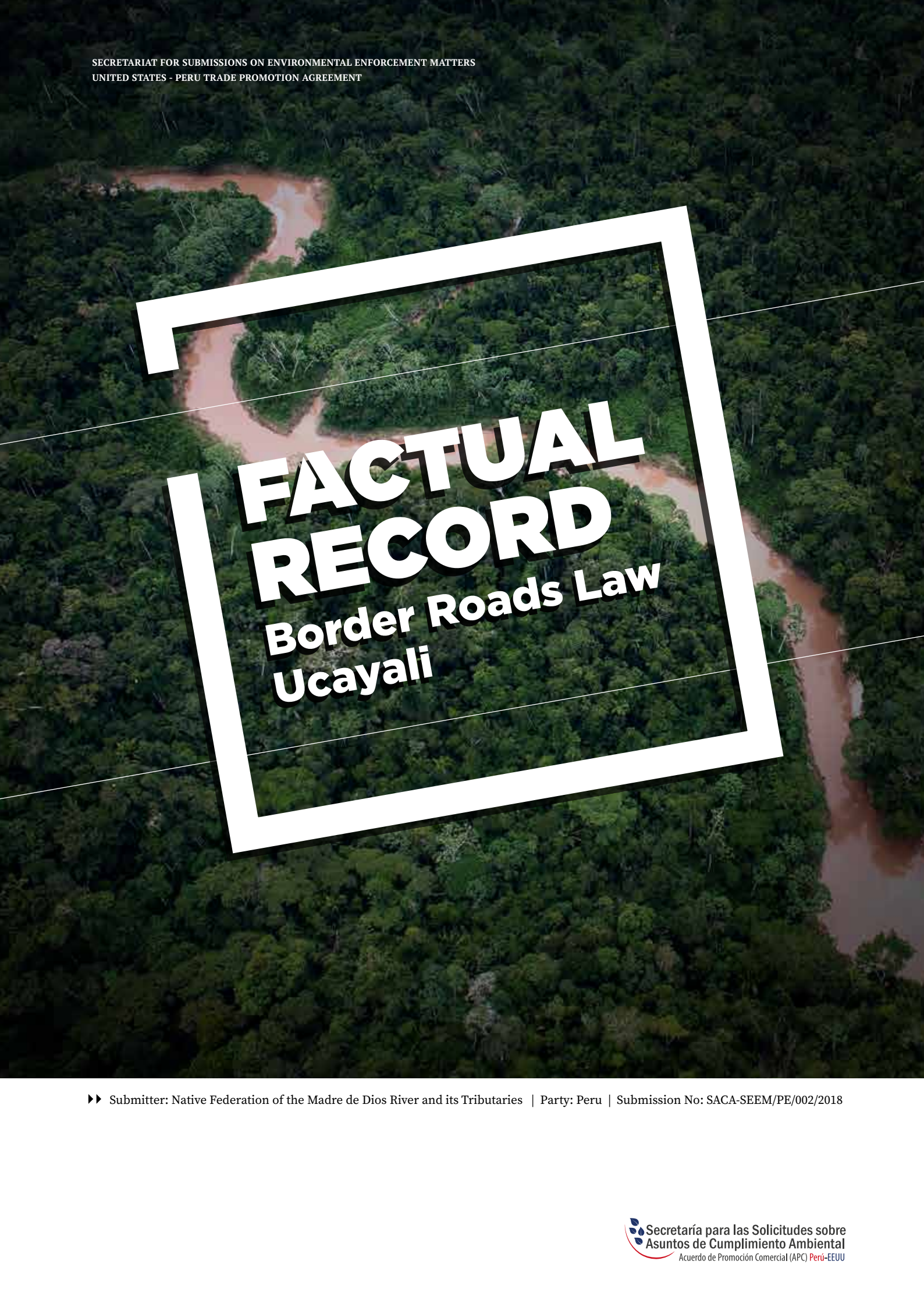




FACTUAL RECORD

Border Roads Law Ucayali

►► Submitter: Native Federation of the Madre de Dios River and its Tributaries | Party: Peru | Submission No: SACA-SEEM/PE/002/2018

FACTUAL RECORD

Border Roads Law Ucayali

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For more information on the Secretariat for Submissions on Environmental Enforcement Matters, on this factual record or other material, please contact:

Secretariat for Submissions on Environmental Enforcement Matters
Organization of American States
1889 F Street N.W., suite 717
Washington D.C., 20006, Estados Unidos
Tel. 202 3709165
www.saca-seem.org

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INITIALISMS, ACRONYMS AND DEFINITIONS

INITIALISMS AND ACRONYMS

CPAAAE Commission for Andean, Amazonian and Afro-Peruvian Peoples, Environment and Ecology of the Congress of the Republic (for Spanish acronym)

EAC Environmental Affairs Council

ECA Environmental Cooperation Agreement

FENAMAD Native Federation of the Madre de Dios River and Tributaries

IACHR Inter-American Commission on Human Rights.

INDEPA National Institute for the Development of Andean, Amazonian and Afro-Peruvian Peoples

ILO International Labor Organization

LFWS Forest and Wildlife Law (for Spanish acronym)

MINAM Ministry of Environment (Peru)

MINCUL Ministry of Culture (Peru)

OHCHR Office of the United Nations High Commissioner for Human Rights

OAS Organization of American States

PA Protected Areas

PIACI Indigenous peoples in a situation of voluntary isolation or situation of initial contact

SACA Secretaría para las Solicitudes sobre Asuntos de Cumplimiento Ambiental (Spanish term for SEEM)

SEEM Secretariat for Submissions on Environmental Enforcement Matters

SERNANP National Service of Protected Areas by the State (Peru)

TPA U.S. – Peru Trade Promotion Agreement

UN United Nations Organization

DEFINITIONS

Border Roads Law	Law No. 30723, “Law that declares the construction of roads in border zones and the maintenance of dirt roads in the region of Ucayali as a national priority and interest.”
Law of Prior Consultation	Law No. 29785, “Law on the right to prior consultation with indigenous or tribal peoples, recognized by the International Labor Organization (ILO) Convention 169.”
PIACI Law	Law No. 28736, “Law for the protection of indigenous or tribal peoples in a situation and isolation of in a situation of initial contact.”
Party	The government of Peru.
Parties	The governments of the United States and Peru.
Secretariat	Secretariat for Submissions on Environmental Enforcement Matters of the United States—Peru Trade Promotion Agreement.
Submitter	Native Federation of the Madre de Dios River and Tributaries (FENAMAD).
Submission	Submission SACA-SEEM/PE/002/2018.
Understanding	Understanding for Implementing Article 18.8 of the United States - Peru Trade Promotion Agreement

MAIN ACTORS

SECRETARIAT FOR SUBMISSIONS ON ENVIRONMENTAL ENFORCEMENT MATTERS

The Secretariat for Submissions on Environmental Enforcement Matters was established by the Understanding for implementing Article 18.8 of the United States—Peru Trade Promotion Agreement.

According to the Understanding, the functions of the Secretariat are:

- 1** The Secretariat shall perform the functions established for it under Articles 18.8 and 18.9 of the TPA. In particular, the Secretariat shall:
 - (a) receive and consider public submissions in accordance with paragraphs 1 and 2 of Article 18.8;
 - (b) request a Party to respond to public submissions and receive the Party's response in accordance with paragraphs 4 and 5 of Article 18.8, respectively; and consider the submission and any response provided by the Party in accordance with paragraph 1 of Article 18.9;
 - (c) inform the Council, in light of any responses provided by the Party, whether public submissions warrant developing a factual record, in accordance with paragraph 1 of Article 18.9;
 - (d) prepare factual records when any member of the Council instructs it to do so, submit them to the Council and, if directed by a member of the Council, make them available to the public, in accordance with Article 18.9; and may take such additional actions as are appropriate to carry out the functions established in Articles 18.8 and 18.9 of the TPA.
- 2** The Secretariat shall apply working and other procedures that the Council establishes for considering public submissions, preparing factual records, engaging experts, preparing reports to the Council, protecting confidential information, making documents publicly available, or other matters related to its functions.

NATIVE FEDERATION OF THE MADRE DE DIOS RIVER AND TRIBUTARIES

The Native Federation of the Madre de Dios River and Tributaries (FENAMAD) is a regional organization representing 37 communities that are grouped into seven indigenous peoples: Harakbut, Matsigenka, Yine, Amahuaca, Shipibo, Kichwa Runa and Ese Ejas peoples. FENAMAD is a legal entity registered in the Public Registry of Peru, under Electronic File No. 11000655 with legal address in Jirón, Diciembre 26, No. 276, Puerto Maldonado, Department of Madre de Dios, Peru.

ENVIRONMENTAL AFFAIRS COUNCIL

The Council was established through Article 18.6 of the TPA, and has the following functions:

- a) Consider and discuss the implementation of Chapter 18 of the TPA;
- b) Provide periodical reports to the Free Trade Commission regarding the implementation of Chapter 18 of the TPA
- c) Provide for public participation in its work, including by:
 - Establishing mechanisms to exchange information and discuss matters related to the implementation of Chapter 18 of the TPA with the public;
 - Receiving and considering input in setting the agenda for Council meetings; and
 - Receiving public views and comments on the matters the public considers relevant to the Council's work and requesting public views and comments on the matters the Council considers relevant to its work.
- d) Consider and discuss the implementation of the environmental cooperation agreement (ECA) signed by the Parties, including its work program and cooperative activities, and submit any comments and recommendations, including comments and recommendations received from the public to the Parties and to the Environmental Cooperation Commission established under the ECA;
- e) Endeavor to resolve matters referred to it under Article 18.12.4; and
- f) Perform any other functions as the Parties may agree.

SUBMISSIONS AND FACTUAL RECORD

PROCESS OF RECEIPT AND CONSIDERATION OF SUBMISSIONS BY THE SECRETARIAT

- a** Any person of a Party of the United States-Peru Trade Promotion Agreement (TPA) may file a submission to the Secretariat for Submissions on Environmental Enforcement Matters (hereinafter “Secretariat”) asserting the lack of effective environmental law enforcement by a Party, in accordance with Article 18.8 of the TPA.
- b** In June 2015, the Parties signed the “Understanding for Implementing Article 18.8 of the United States—Peru Trade Promotion Agreement,” which established the Secretariat. A Memorandum of Understanding was also signed with the Organization of American States (OAS) by which it was agreed that the OAS would house and provide administrative and technical support to the Secretariat in its headquarters in Washington D.C., in the United States.
- c** The Secretariat, among its main functions, receives and considers Submissions on Environmental Enforcement Matters (hereinafter “submissions”) filed by any person, natural or legal, from any of the Parties, in accordance with the provisions of Article 18.8 of the TPA.
- d** The Secretariat determines the admissibility of the submission, in accordance with the criteria set out in paragraph 2 of Article 18.8 of the TPA. If the submissions meet these criteria, the Secretariat will determine whether these submissions merit a response from the Party, in accordance with paragraph 4 of Article 18.8 of the TPA.
- e** The Secretariat will determine, once it has received a response from the Party or once the timeline set forth in Article 18.9 of the TPA to receive such response has been met, whether the preparation of a Factual Record is warranted. If the Secretariat determines that the preparation of a Factual Record is not warranted, the process is then terminated with respect to that submission.

- f If the Secretariat determines that the preparation of a Factual Record is warranted, the Environmental Affairs Council (EAC) of the TPA will be notified of this decision in accordance with Article 18.9 of the TPA.
- g The Secretariat prepares the Factual Record referred to in the above paragraph, if any member of the EAC so orders.
- h The Secretariat will prepare a draft Factual Record, which will be sent to the EAC for comments. Afterwards, the Secretariat will prepare a final Factual Record, which will be made public if any member of the EAC so orders.

Source: Articles 18.8 and 18.9 of the TPA

FACTUAL RECORD

For the preparation of a Factual Record, the Secretariat will consider any information provided by a Party and may consider any technical, scientific and other relevant information:

- (a) that is publicly available;
- (b) presented by interested persons;
- (c) presented by national advisory or advisory committees;
- (d) developed by independent experts; or,
- (e) developed in accordance with the Environmental Cooperation Agreement.

Source: Paragraph 4 of article 18.9 of the TPA

EXECUTIVE SUMMARY

Submission date: July 9, 2018.

Submitter: Native Federation of the Madre de Dios River and Tributaries (FENAMAD).

Assertion: The Peruvian Government is said to have failed to effectively enforce environmental laws during the process of preparation, deliberation, approval and enactment of Law No. 30723, “Law that declares the construction of roads in border zones and the maintenance of dirt roads in the region of Ucayali as a national priority and interest” (hereinafter, “Border roads law”)

Date of Factual Record instruction: June 17, 2019.

SUMMARY OF THE FACTS:

- i On July 9, 2018, FENAMAD filed a Submission to the Secretariat under article 18.8 of the TPA. In its Submission, FENAMAD asserts the lack of effective environmental law enforcement by the Peruvian Government in the process of preparation, deliberation, approval and enactment of Law No. 30723, Border roads law. On June 17, 2019, the United States representatives before the EAC of the TPA issued instructions to the Secretariat to prepare a Factual Record on Submission SACA-SEEM/PE/002/2018. [Paragraphs 1 to 10]
- ii In response to the instruction received by the United States representatives to the EAC, the Secretariat prepared this Factual Record presenting pertinent factual information on the Submitter’s assertions and the provisions of the relevant environmental laws in relation to the process of preparation, deliberation, approval and enactment of Law No. 30723, Border roads law. [Paragraphs 11 to 13]
- iii On January 15, 2018, the Congress of the Republic enacted Law No. 30723, Border roads law. Peruvian Government entities issued opinions on this law and in its potential impact on the Ucayali Department and indigenous peoples that inhabit the geographical area. [Paragraphs 14 to 17]

- iv The Ucayali Department is located in the central eastern zone of Peru, with an area of 102,199.28 km². It is bordered to the north by the Loreto region; to the south by the Cusco and Madre de Dios regions; to the east by the Federative Republic of Brazil and to the west by the Huánuco, Pasco and Junín regions. [Paragraphs 18 to 21]
- v There are 383 native communities belonging to 16 indigenous peoples in the Ucayali Department. Likewise, at least seven indigenous peoples in a situation of voluntary isolation or a situation of initial contact (PIACI) have been identified in the department of Ucayali. In the department of Ucayali, three of the four territorial reserves were categorized as indigenous reserves: Isconahua Indigenous Reserve, Mashco Piro Indigenous Reserve and Murunahua Indigenous Reserve. [Paragraphs 22 to 35]
- vi In 2006, Law No. 28736, “Law for the protection of indigenous or tribal peoples in a situation of isolation and in a situation of initial contact.” (hereinafter, “PIACI Law”), was enacted in order to establish the special cross-sectoral regime for the protection of the PIACI. According to experts, there is an inextricable link between environmental protection, the territory, and natural resources for the survival of indigenous peoples; the PIACI being in a situation of greater vulnerability. Several international instruments note and emphasize this matter. [Paragraphs 36 to 43]
- vii The Ucayali Department has six PA in its territory. Five are managed by a national agency and one by the regional government. Some of these PAs are close to and/or surround towns that are on the border zones of the Ucayali Department with the Federative Republic of Brazil, as is the case of Purus. Additionally the presence of PIACI has been reported in PA of Ucayali. [Paragraphs 44 to 59]
- viii In 1995, the “Convention 169 on Indigenous and Tribal Peoples in Independent Countries of the International Labor Organization” (hereinafter, “Convention 169 of the ILO”), came into force for Peru. In 2011, Law No. 29785, “Law on the right to prior consultation with indigenous or tribal peoples, recognized by the International Labor Organization (ILO) Convention 169” (hereinafter, “Prior Consultation Law”) was enacted. According to these laws the Peruvian Government has to submit to consultation any legislative or administrative measure that could affect the collective rights of indigenous peoples. [Paragraphs 60 to 73]

- ix According to the Forest and Wildlife Law, rules concerning economic activities that may affect the forest and wildlife heritage must be developed in accordance with the relevant legislation, including the recognition and respect of indigenous people's rights in accordance with ILO Convention 169. [Paragraphs 74 to 75]
- x There are certain antecedents of Law No. 30723, Border roads law. In 2016, congressman Carlos Tubino submitted Bill No. 075-2016/CR, "Law that declares the sustainable development of the Province of Purus as a public necessity and of preferential national interest, prioritizing terrestrial connectivity," resulting in the enactment of Law No. 30574, "Law that declares the sustainable development of the Province of Purús of public necessity and of preferential national interest". The Commission of Andean, Amazonian and Afro-Peruvian Peoples, Environment and Ecology of the Congress of the Republic (CPAAAE), in its Analysis of the Normative Impact of the Proposed Law, concludes that this bill should have been consulted. [Paragraphs 76 to 82]
- xi On April 2017, congressman Glider Ushñahua presented Bill No. 1123-2016/CR, "Law that declares the construction of roads in border zones and the maintenance of dirt roads in the region of Ucayali as a national priority and interest.". [Paragraphs 83 to 89]
- xii The Congress of the Republic did not subject Bill No. 1123/2016-CR to an evaluation of its potential impact on the collective rights of indigenous or tribal peoples in order to submitte for evaluation whether it was a legislative measure that should have been consulted. To date, the Rules of Congress of the Republic do not establish mechanisms for the implementation of the Prior Consultation Law during the legislative procedure. [Paragraphs 90 to 96].
- xiii According to current legislation, the laws referred to as "declarative" laws remain valid and binding and can produce immediate and concrete legal effects. [Paragraphs 97 to 102]
- xiv Several congressmen presented bills to repeal Law No. 30723, Border roads law. These bills have had favorable opinions from different entities of the Peruvian Government. [Paragraphs 103 to 105]





SCOPE OF THE FACTUAL RECORD

1. The instruction received by two members of the EAC for the preparation of a factual record for Submission SACA-SEEM/PE/002/2018 does not cover any additional scope to the one proposed by Notification SACA-SEEM/PE/002/2018/N1 of the Secretariat recommending the preparation of this factual record.¹
2. In accordance with paragraphs 68 and 69 of Notification SACA-SEEM/PE/002/2018/N1, the scope of this factual record is:

“ the Secretariat considers that the Submission has key matters that need to be addressed and developed in greater detail. In this sense, the Secretariat recommends the preparation of a Factual Record...” ”

68. Having considered the response of the Government of Peru, the Secretariat considers that the Submission has key matters that need to be addressed and developed in greater detail. In this sense, the Secretariat recommends the preparation of a Factual Record regarding the effective enforcement of articles 1, 4, 5 and 8 of Law No. 28736, Law No. 29785 and paragraph 12 of article II of Law No. 29763.

