage the process of environmental certification of investment projects[7], the objective of evaluation being the information provided by the project owner. For this, it establishes the steps to be followed by the investor, as well as the intervention of State institutions according to their technical capacities.

The certification process involved in an EIA is quite complex, since it involves collecting in situ information on different ecosystems and human populations that make up the area where a project would be located. For this reason, the forms of evaluation of said information must provide tools that allow the adequate and efficient verification of information, so that it places the State one step ahead of the holders and has the technical knowledge to demand efficient preventive measures and quality information.

In turn, the environmental management instruments are classified from the most complex to simplest as: EIA-detailed, EIAsemi- detailed, Environmental Impact Statement. Currently, all EIA-D are carried out by the National Environmental Certification Service (SENACE). In this regard, the responsibilities regarding the evaluation of said information rests both with the State and the companies, which is why it is necessary to have rules that penalize infractions or non-compliance of responsibilities by both parties, but mainly focus on the information gathering methodology, since the success of the quality of the information and the prevention measures proposed will depend on it.

## The Certification Process of an EIA of the Transport Sector within the framework of the EIAS

The EIAS has different stages for a holder to obtain the approval of the environmental certification of a project, it is characterized by two complex processes, such as:

- The EIA evaluation process
- The citizen participation process.

The citizen participation process is carried out by the Project Owner, under the supervision of the sector and / or competent authority. In turn, it is carried out through stages: 1) during the preparation of the EIA, 2) after the approval of the EIA; 3) and during project implementation. The mechanisms for its implementation may vary according to the stages, including workshops, hearings, mechanisms to access information, monitoring and surveillance.

7. For this, MINAM has drawn up a list of investment projects, which already have a type of EIA classification: in turn, ProInversión also has a list of projects that, in order to be viable, must have the approval of their corresponding EIA.

Citizen participation process in the transport sector is organized according to the Citizen Participation Regulation for Environmental Management, D.S 002-2009-MINAM. This is because it does not have an updated standard, despite being an obligation established by the EIAS Law.

In the case of the Amazon Waterway, citizen participation was made according to the Citizen Participation Plan integrated in the Project Terms of Reference.

In parallel, the EIA evaluation process is carried out by the competent authority, and includes as one of its basic requirements the effective fulfillment of the citizen participation process, as well as the presentation of information of a social, economic and environmental nature, as approved in the TDR.

It is worth mentioning that the execution and approval of each of these stages is mandatory and essential for a licensee to start the activities of the project; its non-approval or the lack of one of the requirements is enough for the authority to deny the EIA, or require a new one, according to the stage of the process. In turn, the evaluation carried out by the sector is based on the principle of indivisibility of the project, that is, according to Art. No. 3 of the EIAS Law, a project must be evaluated in its entirety, considering all its components and characteristics, so that all the cumulative and synergistic impacts that it could cause are anticipated.

EIAS Law No. 27446 was published in 2001 and has general recommendations for all sectors. Later, in 2009, the EIAS Regulation was promulgated, through the D.S. N ° 019-2009-MINAM.

## The Environmental Protection Regulation for the Transport Sector (RPAT)

The operation of the EIAS for the transport sector finds its more specific recommendations in the RPAT, approved by the D.S. 004-2017-MTC. Therefore, it is necessary to mention that in order to know precisely what the sector requires regarding the environmental certification process, the RPTA contains provisions within the framework of what the EIAS has, with variables, that the sector considers necessary for the projects of your sector.

For this reason, from this point on, the analysis will be carried out including both the general regulatory framework already described, and a specific one, such as the RPTA.

## Environmental Protection Regulation for Hydrocarbon Activities, Law No. 26221

In agreement with the EIAS Law, this Regulation aims to avoid, mitigate, remedy and compensate for the socio-environmental impacts of hydrocarbon activities. Based on the abovementioned standards, this Regulation establishes the procedure, as well as the environmental management instruments available for each project.

| Rule | Main Objetive |
|---|---|
| General Environmental Law, No. 28611. | Is the most general main standart in the sector that makes express mention of the EIAS. |
| Framework Law of the National Environmental Management System, Law No. 28245. | Its objective is to organize the actions of the Ministry of Environment with the other institutions, at the national, regional and local levels. |
| The EIAS Law and its Regulations. | The EIAS regulatory framework has as a specific scope of action, regulating the environmental certification process of investment projects. |
| The Environmental Protection Regulation for the Transport Sector (RPAT). | It indicates the operation of the EIAS for the transport sector finds its more specific recommendations in the RPAT. |
| The Environmental Protection Regulation for Hydrocarborn Activities, Law No. 26221 | Its purpose is to avoid, mitigate, remedy and compensate for the socio-environmental impacts of hydrocarbon activities. |

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