69. In addition, the Secretariat does not recommend the preparation of a Factual Record regarding the effective enforcement of article No. 70 of Law No. 28611, because Law No. 30723 is not intended to design and apply environmental policy or a territorial planning process, purposes to which article No. 70 of Law No. 28611 directly refers. Likewise, the Secretariat does not recommend the preparation of a Factual Record regarding the effective enforcement of paragraph 3 of article 18.11 of the United States—Peru Trade Promotion Agreement.

¹. The instruction received by the Secretariat can be seen in Figure 02.





Mr. Dino Delgado Gutiérrez
Executive Director
Secretariat for Submissions on Environmental Enforcement Matters

June 17, 2019

Dear Mr. Delgado:

With this letter, the United States of America confirms receipt of SACA-SEEM/PE/002/2018/N1, submitted to the Environmental Affairs Council by the Secretariat for Submissions on Environmental Enforcement Matters (Secretariat) pursuant to Article 18.9.1 of the United States-Peru Trade Promotion Agreement (PTPA). In accordance with Article 18.9.2 of the PTPA, the United States instructs the Secretariat to prepare a factual record for the public submission SACA-SEEM/PE/002/2018.

Sincerely,

Marcia S. Bernicat
Principal Deputy Assistant Secretary of State
Bureau of Oceans and International
Environmental and Scientific Affairs
U.S. Department of State

Jennifer Prescott
Assistant U.S. Trade Representative
for Environment and Natural Resources
Office of the U.S. Trade Representative

U.S. Representatives on the United States-Peru Trade Promotion Agreement
Environmental Affairs Council

Figure 02 – Instruction to develop the Factual Record

Instruction to the United States-Peru Trade Promotion Agreement Secretariat for Submissions on Environmental Enforcement Matters Regarding Submission SACA-SEEM/PE/002/2018 Asserting that the Government of Peru is Failing to Effectively Enforce its Environmental Laws in the Drafting, Deliberation, Approval and Enactment of Law 30723 that Declares the Construction of Roads in Border Areas and Maintenance of Truck Paths in the Ucayali Region a Priority and National Interest.

THE UNITED STATES OF AMERICA:

SUPPORTIVE of the process provided for in Articles 18.8 and 18.9 of the *United States-Peru Trade Promotion Agreement* (PTPA) regarding Submissions on Enforcement Matters and the preparation of factual records;

CONSIDERING Submission SACA-SEEM/PE/002/2018 (the "Submission") filed by the Native Federation of the Madre de Dios River and its Tributaries (FENAMAD) on July 9, 2018, and the Responses provided by the Government of Peru on February 5, 2019, and March 12, 2019;

HAVING REVIEWED the Secretariat's May 24, 2019 Notification in accordance with Article 18.9(1) of the PTPA, informing the Environmental Affairs Council that the Secretariat considers the Submission to warrant the development of a Factual Record; and

PURSUANT to Article 18.9(2) of the PTPA,

HEREBY INSTRUCTS the Secretariat to prepare a factual record concerning the Submission.



Marcia Bernicat
Principal Deputy Assistant Secretary
of State
Bureau of Oceans and International
Environmental and Scientific Affairs
U.S. Department of State



Jennifer Prescott
Assistant U.S. Trade Representative
Office of Environment and Natural
Resources
Office of the U.S. Trade
Representative

U.S. Representatives on the PTPA Environmental Affairs Council



THE SUBMISSION PROCESS SACA-SEEM/PE/002/2018²

i. Submission - Article 18.8 paragraph 1 TPA

3. FENAMAD asserted in its Submission the lack of effective environmental law enforcement by the Peruvian Government in the process of preparation, deliberation, approval and enactment of Law No. 30723, Border roads law.
4. FENAMAD alleged that during the preparation, deliberation, approval and enactment of Law No. 30723, Border roads law, the Peruvian Government did not effectively enforce the following environmental laws:
 - a. Articles 1, 4, 5 and 8 of Law No. 28736, PIACI law.
 - b. Law No. 29785, Prior Consultation Law;
 - c. Article 70 of Law No. 28611, “General Environmental Law”;
 - d. Paragraph 12 of article II of the Preliminary Title of Law No. 29763, “Forest and Wildlife Law; and,
 - e. Paragraph 3 of article 18.11 of the United States-Peru TPA.

ii. Determination in accordance with Article 18.8 (1) and (2)

5. On December 28, 2018, the Secretariat issued Determination SACA-SEEM/PE/002/2018/D1 which details compliance with the admissibility criteria of the Submission filed by FENAMAD.
6. The Secretariat established the Submission was written in Spanish and filed by a legal entity legally constituted in Peru. It includes documentary evidence, as well as an exhaustive identification of the alleged lack of effectively environmental law enforcement. The Submission appears to be focused on promoting the effective enforcement of the Party’s environmental law and gives no indication of seeking to harass an industry. It also provides information on written communications the Submitter sent to the relevant institutions of the Party.

“ The Submitter asserts that Peru was not effectively enforcing its environmental laws in the process of preparation, deliberation, approval and enactment of Law No. 30723.”

iii. Determination in accordance with Article 18.8 (4)

7. On January 11, 2019, the Secretariat issued Determination SACA-SEEM/PE/002/2018/D2 considering that the Submission warrants a response from the Party. The Secretariat considers that, among others, the Submission is not frivolous, asserts harm, and addresses matters that will contribute to

achieve the objectives of Chapter 18 of the TPA and the Environmental Cooperation Agreement.

iv. Response of the Government of Peru

8. On March 12, 2019, the Government of Peru responded, as required by the Secretariat. In this response, it was reported that, in the opinion of the Government of Peru:
 - a. The Secretariat must wait for the approval of the EAC's work procedures in order to start processing the Submissions on Environmental Enforcement Matters.
 - b. The Submission did not meet the admissibility criteria since not all the laws asserted by FENAMAD qualify as environmental laws within the framework established in article 18.14 of the TPA.

2. This section contains a brief summary of the process initiated by the Submission filed by FENAMAD, which follows the stages described in articles 18.8 and 18.9 of the TPA. The complete documents referred to in this summary are attached to this Factual Record. Additionally, documents related to this Submission that were exchanged between the Secretariat, the Parties, and the Environmental Affairs Council will also be attached as annexes.

- c. The Submission does not provide sufficient information to allow the Secretariat to review it since it does not substantiate how the lack environmental law enforcement would have occurred.
- d. The Secretariat should not have required a response from the Party because it did not meet the admissibility criteria nor the criteria set forth in paragraph 4 of Article 18.8.
- e. Because the law driving the Submission is a declaration of national interest, there is no action or inaction identified, such as the construction of a road.

v. Notification according to Article 18.9 (1)

- 9. On May 24, 2019, the Secretariat issued the Notification in accordance with article 18.9 (1), in which it considers that the Submission warrants the preparation of a Factual Record. In this Notification the Secretariat states that:
 - a. The Secretariat is not only given the authority to but is also obliged to receive and process Submissions on Environmental Enforcement Matters that are filed in accordance with article 18.8 of the TPA.
 - b. There are various pronouncements from entities belonging to the same Peruvian Government that have communicated their position on the bills that gave rise to Law No. 30723, which drives the Submission. These pronouncements agree noting that this law could affect

the rights of indigenous peoples inhabiting the department of Ucayali.

- c. The Submission does not assert that it is the construction of a road or any other action of the Executive Power that drives it. Instead, it asserts that the lack of effective environmental law enforcement occurs in the process of preparation, deliberation, approval and enactment of Law No. 30723, Border roads law.
- d. The Secretariat considered that the Submission had key matters that needed to be addressed and developed in greater detail. In this sense, the Secretariat recommended the preparation of a Factual Record regarding the effective enforcement of articles 1, 4, 5 and 8 of Law No. 28736, Law No. 29785 and paragraph 12 of article II of Law No. 29763.

vi. Instruction for preparing the Factual Record

- 10. On June 17, 2019, the United States Department of State and the Office of the United States Trade Representative instructed the Secretariat to develop a Factual Record for Submission SACA-SEEM/PE/002/2018.^{3 4}

vii. Draft Factual Record

- 11. On May 18th, 2020, the Secretariat submits the draft Factual Record corresponding to Submission SACA-SEEM/PE/002/2018 to the ECA in compliance with the Instruction received on June 17th, 2019, in accordance with paragraph 5 of article 18.9 of the TPA.

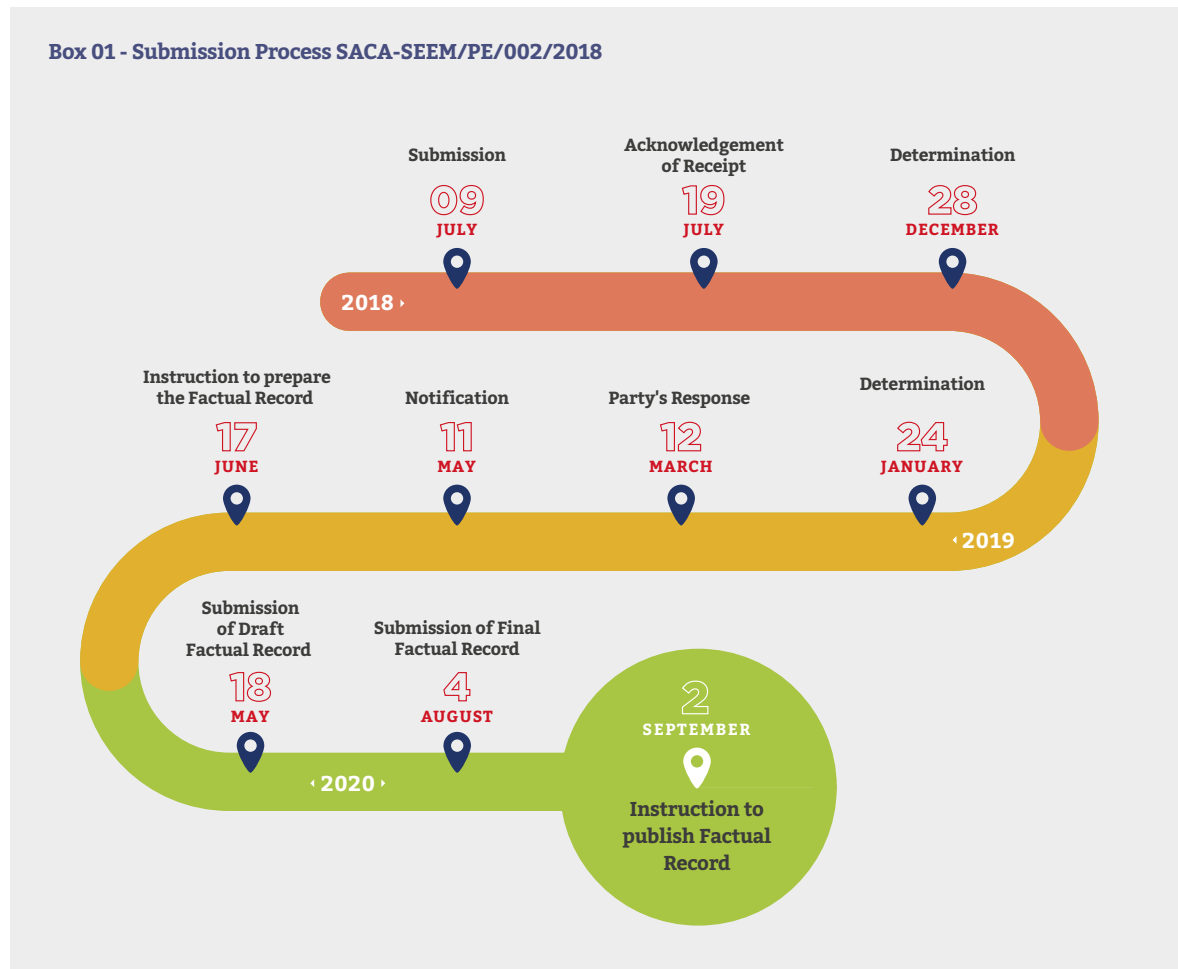
viii. Parties' Comments to the draft Factual Record

12. In accordance with paragraph 5 of article 18.9 of the TPA, “any Party may provide comments on the accuracy of the draft factual record within 45 days thereafter.” This deadline expired on July 2, 2020.

ix. Publication of the Final Factual Record

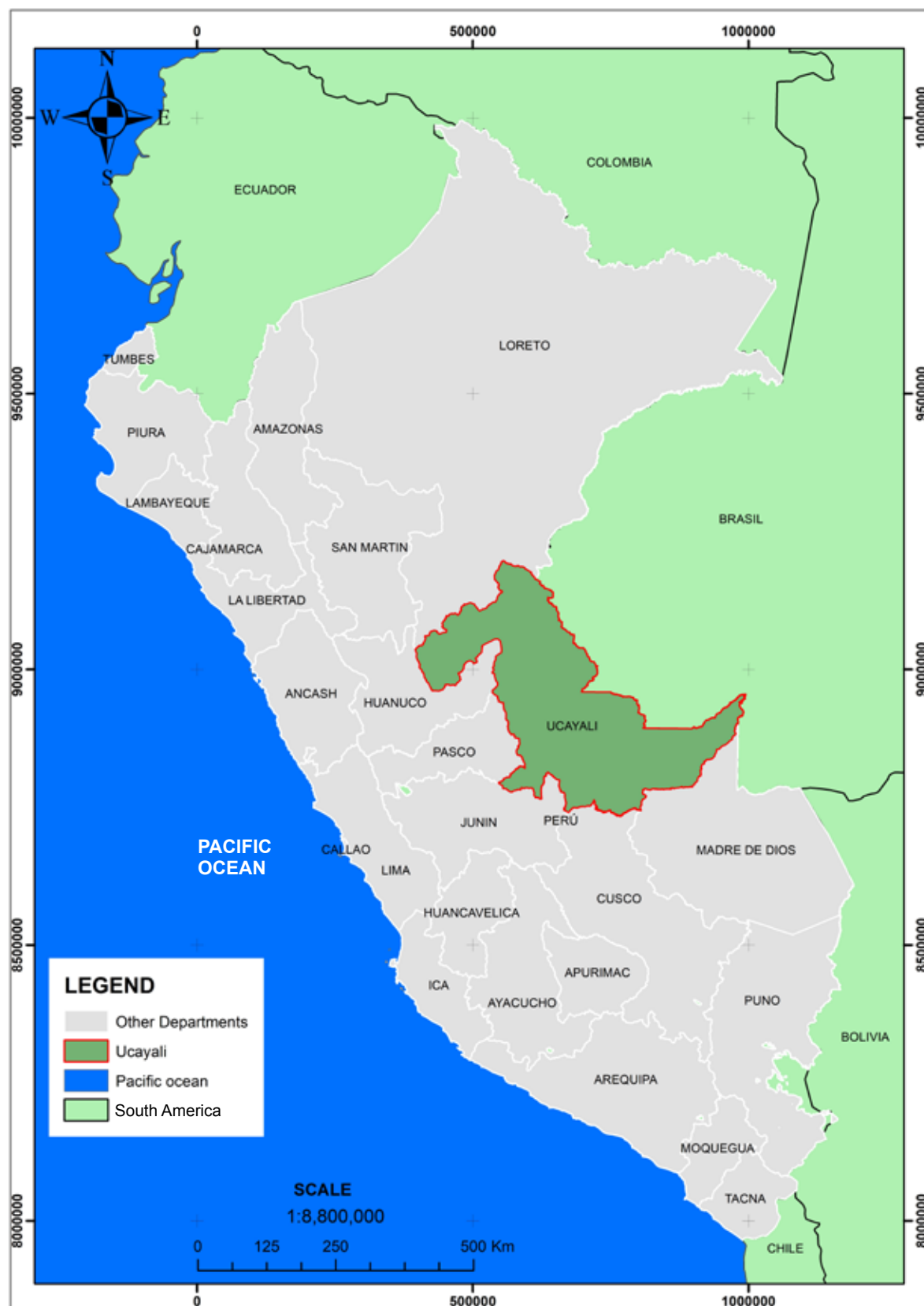
13. After incorporating—as appropriate—any comments made to the Draft Factual Record, the Secretariat will submit the final draft of the Factual Record to the EAC, which will be published if any member of the EAC instructs it to do so.

Box 01 - Submission Process SACA-SEEM/PE/002/2018



3. On August 17, 2019, the Government of Peru sent a document to the Secretariat—“Regarding the recommendation of the Secretariat for Submissions on Environmental Enforcement Matters for the preparation of a Factual Record - Position of the Government of Peru”. This document can be found at www.saca-seem.org

4. On April 2, 2020, the Secretariat responded to the document dated August 17, 2019 prepared by the Government of Peru. The Secretariat's response can be found at www.saca-seem.org



Map 01 – Geographical location of the Ucayali Department





BORDER ROADS LAW AND ASSERTED ENVIRONMENTAL LAW

The following section comments on the enactment of Law No. 30723, Border roads law, and on some of the opinions of entities of the Peruvian Government on this enactment. The Submission filed by FENAMAD asserts that in the process of preparation, deliberation, approval and enactment of this law, several environmental laws were not effectively enforced.

14. On January 15, 2018, the Congress of the Republic enacted Law No. 30723, the Border roads law, which contains a sole article:

“Sole article. Declaration of priority and national interest

It is declared that the construction of roads in border zones and the maintenance of dirt roads in the region of Ucayali is a national priority and interest, under the unrestricted respect for protected areas and the indigenous peoples that inhabit them.”

Congress of the Republic		10/10/2018
Parliamentary Document Processing Office		01:46:09
BILL AND LAW FOLLOW-UP		Pg:00001
Per Random Numbers		
Proj. N	Date	Title of Bill
01123	03/04/2017	LAW THAT DECLARES THE CONSTRUCTION OF ROADS IN BORDER ZONES AND THE MAINTENANCE OF DIRT ROADS IN THE REGION OF UCAYALI AS NATIONAL PRIORITY AND OF INTEREST.
I		
Proponent: Congress		
Parliamentary Group: Fuerza Popular		
Summary:		Signatories:
Proposes to declare the construction of roads in border zones and the maintenance of dirt roads in the region of Ucayali as national priority and of interest.		G.Ushishua
		E. Melgar
		M.Castro
		C. Dominguez
		B.Randrez
		G.Trujillo
Follow-up:		
04/04/2017	Decreed to.....	Transportation
05/04/2017	In committee.	Transportation
03/07/2017	SustentatoryFavorable Dictum	Transportation
	/ in Minutes 07.07.2017	
22/08/2017	Ac. C.D.	
	became informed of the opinion and included it in the Order of the Day.	
23/08/2017	Official Letter	
	021-2017-2018/GAUH-CR by Congressman Ushishua Huasanga requests prioritization.- Parliamentary General Directorate (DGP) to be reviewed by the Board of Spokespersons	
09/11/2017	Plenary Assembly	
09/11/2017	New Text	
	by the Vice president of the Committee of Transportation, Congressman Rios Oca, presented in Assembly Hall	
09/11/2017	Rejected	
	submitted by Congressman Manuel Dammert so the Project goes to the Commission of Andean Peoples	
09/11/2017	Approved First Vote	
09/11/2017	Official Letter	
	w/o number of Congressman Rozas Beltran requests Reconsideration to the vote presented in Assembly Hall	
09/11/2017	Rejected	
	the Reconsideration submitted by Congressman Rozas Beltrán	
14/11/2017	Official Letter	
	168-2017-2018/GAUH-CR by Congressman Ushishua Huasanga requests that the Board of Spokespersons include the second vote for project 1123/2016-CR in the Agenda of Plenary Assembly	
07/12/2017	Approved	
	in the Second Vote	
15/12/2017	Enrolled Bill	Envelope N° 71
	expires: 10.01.2018	
15/01/2018	Enactment	Law No: :30723
	/ 13.01.2018 Enrolled Bill, Envelope w/o number for its enactment	
15/01/2018	Congress Enactment	
22/01/2018	Published	
	Law N° 30723	

Figure 02 – Follow-up of Bill 1123/2016-CR [Original in Spanish]

15. Regarding the enactment of Law No. 30723, the Ombudsman's Office states in its 2017 Annual Report:

Another topic addressed was the legislative initiatives that proposed the declaration of interest or public need for the development of road infrastructure, without taking into consideration the protection of the rights of indigenous peoples in a situation of isolation and situation of initial contact.

Thus, Bill No. 0075/2016-CR, "Law that declares that the sustainable development of the province of Purus is of public necessity and of preferential national interest, prioritizing terrestrial connectivity", promotes connectivity between the populated centers of Puerto Esperanza (Ucayali) and Iñapari (Madre de Dios), which could affect the Alto Purús National Park, the Mashco Piro Indigenous Reserve and the Madre de Dios and Murunahua territorial reserves. In this case, we consider that the proposal is incompatible with the intagibility regime, established by the Law on Protected Areas and the Law for the protection of indigenous or tribal peoples in a situation of isolation and in a situation of initial contact (Official Letter No. 130-2017-DP/AMASPPI dated April 3, 2017). In response to this recommendation, Congress modified the legal structure of the project, prioritizing forms of multimodal connection and specifying that it would not violate said areas or the rights of indigenous peoples, a text included in the Bill No. 30754.

Regarding Bill No. 1123/2016/CR, a law that declares that the construction of roads in border zones and the maintenance of dirt roads in the Region of Ucayali is of national interest and priority, we reiterate that the construction of a road or the authorization of illegally build roads may infringe the regime established to

protect the intangible values established for indigenous reserves and national parks located in the border area of the aforementioned region (Official Letter No. 347 — 2018-DP/AMASPPI dated September 14, 2017). The legal structure was approved by Congress in the first and second votes without including our recommendations, despite us asking Congress—in an expressed manner—to exclude protected areas, territorial reserves and indigenous reserves, as well as its areas of influence, from the scope of the regulatory proposal (Official Letter No. 468-2017-DP/AMASPPI of December 6, 2017). Since this enrolled bill was not observed by the Executive Power, it was enacted as Law No. 30723 by the Congress of the Republic.

16. In its response to the Inter-American Commission on Human Rights in relation to the Mashco Piro, Yora and Amahuaca Indigenous Peoples Case, the Specialized Supranational Public Prosecutor's Office of the Ministry of Justice and Human Rights of Peru, refers to Law No. 30723, Border roads law, and the opinions issued prior to its enactment, as can be seen in Figure 03.
17. It is apparent that the enactment of Law No. 30723, Border roads law, generated adverse reactions from the Peruvian Government itself. To understand the context in which the preparation, deliberation, approval and enactment of this law took place, the section below describes geographical and demographic characteristics of the department of Ucayali, PAs, Territorial Reserves and Indigenous Reserves that exist in said department and their relationship with the border zones mentioned in the law. Lastly, the environmental laws asserted by the Submitter also discussed, together with its relation to Law No. 30723, Border roads law.

83. Regarding Law No. 30723, Law that declares of priority and national interest the construction of roads in border zones and the maintenance of dirt roads in the department of Ucayali issued by the Congress of the Republic (hereinafter, the Law No. 30723), the following should be reported (ANNEX 8):

Prior to the enactment and publication of Law No. 30723, observations were made to the Bill by various institutions:

- The observations of the Ministry of Culture on the Bill indicated the following:

"5.1. It is observed that the area of intervention of the bill would be assumed to be areas where indigenous peoples live in a situation of isolation and in a situation of initial contact, as well as other towns located in native communities.

5.2 Considering the negative impacts (...) that the construction of roads could produce in areas where indigenous peoples live in a situation of isolation and in a situation of initial contact and - given the situation of high vulnerability of members of these peoples, especially immunological, sociocultural and territorial aspects, it is concluded that the bill under comment is not viable.

- Likewise, once Law No. 30723 was published, the Specialized Supranational Public Attorney General's Office expressed the following:

"to inform you that the Inter-American Commission on Human Rights (IACHR) has forwarded to the Peruvian State Letter CIDH/SE/Ar141/1-2018/02, dated January 16, 2018, through which it requests information under Article 41 of the American Convention of Human Rights (CADH), regarding the Bill No. 1123/2016-CR, on the construction of roads and the maintenance of dirt roads in the Ucayali region."

"The IACHR maintains that, according to information received, this law would put natural areas protected by the State (Alto Purús National Parks, Cordillera Azul and Sierra del Divisor) at risk, as well as three indigenous reserves (Murumahuá, Isconahuá and Mashco Piro) (...) Lastly, the IACHR observes that one of the affected communities -Mashco Piro, Yerra and Amahuaca- is benefiting from precautionary measures MC262-05, in the framework of which the IACHR asked the Peruvian State to adopt all the necessary measures to guarantee the life and personal integrity of its members."

84. As can be seen, Law No. 30723 was observed before its approval and enactment by various institutions, these observations took into account the possible exposure of the PIACI Mashco Piro and others, and highlighted the precautionary measures granted to them by the IACHR.

85. Finally, it should be noted that the Commission for Transport and Communications is currently preparing the pre-dictum corresponding to Bill No. 2360/2017 - 'Law that repeals Law No. 30723 which declares the construction of roads in border zones and the maintenance of dirt roads in the region of Ucayali a national priority and interest.

Figure 03 – Report of the Specialized Supranational Public Prosecutor's Office, Report No. 160-2019-JUS/CDJE-PPES, dated July 8, 2019, of the Ministry of Justice and Human Rights, sent to the Inter-American Commission on Human Rights. [Original in Spanish]



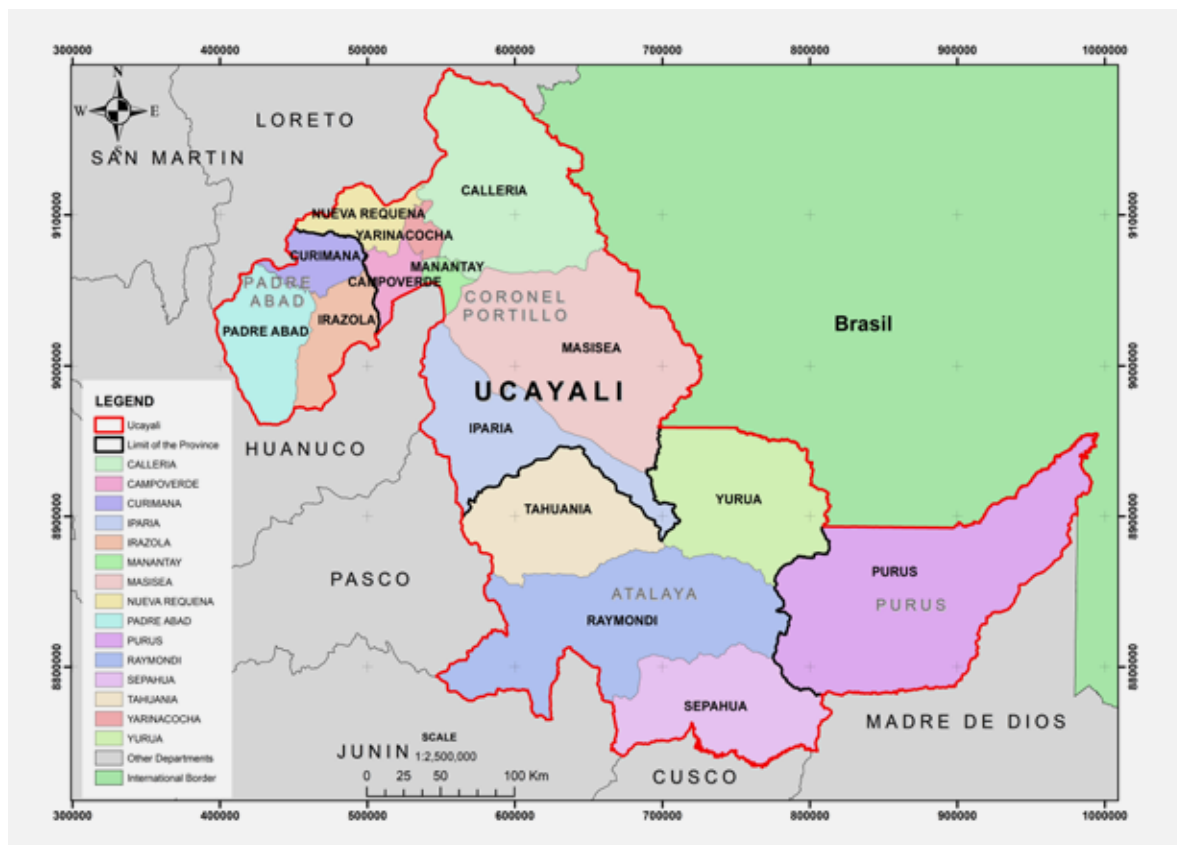
FACTS RELATED TO THE SUBMISSION

The following section contains geographic and demographic data of the department of Ucayali in Peru, since Law No. 30723, Border roads law is limited to this geographic space.

4.1. Department of Ucayali

18. The department of Ucayali has a surface area of 102,199.28 km² and is located in the central-eastern zone of Peru. It is bordered to the north by the Loreto region; to the south by the Cusco and Madre de Dios regions; to the east by the Federative Republic of Brazil and to the west by the Huánuco, Pasco and Junín regions. The city of Pucallpa is the capital, at an altitude of 154 meters above sea level.⁵
19. Politically, it is divided into four Provinces: Coronel Portillo, Atalaya, Padre Abad and Purús. The Coronel Portillo Province is made up of the districts: Callería, Campo Verde, Iparía, Masisea, Nueva Requena, Yarinacocha and Mamantay. The Province of Padre Abad is made up of three districts:

5. National Institute of Statistics and Information, "Statistical Compendium at the Department Level 2008-2009", 2009.



Map 02 – Provinces of the Ucayali Department

Padre Abad, Irazola and Curimaná. The Atalaya Province is made up of four districts: Raymondi, Tahuania, Yurúa and Sepahua. Lastly, the Purús Province has a single district with the same name.

20. According to the 2017 National Census, the Region of Ucayali has a population of 496,459 inhabitants, showing an increase compared to the 432,159 inhabitants registered in 2007⁶.

Box 02 – Ucayali Department Data

Indicator	Unit of Measure	Year	Ucayali
Surface area	Km2	2017	102,199.28
Life expectancy	Years	2015 2020	72.0
Population growth	Percentage	2017	2.13
Births	Persons	2017	13,667
Deaths	Persons	2017	2,177
Voting age population	Persons	2018	365,109
Immigrant population	Persons	2017	115,365
Chronic malnutrition rate in children under 5 years of age	Percentage	2017	19.4
Emigrant population	Persons	2017	73,351
Illiteracy rate	Percentage	2017	4.5
Male illiteracy rate	Percentage	2017	3.4
Female illiteracy rate	Percentage	2017	5.9
School attendance rate (primary)	Percentage	2017	90.9
School attendance rate (secondary)	Percentage	2017	76.3
Education level (Primary) – Population 15 years of age and over	Percentage	2017	26.3
Education level (Secondary) – Population 15 years of age and over	Percentage	2017	49.0
Education level (Non-university higher education) – Population 15 years of age and over	Percentage	2017	11.2
Education level (University) – Population 15 years of age and over	Percentage	2017	10.8
Health Insurance coverage	Percentage	2017	75.2
Economically active population (EAP)	Persons (thousands)	2017	278.4

6. National Institute of Statistics and Information. Peru: Socio-demographic profile – National Report, 2017.

Indicator	Unit of Measure	Year	Ucayali
EAP (employed)	Persons (thousands)	2017	271
EAP Employed in agriculture, fishing, mining	Persons (thousands)	2017	61.6
EAP Employed in Manufacturing	Persons (thousands)	2017	23
Average monthly income	Nuevos soles (Peruvian currency)	2017	1,166.8
GDP (constant prices)	Nuevos soles (thousands) (Peruvian currency)	2012	11,207,952.0
Households with access to drinking water	Percentage of total # of households	2017	40.7
Households with access to sewage	Percentage of total # of households	2017	45.6
Households with access to electricity for lighting	Percentage of total # of households	2017	87.4
Households with access to cable TV	Percentage of total # of households	2017	33.0
Households with access to landlines	Percentage of total # of households	2017	8.8
Households with access to mobile telephony	Percentage of total # of households	2017	87.4
Households with Internet access	Percentage of total # of households	2017	13.7
Registered motor vehicles	Unit	2018	9,918
Telephone landlines in service	Unit	2018	16,135
Mobile phone lines in service	Unit	2018	38,8511
EAP employed by companies with 1-10 workers	Percentage	2017	76.5
Poverty rate	Percentage	2017	12.1 - 14.6
Extreme poverty rate	Percentage	2017	2.9 - 4.4
Working age population (14 years of age and over)	Persons (thousands)	2017	370
EAP unemployed	Persons (thousands)	2017	7.4
GDP per capita	Soles por persona	2012	25747.84
	Nuevos Soles per person	2012	25,747.84

Source: INEI, 2019

The following section details the territorial reserves and indigenous reserves located in the department of Ucayali. Some of these reserves are close to the border zones referred to in Law No. 30723, “Border roads law”.

21. According to the Population Census of 2017, the population of the provinces of the Region of Ucayali is: Coronel Portillo with 376,959 (75.9%), Padre Abad with 58,702 (11.8%), Atalaya with 48,536 (9.7%) and Purús with 2,881 (0.58%), with a total of 496,459 inhabitants.

4.2 Territorial and indigenous reserves

22. According to the III Census of Native Communities 2017, there are 383 native communities belonging to 16 indigenous peoples in the Department of Ucayali, which represents 14.2% of the native communities throughout Peru.

23. Article 10 of Law No. 22175, Law of Native Communities and Agrarian Development of the Forest and Forest border region establishes that:

Article 10.- The State guarantees the integrity of the territorial property of the Native Communities, will establish the corresponding cadaster, and will grant them property titles.

The following will be considered for the demarcation of the territory of the Native Communities:

a) *When they have become settled, the area they currently occupy to develop their agricultural, gathering, hunting and fishing activities; and*

b) *When they carry out seasonal migrations, the entire surface area where they are settled during that process.*

c) *When they possess an insufficient size of land, they will be granted the amount of surface area they require to satisfy the needs of their population*

24. According to data prepared by the Ministry of Culture (MINCUL), of the 17 PIACI found in Peru, at least seven have been identified in Ucayali: Maschco Piro, Isconahua, Murunahua, Chitonahua and Mastanahua in voluntary isolation; and Yora (Nahua) and Amahuaca in initial contact.

25. The Second Transitory Provision of Decree Law No. 22175, Law of Native Communities and Agrarian Development of the Forest and Forest border region, establishes that:

Second.- *A provisional territorial area will be determined for the demarcation of the territory of the Native Communities when they are in a situation of initial and spo-*

radic contact and in a situation of sporadic contact with other members of the national community. The demarcation will be established according to their traditional ways of using natural resources, until one of the situations referred to in subsections a) and b) of Article 10 of this Law is defined.

26. In accordance with sub-paragraph b) of article 3 of Law No. 28736, indigenous reserves acquire such category by Supreme Decree based on a study that is added to what is stated in sub-paragraph a) of this article, which, in order to be valid, must note the renewable term as many times as necessary, as well as the indigenous peoples that benefit, and the obligations and prerogatives of the native communities or neighboring indigenous peoples. This study is carried out by a Multisectoral Committee, is directed by INDEPA and has the opinion of the regional government in whose constituency the indigenous reserve is located. Said report must contain an environmental, legal and anthropological analysis and must articulate the technical opinions and intervention strategies of the sectors: Health, Women and Social Development, Agriculture, Energy and Mines, Defense, the Interior of Peru, and, if applicable, Foreign Relations.

27. On February 1990, the Peruvian Government declared as State Territorial Reserve in favor of ethnic groups in voluntary isolation and initial contact—Kugapakori, Nahua, Nanti and others, through Ministerial Resolution No. 046-90-AG-DGRAAR, 456,672.73 hectares in the provinces of La Convencion and Atalaya in the departments of Cusco and Ucayali.

28. In 2003, the Peruvian Government approved Supreme Decree No. 028-2003-AG, which specifies the control measures and limitations on the development of activities in said Reserve. One of the recitals of this Supreme Decree states:

That, in light of the above, there is a need to grant the State Reserve in favor of the Kugapakori and Nahua ethnic groups, established by Ministerial Resolution No. 0046-90-AG/DGRAAR, a higher level of legal protection and establish, with greater clarity, the control measures and limitations to the development of activities in said area, as well as designate the competent authorities to guarantee the rights that assist indigenous peoples in voluntary isolation and initial contact located in said area.

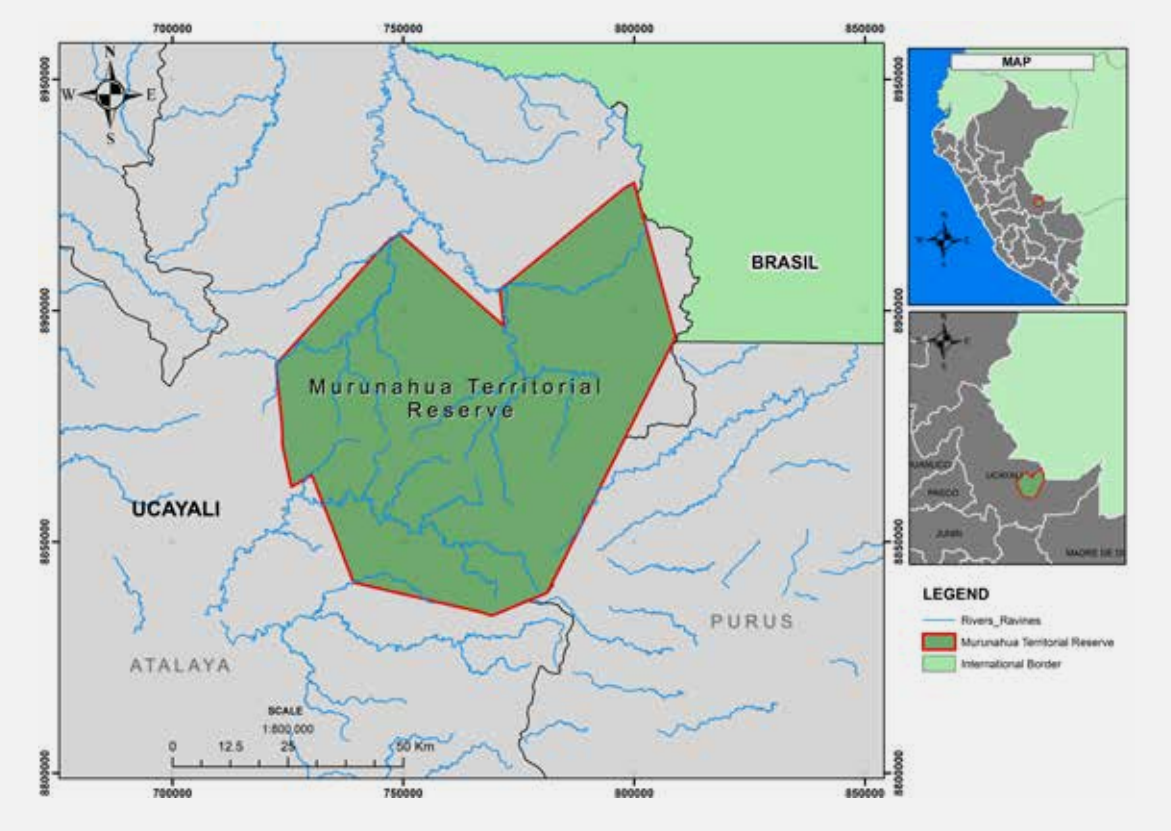
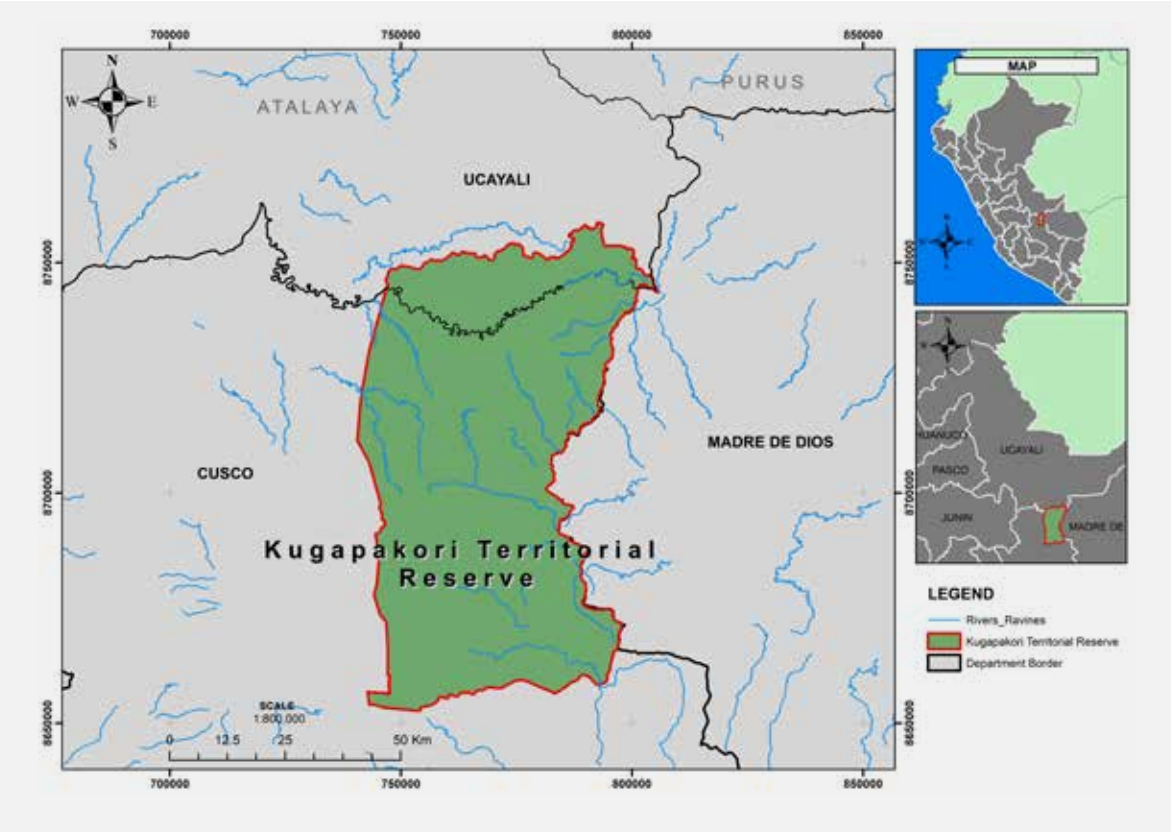
Box 03 - Territorial Reserves Protection

Article 3.- The territorial, ecological and economic integrity of the lands included within the State Territorial Reserve in favor of the ethnic groups, in voluntary isolation and initial contact—Kugapakoriu, Nahua, Nanti and others present there—is guaranteed.

Therefore, establishing human settlements, within the territorial reserves, different from those of the ethnic groups mentioned in article 2, is prohibited, as well as developing economic activities. Likewise, the granting of new rights that imply the use of natural resources is prohibited.

It is noted that all income from third parties, whether public or private, for healthcare, research, and other purposes requires the prior authorization of the National Commission for Andean, Amazonian and Afro-Peruvian Peoples - CONAPA, as well as the disclosure to organizations run by indigenous people of the area.

It is noted that the rights to use existing natural resources must be exercised with the utmost consideration to guarantee that the rights of the indigenous populations inhabiting the State Territorial Reserve in favor of ethnic groups in voluntary isolation and initial contact Kugapakori, Nahua, Nanti and others present there, are not affected. This must follow the directives that the National Commission for Andean, Amazonian and Afro-Peruvian Peoples-CONAPA must establish in this regard.

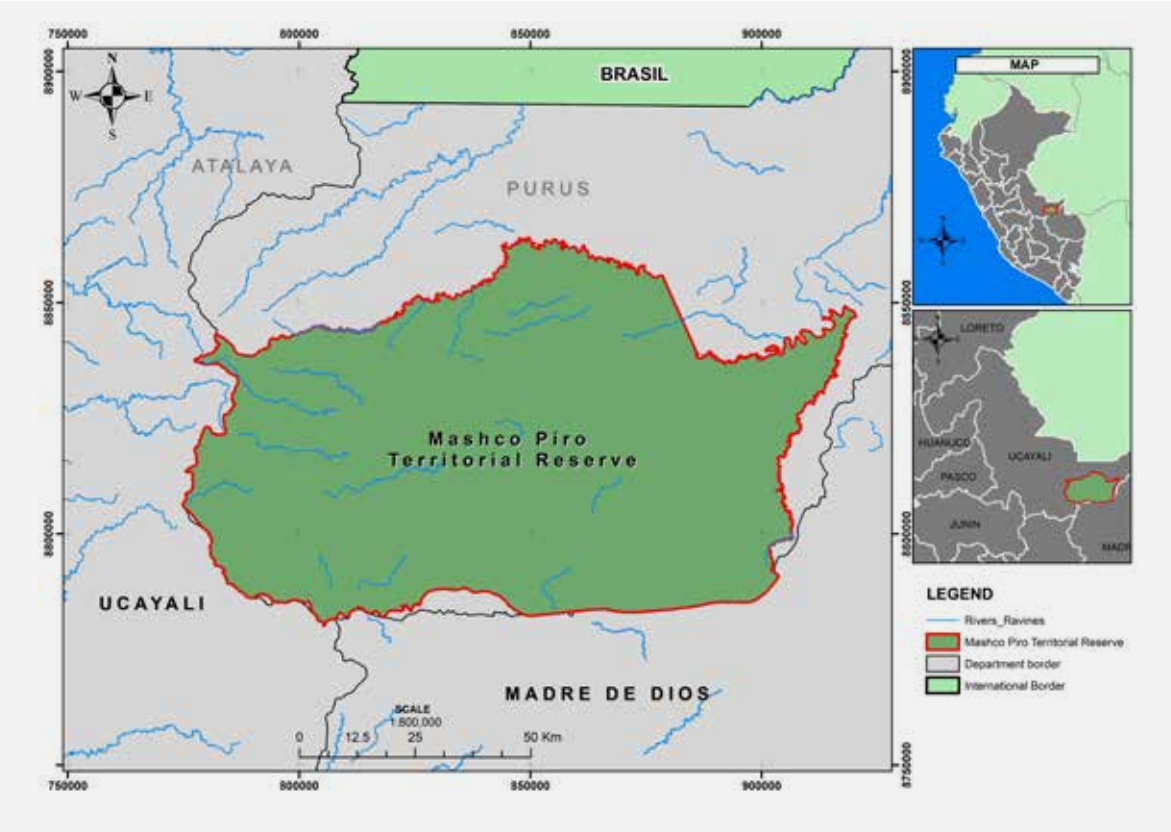


29. In April 1997, the Peruvian Government declares as a Territorial Reserve in favor of the Murunahua ethnic group, 481,560 hectares located in the districts of Yurua and Antonio Raymondi, Atalaya province in the Department of Ucayali, through Regional Directorial Resolution No. 189-97-CTARU/DRA.
30. In April 1997, the Peruvian Government declares as a Territorial Reserve in favor of the Mashco-Piro ethnic group 768,848 hectares located in the Purús districts in the Department of Ucayali, through Regional Directorial Resolution No. 190-97-CTARU/DRA.
31. In June 1998, the Peruvian Government, declares as a Territorial Reserve in favor of the Isconahua ethnic group, 275,655 hectares located in the province of Coronel Portillo in the Department of Ucayali, through Regional Directorial Resolution No. 201-98-CTARU-DRA.

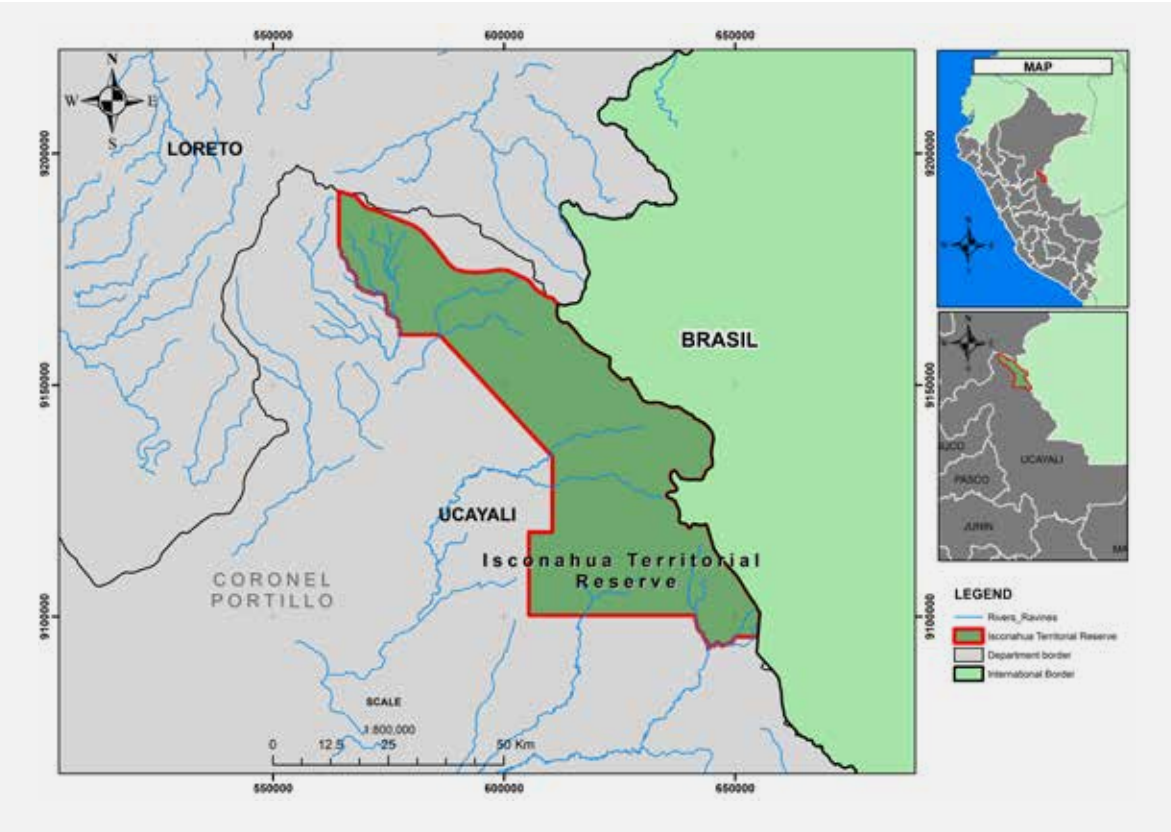
Box 04 - Indigenous and Territorial Reserves

The Indigenous Reserves and Territorial Reserves are lands demarcated by the Peruvian State in favor of the PIACI to protect their rights, territory and the conditions that ensure their existence and integrity as peoples.

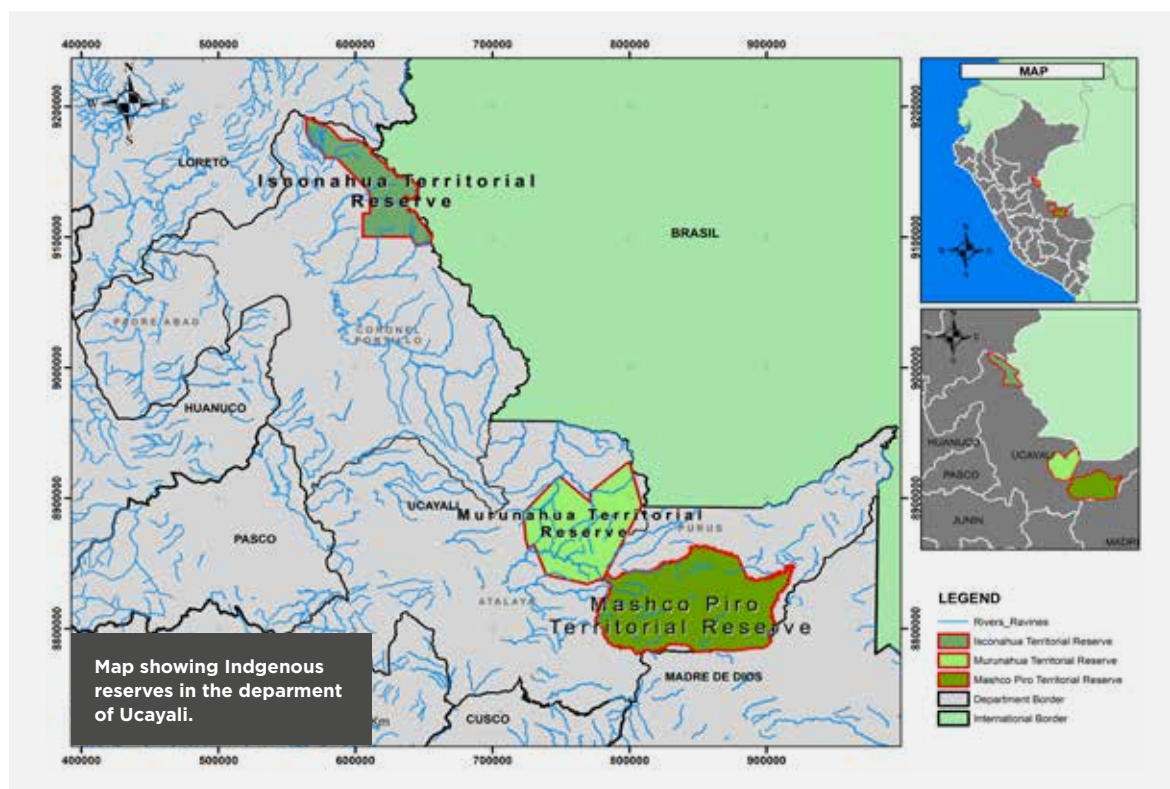
Although both terms refer to the same territory, Indigenous Reserves is the most recent legal term incorporated by Law No. 28736, PIACI Law, and has the intention of replacing the previous term of Territorial Reserves. With the new term of Indigenous Reserves, these territories are provided with a higher level of legal protection and the competent authorities, control measures and limitations regarding access and development of activities in said areas are clearly established.



Map 05 – Territorial Mashco-Piro Reserve



Map 06 –Isconahua Territorial Reserve



Map 07 – Indigenous reserves

32. On April 2014, the MINCUL, approved Supreme Decree No 001-2014-MC, “Declares the recognition of Indigenous or Tribal Peoples in a Situation of Isolation and Initial Contact located in the Territorial Reserves called “Madre de Dios,” located in the Department of Madre de Dios; “Isconahua”, “Murunahua” and “Mashco Piro,” located in the department of Ucayali and the Territorial Reserve “Kugapakori, Naghua, Nanti and others”, located in the departments of Ucayali and Cusco.
33. Likewise, article 7 of the Supreme Decree referred to in the previous paragraph, establishes that in accordance with paragraph b) of article 3 of Law No. 28736, the procedure for categorizing the Indigenous Reserve must be carried out under the Direction of the Vice Ministry of Interculturality of MINCUL.
34. In July 2016, MINCUL approves Supreme Decree No. 007-2016-MC and declares the Categorization of the Isconahua, Mashco Piro and Murunahua Indigenous Reserves; the three of which are located in the Department of Ucayali.
35. According to article 2 of Supreme Decree No. 007-2016-MC, the objectives of indigenous reserves are:
 - 2.1 In the case of the Isconahua Indigenous Reserve, the protection of the rights, habitat and conditions that ensure the existence and integrity of the Isconahua indigenous peoples in a situation of isolation.
 - 2.2 In the case of the Mashco Piro Indigenous Reserve, the protection of the rights, habitat and conditions that ensure the existence and integrity of the Mashco Piro and Mastanahua indigenous peoples in a situation of isolation and of the people whose ethnicity has not been possible to identify.
 - 2.3 In the case of the Murunahua Indigenous Reserve, the protection of the rights, habitat and conditions that ensure the existence and integrity of the indigenous peoples in isolation—Murunahua, Chitonahua and Mashco Piro, and of indigenous peoples in initial contact—Amahuaca.



The following section details the PIACI rights and their relationship with the environment and natural resources

4.3. Indigenous peoples in a situation of voluntary isolation or a situation of initial contact

36. Article 6 of Supreme Decree No. 001-2014-MC establishes that the protection of the rights of indigenous peoples in a situation of isolation and initial contact recognized within each of the above-mentioned territorial reserves must be guaranteed.
37. The Inter-American Court of Human Rights has established that there is a special relationship between indigenous peoples and

the land and territories they inhabit. This unique relationship encompasses two dimensions: i) a material relationship that provides them with the necessary resources for their subsistence, development and continuity of their way of life, and ii) a spiritual dimension insofar as the relationship with their territory determines the identity of indigenous peoples and the transmission of their cultural legacy. The PIACI are essentially nomadic, semi-nomadic or itinerant farmers, so the boundaries of their territories depend on their migration patterns.¹⁰

9. IACHR Case of the Saramaka People Vs. Suriname. Judgment of November 28, 2007.

10. IACHR Report "Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas". 2013, p. 56.

Box 05 - PIACI Definition

Indigenous peoples in voluntary isolation are indigenous peoples or segments of indigenous peoples who do not maintain sustained contact with the majority non-indigenous population, and who generally reject any type of contact with persons who do not belong to their own people. Voluntary isolation is a survival strategy for these groups. As the IACHR noted, these groups are called “indigenous peoples in voluntary isolation” in order to highlight the importance of the right to self-determination since isolation is an expression of the autonomy that should be respected.

Indigenous peoples in initial contact are understood to be those who maintain recent contact or who, despite maintaining a certain level of contact, are not fully familiar with nor share the patterns and codes of social relations of the majority population. These are indigenous peoples or segments of indigenous peoples that maintain sporadic or intermittent contact with the majority non-indigenous population. The IACHR notes that “initial” should not be understood only as a temporal term, but as a reference to the scant extent of contact and interaction with the majority non-indigenous society.

Source: Indigenous and Tribal Peoples of the Pan-Amazon Region Report - Inter-American Commission on Human Rights, 2019.

38. The aforementioned intrinsic connection is exacerbated in the case of the PIACI, since external pressures on the territories in which they live and move lead to threats to their physical, cultural and psychological integrity. The direct pressures on its territory are generated by the extraction of resources through logging, hydrocarbon extraction, and informal mining, and secondly, by the construction of infrastructure works, such as roads or hydroelectric plants. Such activities, in addition to gen-

erating deforestation and habitat degradation, generate a risk of contact that can sometimes trigger confrontations with outsiders.¹²

39. The transmission of infectious contagious diseases caused by the direct incursion of third parties or by indirect contact with contaminated food is one of the most serious threats to the physical survival of PIACI. Not having the same immune system as non-indigenous societies, contagion from

a member of the community can have devastating effects. Epidemics also generate social and cultural disruption within the community, as well as the disintegration of families due to the loss of members¹⁴.

40. In its Advisory Opinion OC-23/2017 of November 15, 2017, the Inter-American Court of Human Rights states that:

47. *This court recognized the existence of an irrefutable relationship between the protection of the environment and the fulfilment of other human rights, due to the fact that environmental degradation and the adverse effects of climate change affect the effective enjoyment of other human rights (...).*

48. *In particular, in cases on land and territorial rights of indigenous and tribal peoples, this Court has made reference to the relationship between a healthy environment and the protection of human rights, considering that the right to their collective property is tied to the protection and access to the resources found in the people's territories, since these natural resources are necessary for the very survival, development and continuity of the lifestyle of said peoples¹⁵. Likewise, the Court has recognized the close link between the right to a dignified life and the protection of ancestral land and natural resources. In this regard, this Court has*

“ The direct pressures on its territory are generated by the extraction of resources through logging, hydrocarbon extraction, and informal mining, and secondly, by the construction of infrastructure works, such as roads or hydroelectric plants ”

determined that in view of the unique situation of vulnerability of indigenous and tribal peoples, the States must adopt positive measures aimed at guaranteeing the members of these people's access to a dignified life—which includes the protection of the close ties they have with the land—and their “life project”, both in their individual and collective dimensions¹⁶. Likewise, this Court has highlighted that the lack of access to the territories and the corresponding natural resources may expose indigenous communities to precarious or subhuman living conditions, greater vulnerability to diseases and epidemics, as well as subject them to situations of extreme lack of protection that may entail various violations of their human rights, in addition to causing suffering and damaging the preservation of their way of life, customs and languages¹⁷.

11. Ibid, p. 55. / 12. Ibid, p. 51 / 13. Ibid, p. 74. / 14. Ibid, p. 77.

15. See inter alia, Case of the Yakye Axa Indigenous Community v. Paraguay (Merits, Reparations and Costs). Judgment of June 17, 2005, Series C, No. 125, para. 137; Case of Sawhoyamaya Indigenous Community v. Paraguay (Merits, Reparations and Costs). Judgment of March 29, 2006. Serie C No. 146, para. 118; Case of Saramaka People v. Suriname (Preliminary Objections, Merits, Reparations, and Costs). Judgment of November 28, 2007. Serie C No. 172, para. 121 and 122; and Case of the Kaliña and Lokono Peoples v. Suriname, supra para. 173.

16. Case of the Yakye Axa Indigenous Community v. Paraguay, supra para. 163, and Case of the Kaliña and Lokono Peoples v. Suriname, supra paragraph 181.

17. Case of the Yakye Axa Indigenous Community v. Paraguay, supra paragraph 164; Case of Kichwa Indigenous People of Sarayaku v. Ecuador (Merits, Reparations and Costs), Judgment of June 27, 2012. Series C No. 245, para. 147; and the Case of Afro-descendant communities displaced from the Cacarica River basin (Operation Genesis) v. Colombia. (Preliminary Objections, Merits, Reparations, and Costs). Judgment of November 20, 2013. Series C. No. 270, para. 354.

Box 06 - PIACI Right

Article 4.- Rights of the members of the peoples in a situation of isolation or a situation of initial contact

The State guarantees the rights of indigenous peoples in isolation or initial contact by assuming the following obligations to them:

- a) Protect their life and health, developing priority actions and preventive policies, given their possible vulnerability to communicable diseases;
- b) Respect their decision regarding the structure and process of their relationship with the rest of the national society and with the State;
- c) Protect their culture and traditional ways of life, recognizing the particular spiritual relationship that these peoples have with their habitat, as an integral element of their identity;
- d) Recognize their right to own the lands they inhabit, restricting the entry of foreigners to them; the ownership of the populations over the lands they own is guaranteed when they adopt a settled lifestyle.
- e) Guarantee free access and extensive use of their lands and natural resources for their traditional subsistence activities; and,
- f) Establish indigenous reserves, which will be determined on the basis of the land areas they inhabit, and to which they have had traditional access, until they voluntarily decide regarding land titling.

41. The “Result of the consultations carried out by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the region: Bolivia, Brazil, Colombia, Paraguay, Peru and Venezuela”¹⁸ mentions that:

The right to land, referred to in articles 10, 26, 27, 28, 29, 30 and 32 of the UN Declaration on the Rights of Indigenous Peoples, is essential, since in the case of indigenous peoples in isolation and initial contact, there is complete interdependence with the environment and this allows them to maintain their lives and cultures, due to their deep knowledge of land use, development, and care of their environment. This means that respecting their decision to remain in isolation requires that their exercise of their land and territorial rights be guaranteed and respected, since any environmental aggression they suffer would mean an aggression against their cultures and the risk of remaining in isolation.

42. Along the same lines, it should be noted that land rights have a direct relationship with the environment. Convention 169 establishes that governments must take measures, in cooperation with the peoples concerned, to protect and preserve the environment of the territories they inhabit. Furthermore, the United Nations Declaration on the Rights of Indigenous Peoples has expressly recognized that indigenous peoples have the right to conserve and protect the environment and the productive capacity of their lands or territories and resources. It is the same line followed by the American Declaration on the Rights of Indigenous Peoples:

“ According to the Inter-Ethnic Association for the Development of the Peruvian Rainforest, “The ties between the PIACI and the land and the natural resources found within it is much greater. These peoples depend entirely on forest resources and biodiversity in general to subsist and satisfy their needs, without which they would simply perish. ”

Source: Report on the situation of the peoples in isolation and initial contact in the Peruvian Amazon (2018). Interethnic Association for the Development of the Peruvian Rainforest. Lima. December 2018.

Article XIX - Right to protection of the healthy environment

1. *Indigenous peoples have the right to live in harmony with nature and to a healthy, safe and sustainable environment, essential conditions for the full enjoyment of the right to life, their spirituality, worldview and collective well-being.*
2. *Indigenous peoples have the right to conserve, restore, and protect the environment, and the right to the sustainable management of their lands, territories, and resources.*
3. *Indigenous peoples have the right to be protected against the introduction, abandonment, dispersal, transit, indiscriminate use or deposit of any dangerous material that*

¹⁸. Protection Guidelines for indigenous peoples in isolation and initial contact in the Amazon region, the Gran Chaco and the eastern region of Paraguay. Office of the United Nations High Commissioner for Human Rights. Geneva. February, 2012.

may adversely affect indigenous communities, lands, territories and resources.

4. *Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States should establish and carry out assistance programs for indigenous peoples to ensure this conservation and protection, without discrimination.*

43. According to the aforementioned laws and those cited by the Submitter, the construction of roads that could cross PIACI territories could have a profound impact on the habitat and ecosystems of the Territorial and Indigenous Reserves and other areas where PIACI live and move. In this situation it would not be possible to distinguish the impact on the environmental elements, the territories of PIACI and the exercise of their rights, such as life and integrity.

Box 07 - Common characteristics of the PIACI

Although these peoples [in isolation] are heterogeneous themselves, some common characteristics among them have been identified:

- › They are highly integrated in the ecosystems they inhabit and of which they are a part, maintaining close interdependent ties with the environment in which they develop their lives and their culture.
- › They have a deep understanding of their environment, which allows them to live self-sufficiently from generation to generation.
- › They do not know how the predominant society works, which is why they are in a defenseless situation and extremely vulnerable to the various actors that could approach them.
- › They are highly vulnerable in terms of their health, demographics, territory, society and culture.
- › Their territories face threats that directly endanger the continuity of their cultures and ways of life.

The following section describes the protected areas located in the Department of Ucayali, since the presence of PIACI has been reported in some of them. Additionally, some of the PAs located in the department of Ucayali are also in border areas referred to in Law No. 30723, Border roads law.

4.4 PA of the Department of Ucayali and presence of PIACI

44. Ucayali has six protected areas PA in its territory. Five of them are under national management, and one under regional management.¹⁹
45. The PAs under national management are: The Cordillera Azul National Park, the Alto Purus National Park, the Sierra del Divisor National Park, the El Sira Communal Reserve and the Purus Communal Reserve. Additionally, the Department of Ucayali has the Imiria regional conservation area.
46. The Peruvian Government established the Cordillera Azul National Park, through Supreme Decree No. 031-2001-AG, covering 1,353,190.85 ha in the provinces of Bellavista, Picota, Tocache and San Martín in the Department of San Martín, the province of Ucayali in the Department of Loreto, the province of Padre Abad in the Department of Ucayali and the province of Leoncio Prado in the Department of Huánuco.
47. According to the law that established the Cordillera Azul National Park, the Park aims to protect a unique series of species, biological communities and geological formations, typical of the montane and premontane forests of the Cordillera Azul complex, as well as intact headwaters and basins; and to support the development of an integrated and balanced management of the natural resources of the adjacent areas.²⁰
48. The Peruvian Government established the Alto Purus National Park, through Supreme Decree No. 040-2004-AG, covering an area of 2,510,694.41 ha in the provinces of Atalaya and Purus in the Department of Ucayali and the provinces of Tahuamanu, Tambopata and Manu in the Department of Madre de Dios.
49. The general objective of establishing the Alto Purús National Park is to conserve a representative sample of tropical humid forest and its transitional life zones, the evolutionary processes that take place in them, as well as endemic and threatened species of flora and fauna, such as the river wolf, the charapa, the harpy eagle and the celestial-headed green maca.
50. The specific objectives of the establishment of the Alto Purús National Park are: i) protect the area where indigenous peoples live in voluntary isolation and/or in initial or sporadic contact within the PA, in order to guarantee their physical and cultural integrity; ii) protect the water courses within the PA, which, in addition to the environmental values and services they provide, constitute a corridor of migratory species and genetic exchange; iii) develop research work on biological diversity, education, tourism in certain areas and others of indirect management; and, iv) preserve the richness and scenic beauty of the area with high tourist potential.

19. www.sernanp.gob.pe – consulted on April 2020

20. Supreme Decree No. 031-2001-AG – Establishes the areas of land located in the departments of Loreto, San Martín, Ucayali and Huánuco as Cordillera Azul National Park.

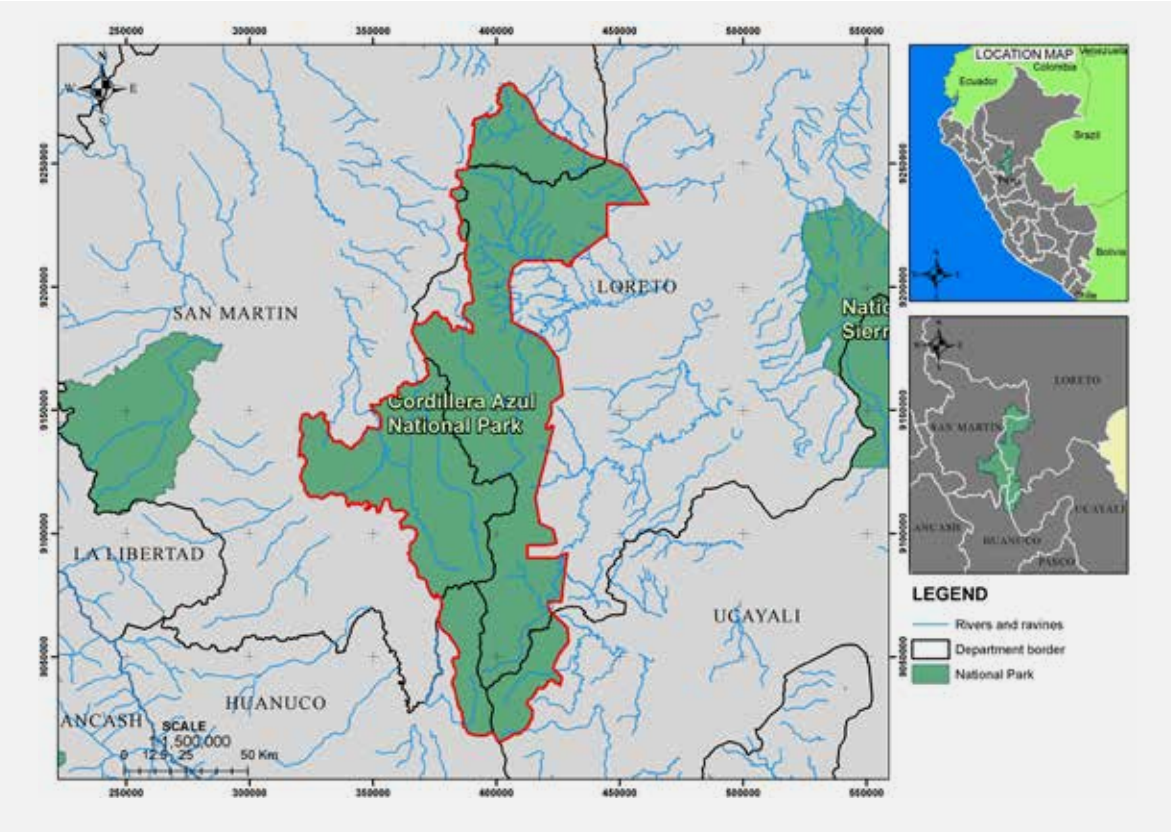
Box 08 - Establishment of the Alto Purus National Park and Purus Communal Reserve

Article 5.- On the rights of indigenous populations in voluntary isolation and/or initial or sporadic contact.

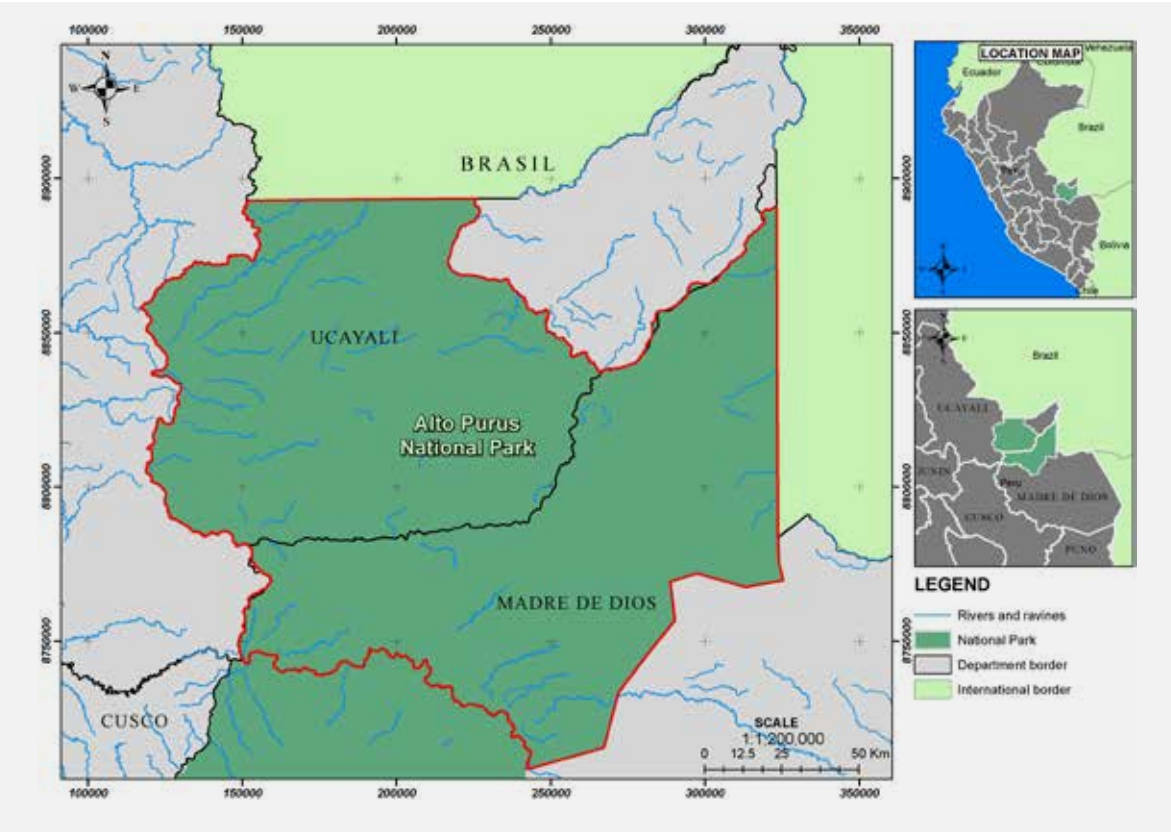
The establishment of the Alto Purus National Park and the Purus Communal Reserve safeguards the real rights, use and management of renewable natural resources for their subsistence, in favor of the indigenous populations in voluntary isolation and/or initial or sporadic contact—Mashco-Piro, Curanjeños and others present there. The first group was recognized through Regional Directorial Resolution No. 000190-97-CTARU/DRA, which declared a Territorial Reserve in favor of the Mashco-Piro ethnic group of an area of seven hundred and sixty-eight thousand eight hundred and forty-eight hectares (768,848 ha) located in the Purus district, Purus province, Department of Ucayali.

Notwithstanding what is noted in the preceding paragraph, the establishment of the Alto Purus National Park and the Purus Communal Reserve does not represent a violation of the overall rights of indigenous populations in voluntary isolation and/or sporadic initial contact, in accordance with the rights recognized by the Political Constitution of Peru and other related laws.

The presence of indigenous populations in voluntary isolation and/or initial or sporadic contact will be taken into consideration in the planning processes developed by the competent authority, for the proper management of the Alto Purus National Park and the Purus Communal Reserve.

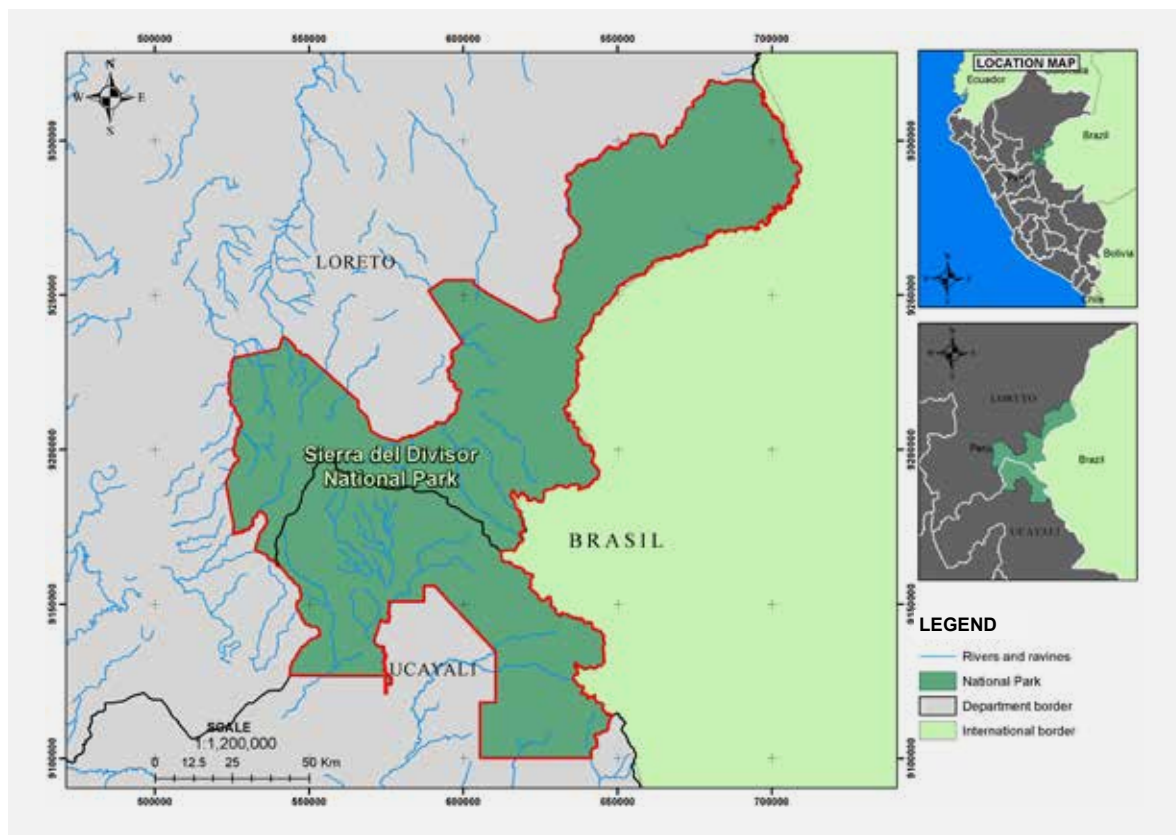


Map 08 – Cordillera Azul National Park

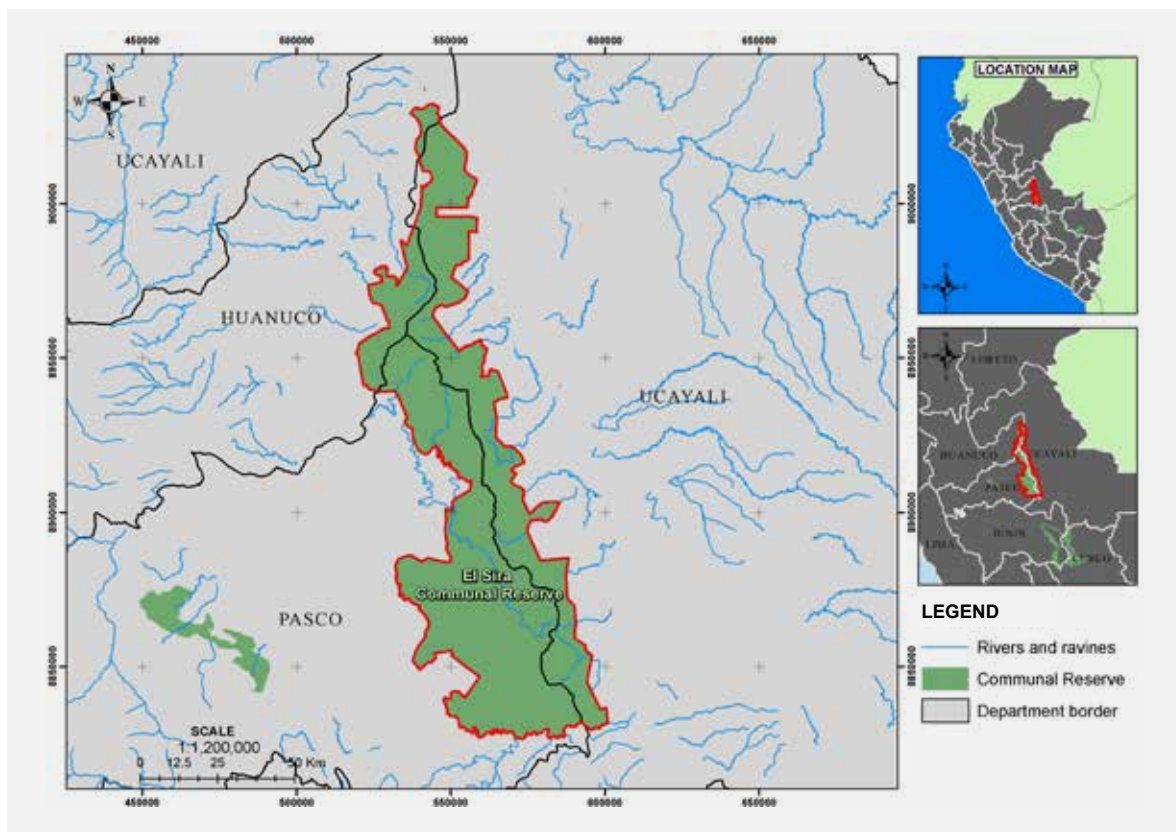


Map 09 – Alto Purus National Park

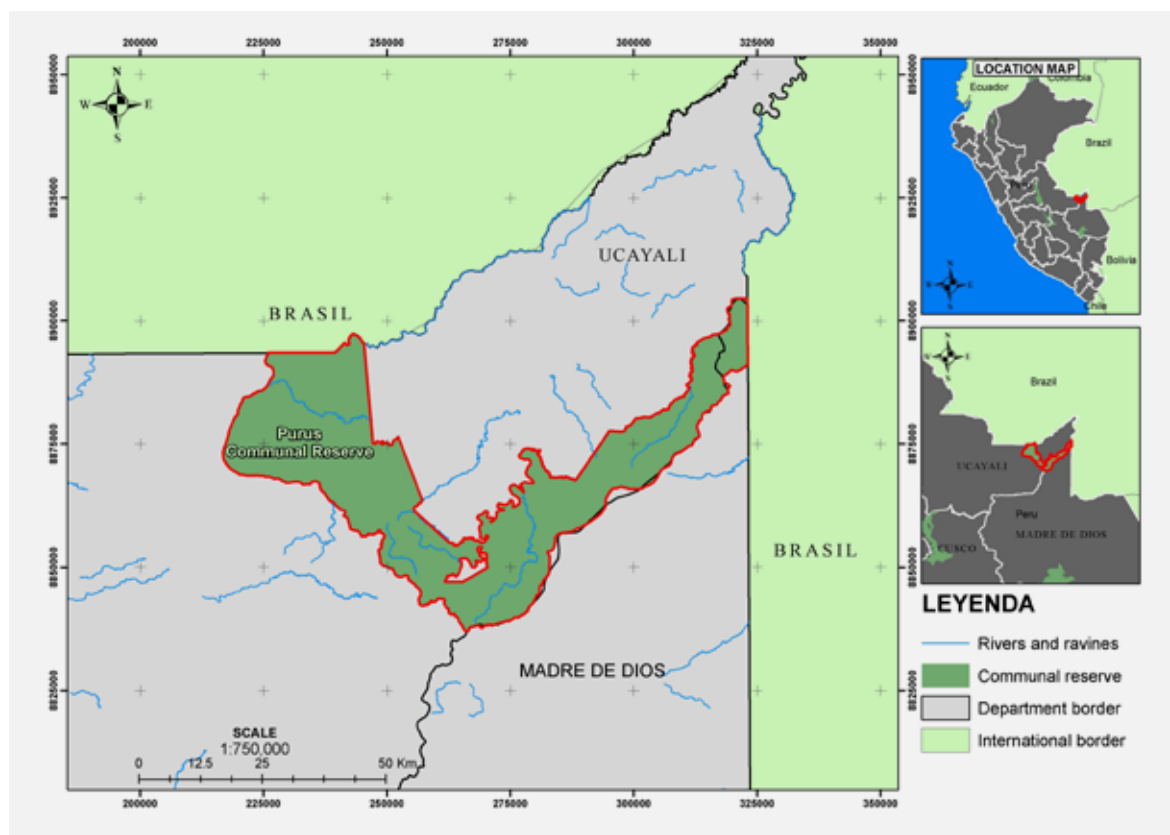
51. The Peruvian Government established Sierra del Divisor National Park, through Supreme Decree No. 014-2015-MINAM, covering an area of 1,354,485.10 ha in the province of Coronel Portillo in the department of Ucayali.
52. The general objective of the Sierra del Divisor National Park is to protect a representative sample of the mountainous region of the plains of the Amazon tropical humid forest, to protect the existing biological, geomorphological and cultural diversity, ensuring the continuity of the evolutionary ecological processes that emerge there for the benefit of the local population.
53. The El Sira Communal Reserve, established by Supreme Decree No. 037-001-AG, is located in an area of 616,413.41 ha, in the departments of Huanuco, Pasco and Ucayali.
54. The Purus Communal Reserve, established by Supreme Decree No. 040-2004-AG, is located in an area of 202,033.21 ha in the province of Tahuamanu in the department of Madre de Dios and in the province of Purús in the department of Ucayali.
55. In accordance with the law that created the Purus Communal Reserve, the general objective of the Reserve is to conserve the biological diversity of the area and the sustainable management of resources for the benefit of the local populations located within the area of influence. Additionally, the establishment of the Purus Community Reserve has the following specific objectives: i) strengthen local capacities in the management of the area and other actions conducive to the conservation of biodiversity within it and in the areas of neighboring local populations; and, ii) be located within the buffer zone of the Alto Purus National Park.
56. The Peruvian Government established Imiria Regional Conservation Area through Supreme Decree No. 006-2010-MINAM, covering an area of 135,737.52 ha, in the province of Coronel Portillo in the department of Ucayali.
57. Article 21 of Law No. 26834, Law on Protected Areas, establishes that each PA is assigned a category according to the nature and objectives of each PA. There are areas for indirect use: National Parks, National Sanctuaries and Historic Sanctuaries. There are also categories that correspond to areas of direct use: National Reserves, Landscape Reserves, Wildlife Refuges, Communal Reserves, Protected Forests, Game Reserves and Regional Conservation Areas.
58. Areas of indirect use are those that allow non-manipulation scientific research, recreation, and tourism in appropriately designated and managed areas. In these areas the extraction of natural resources is not allowed, nor are modifications and transformations of the natural environment.²¹
59. The areas of direct use are those that allow the exploitation or extraction of resources in those areas, primarily by local populations and places and for those resources defined by the area management plan. Other uses and activities that are developed must be compatible with the objectives of the area.²²



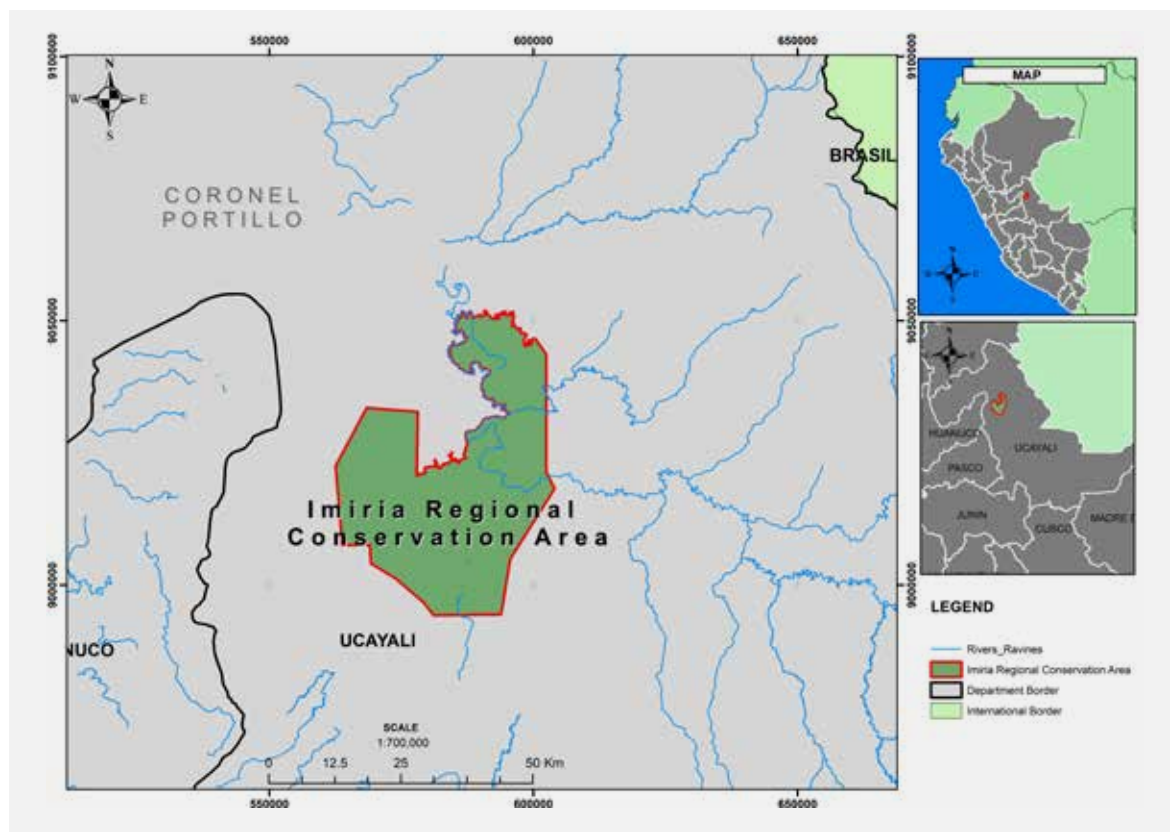
Map 10 – Sierra del Divisor National Park



Map 11 –El Sira Communal Reserve



Map 12 – Purús Comunal Reserve

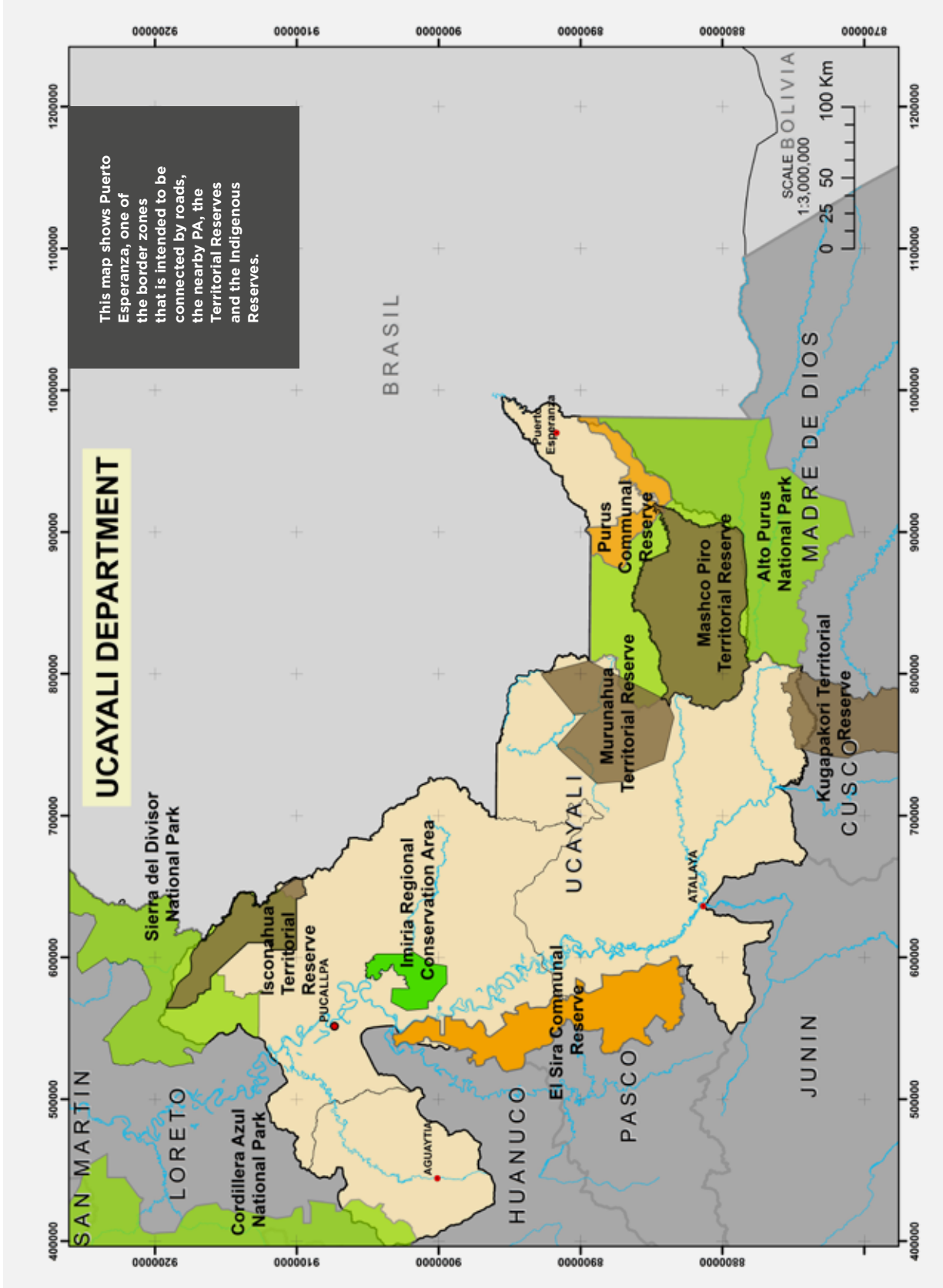


Map 13 – Imiría Regional Conservation Area

Box 09 –PA and Conservation Concessions with PIACI presence

PA/CC	Year created	PIACI	Political Location	Surface Área (ha)	Created by Law
Conservation Concession Los Amigos	2001	Mashco Piro	Madre de Dios	145,945.24	RJ No. 154-2001-INRENA
Manu National Park	1973	Machiguenga, Nanti, Mashco Piro	Madre de Dios and Cusco	1,716,295.22	Supreme Decree No. 644-73-AG
Alto Purus National Park	2004	Pano-hablantes Mashco piro	Ucayali and Madre de Dios	2,510,694.41	Supreme Decree No. 040-2004-AG
Cordillera Azul National Park	2001	Kakataibo	San Martín, Loreto, Ucayali, and Huánuco	1,353,190.85	Supreme Decree No. 031-2001-AG
Otishi National Park	2003	Arawak-hablantes	Cusco and Junín	305,973.05	Supreme Decree No. 003-2003-AG
Purus Communal Reserve	2004	Pano-hablantes Mashco piro	Ucayali	202,033.21	Supreme Decree No. 040-2004-AG
Ashaninka Communal Reserve	2003	Kakinte	Cusco and Junín	184,468.38	Supreme Decree No. 003-2003-AG
Machiguenga Communal Reserve	2003	Kakinte	Cusco and Junín	218,905.63	Supreme Decree No. 003-2003-AG
Megantoni National Sanctuary	2004	Nanti	Cusco	215,868.96	Supreme Decree No. 030-2004-AG
Sierra del Divisor National Park	2015	Isconahua	Loreto and Ucayali	1,354,485.10	Supreme Decree No. 014-2015-MINAM

Source: Indigenous Peoples in Isolation and Initial Contact of the Peruvian Amazon. Mechanisms for the protection of their rights. Culture Ministry of Culture. Lima, 2016.



Map 14 - Ucayali Department, PA and Indigenous Reserves

The following section discusses the right to prior consultation of indigenous peoples in Peru. According to the Submission filed by FENAMAD, in the process of preparation, deliberation, approval and enactment of Law No. 30723, Border roads law, the Prior Consultation Law was not effectively enforced.

4.5 Prior Consultation

60. In 1995, the ILO Convention 169 came into force in Peru. Article 6 of Convention 169 establishes that:

1. *In applying the provisions of this Convention, governments shall:*
 - a) *consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;*
 - b) *establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;*
 - c) *establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.*

2. *The consultations carried out in application of this Convention shall be undertaken, in good faith and in an appropriate form to the circumstances, with the purpose of achieving agreement or consent to the proposed measures.*

61. Article 7 of ILO Convention 169, on the right of indigenous peoples to pursue their own vision of development, establishes that:

The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

62. In accordance with the provisions of article 55 of the Political Constitution of Peru, ILO Convention 169 is part of national law and its effective implementation is a State obligation.

63. On September 2011, Prior Consultation Law, Law No. 29785, was enacted.

64. According to article 1, the Prior Consultation Law aims to develop the content, principles and procedure of the indigenous or tribal peoples' right to prior consultation regarding legislative or administrative measures that directly affects them.
65. Article 2 of the Prior Consultation Law establishes that indigenous or tribal peoples have a right to be consulted prior to any legislative or administrative measure that directly affect their collective rights, in particular their physical existence, cultural identity, quality of life or development.
66. Article 3 of the Prior Consultation Law establishes that the purpose of the consultation is to guarantee the inclusion of indigenous peoples in the Government's decision-making processes and the adoption of measures that respect their collective rights.
67. The collective rights of indigenous peoples, to which the Prior Consultation Law refers, in accordance with the international treaties signed by the Peruvian Government, and its internal regulations on the matter, include the rights to land and territory, which in turn includes the use of natural resources that are in their geographical area and that they traditionally use within the framework of current legislation.

“ Convention 169 came into force in 1994 for Peru and the Law of Prior Consultation was enacted in 2011. ”



68. The subjects of the right to consultation, according to article 5 of the Law of Prior Consultation, are indigenous and tribal peoples whose collective rights may be directly affected by a legislative or administrative measure. They are the ones who will participate in the consultation processes through their representative institutions and organizations, as noted in article 6 of the same law.
69. Article 9 of the Prior Consultation Law establishes that Government entities are obliged, as per their formal and legal obligations, to identify proposals for legislative or administrative measures that have a direct relationship with the collective rights of indigenous and tribal peoples, so that a prior consultation of such measures should be carried out if it is concluded that there would be a direct effect on their collective rights.

Box 10 - Right to consultation

Article 2.- Right to consultation

It is the right of indigenous and tribal peoples to be consulted in advance on legislative or administrative measures that directly affect their collective rights, their physical existence, cultural identity, quality of life or development. It is also appropriate to carry out the consultation regarding national and regional development plans, programs and projects that directly affect these rights.

The consultation referred to in this Law is implemented on a compulsory basis only by the State.

Source: Law of Prior Consultation

70. Article 17 of the Prior Consultation Law specifies that the Government entities that are going to issue legislative or administrative measures are competent to carry out the process of prior consultation, in accordance with the stages established by law and which are outlined in Box 12 of this Factual Record.

71. The United Nations Declaration on the Rights of Indigenous Peoples (2007) discusses prior consultation in the following terms:

Article 19.- States shall consult and cooperate in good faith with the indigenous peoples concerned through their representative institutions in order to obtain their free, prior and informed consent before adopting and apply-

ing legislative or administrative measures that may affect them.”

Article 38.- States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

“ According to the Law of Prior Consultation, legislative or administrative measures that may directly affect indigenous or tribal peoples must be consulted. ”

Box 11 - Relevant definitions

Direct effect.- It is considered that a legislative or administrative measure directly affects the indigenous peoples when it includes elements that may produce changes in the legal situation or in the exercise of the collective rights of such peoples.

Collective rights.- Rights that concern indigenous peoples, recognized in the Constitution, in ILO Convention 169, as well as in international treaties ratified by Peru and national law. It includes, among others, the rights to cultural identity; to the participation of indigenous peoples; to consultation; to choose their development priorities; to preserve their customs, provided that they are not incompatible with the fundamental rights defined by the national legal system or with internationally recognized human rights, to special jurisdiction; to the land and the territory, that is to say to the use of the natural resources that are within its geographic scope and that they traditionally use within the framework of the current legislation; to health with an intercultural approach; and to intercultural education.

Legislative measures.- Legal norms with the rank of law that may directly affect the collective rights of indigenous peoples.

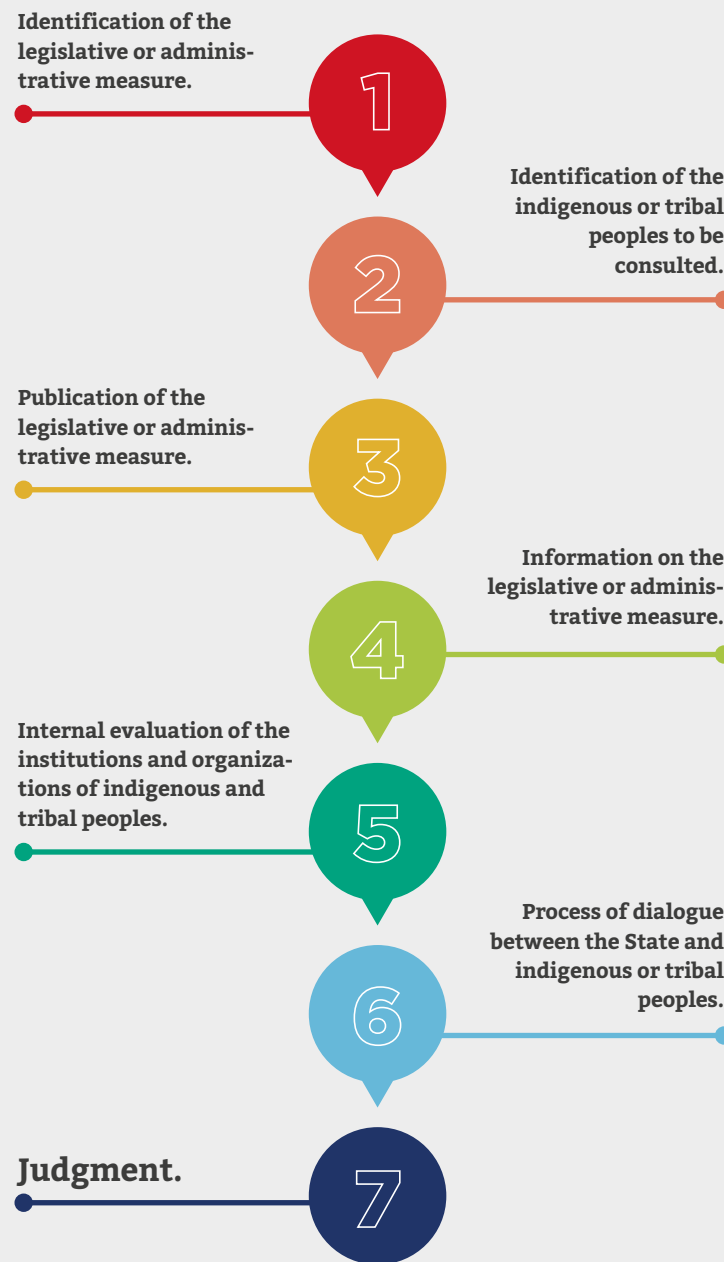
Source: Regulations of the Prior Consultation Law

72. Likewise, the right to prior consultation has been repeatedly addressed in the jurisprudence of the Inter-American Court of Human Rights. In the case of *Sarayaku Indigenous People v. Ecuador*²³, the Court noted the obligation of the Governments to carry out consultation processes with indigenous peoples when their interests may be affected.

73. Prior consultation seeks, among others, to guarantee the territorial property of indigenous peoples, in the sense that indigenous territory allows the preservation of the sources of ecosystems, as well as the flora and fauna necessary for their subsistence.

23. Judgment of June 27, 2012.

Box 12 - Prior consultation process Stages



Source: Law of Prior consultation

The following section discusses the necessary integration of regulatory frameworks referred to in the Forest and Wildlife Law when any regulation may directly or indirectly impact the Peruvian forest and wildlife heritage, respecting the rights of indigenous peoples.

4.6 Integration of regulatory frameworks

74. Paragraph 12 of Article II - General Principles of Law No. 29763, Forest and Wildlife Law, establishes the following:

12. Integration with other regulatory frameworks

The laws related to other natural resources or economic or any nature of activities that could directly or indirectly affect the integrity, conservation and security of the forest and wildlife heritage of the Nation are governed and are in accordance with the current legislation on this

matter, including the recognition and respect for the rights of indigenous peoples in accordance with ILO Convention 169.

The implementation of this Law, its regulations and any related measure comply with the obligations stipulated in the international treaties to which the country is a party and are in force.

75. According to paragraph 12 of article II of the Forest and Wildlife Law, Law No. 30723, Border roads law, must be consistent with the provisions of the Forest and Wildlife Law and the indigenous peoples rights.



Box 13 - Forest and wildlife heritage

Article 4.- Forest and wildlife heritage of the Nation

The forest and wildlife heritage of the Nation comprises the following:

- a) Forest ecosystems and other wild vegetation ecosystems.
- b. Forest and wildlife resources preserved at their source.
- c. Forest and wildlife biological diversity, including its associated genetic resources.
- d. Forests planted on land belonging to the State.
- e. Forest ecosystem services and other wild vegetation ecosystems.
- f. Land with greater forest capacity of use and land with higher capacity of protection, with or without forests.
- g. The landscapes of forest ecosystems and other ecosystems of wild vegetation as long as they are the object of economic use.

Forest plantations on private and communal farms and their products are considered forest resources but are not part of the forest and wildlife heritage of the Nation.

In the following section, two Bills are reviewed (Bill No. 075-2016/CR and Bill No. 1123/2016-CR, for four purposes:

1. For background information about Law No. 30723, Border roads law;
2. To know what drives each law;
3. To know relevant opinions of the Peruvian Government; and,
4. To find out if the laws asserted by the Submitter were enforced in the process of preparation, deliberation, approval and enactment of Law No. 30723.

4.7 Process of preparation, deliberation, approval and enactment of Law No. 30723

4.7.1 Bill No. 075-2016/CR

76. Congressman Carlos Tubino presented Bill No. 075-2016/CR, “Law that declares the sustainable development of the province of Purús, prioritizing terrestrial connectivity, as a public necessity and of preferential national interest”, in August 2016, and serves as background to understanding a series of bills that in their original drafting proposed terrestrial connection of the Province of Purús in the department of Ucayali.
77. Bill No. 075-2016/CR comprised three articles and a final provision:

Article 1.- Object of the Law

It is declared that the sustainable development of the Purús Province in the Region of Ucayali, where terrestrial connectivity between Puerto Esperanza and Iñapari is prioritized, is a public necessity and of preferential national interest, guaranteeing respect for Protected Areas and the rights of Native Communities, Farming Communities and Tribal Peoples, in accordance with the current law, in order to resolve the isolation in which this Province finds itself, promoting the integration of its population located in the center of the homeland.

Article 2.- Technical Studies and Regulations

The Executive Power has the authority to initiate the corresponding studies, in accordance with national regulations and international agreements signed by Peru, so that it may carry out the terrestrial connectivity referred to in the preceding article.

Article 3., - Control of terrestrial interconnectivity

The necessary control systems will be implemented to guarantee the protection of the biodiversity in the area, as well as the intangibility of the National Parks and other Natural Areas Protected by the State.

First Final Provision. -

This law comes into force the day after its publication in the Official Gazette “El Peruano.”

78. On Bill No. 075-2016/CR, the Ministry of the Environment (MINAM) issued Report No. 355-2016-MINAM/SG/OAJ, dated November 3, 2016, that states:
 - » “(...) focusing on the legislative proposal, it is to be noted, that its purpose (Art.1), to propose the terrestrial connectivity (road) between Puerto Esperanza and Iñapari, would comprise the territories that make

up the Alto Purus National Park, the Purus Communal Reserve, the Mascho Piro Indigenous Reserve, the buffer zone of the Alto Purus National Park comprising the Madre de Dios Territorial Reserve and the Murunahua Indigenous Reserve for isolated indigenous peoples, that is, it would comprise territories that are within the National Service of Protected Areas by the State.”

- “In the case of Alto Purus National Park, through Presidential Resolution No. 238-2012-SERNANP, dated December 28, 2012, its corresponding Master Plan was approved, which establishes a strict zoning across 100% of the Park’s territorial expansion.”
- “(...) in accordance with Article 2 of Supreme Decree No. 007-2016-MC, the objective of the Indigenous Reserves, (the proposed law includes several of them), is the protection of rights, habitats and conditions that ensure the existence and integrity of indigenous peoples. This situation would be undermined if the objective of the proposed law is met.”
- “(...) in the case of Indigenous Peoples, in accordance with the provisions of Article 2 of Law No. 29875, Law on the Right to Pri-

or Consultation with Indigenous or Tribal Peoples and within the framework of International Labor Organization Convention No. 169, the indigenous and tribal peoples must be consulted prior to any legislative or administrative measures that directly affect their collective rights, their physical existence, cultural identity, quality of life or development. This requires that the regulatory proposal be consulted, requesting an opinion from the Vice Ministry of Interculturality of the Ministry of Culture.”

- “With regards to the purview of the proposal relating to “... to guarantee the protection of biodiversity in the area, as well as the intangibility of National Parks and other natural areas protected by the State...” (Article 3) it can be appreciated that it is contradictory and incongruent with what is stated within the purview (Articles 1 and 2) of the Bill.
- “Due to the above, in the opinion of this Legal Office, Bill No. 75/2016-CR, is not viable, in accordance with the current legal framework.”

79. Likewise, the National Service of Protected Areas by the State (SERNANP), issued Technical Legal Report No. 002-2016-SERNANP/DDE/DGANP/OAJ on October 31, 2016, that states the following about the Bill No. 75/2016-CR:

“The proposed terrestrial connectivity contained in the bill is not consistent with the constitutional mandate of the Peruvian State to promote the conservation of biological diversity and protected areas, which has been included in the Law on Protected Areas, that establishes that the Natural Areas make up the heritage of the Nation.”

“ MINAM: Bill No. 75/2016-CR is not viable, in accordance with the current legal framework. ”

80. The MINCUL, through Report No. 000084-2016/DGPI/VMI/MC dated September 23, 2016, regarding Bill No. 75/2016-CR, states that:

» “(...) it is observed that the bill that seeks to declare the terrestrial connectivity for the Purus district as public necessity and of national interest could directly affect the rights of the indigenous peoples both in the Madre de Dios Territorial Reserve and in the Mashco Piro Reserve.

“This, by virtue of the collective rights that may be affected, such as: the collective right to the territory, given the proximity of the proposed connectivity to the territories of habitat, use and transit of the Mashco Piro and Mastanahua peoples, among others, as well as affecting the right to self-determination.”

81. Although Bill No. 75/2016-CR proposes a legal framework considered “declarative,” it is interesting to note that paragraph 4.2 - Analysis of the Legal Impact of the Bill contained in the Dictum on Bill No. 75/2016-CR of the Commission for Andean, Amazonian and Afro-Peruvian Peoples, Environment and Ecology of the Congress of the Republic, establishes that the following should be consulted:

[The proposed legislative initiative] does impact the rights of indigenous peoples and communities that inhabit the area, given that the multimodal connection the State adopts has direct implications on the pre-existing indigenous territorial rights; the preparation of the Action Plan of Purús considers actions regarding said towns and the Province's sustainable development policies will necessarily be enforceable on them too; all of which configures the “direct effect” assumption as described in the ILO

“ The CPAAAE’s Opinion on Bill N ° 75/2016-CR asserts that there is an impact on the rights of indigenous peoples and communities. ”

Convention No. 169, for which the respective process of prior consultation of this legislative measure must proceed.

(...)

As for the body responsible for carrying out the prior consultation, the Commission proposes that due to its specialized nature, whose complex conditions demand a high degree of specialization in indigenous affairs, the Plenary Assembly of Congress considers delegating functions to the CPAAAE for the respective prior consultation of this legislative measure, once this dictum has been approved in the first vote.

82. In June 2017, the Congress of the Republic enacts Law No. 30574, “Law that declares the sustainable development of the Purus province in the department of Ucayali as a public necessity and of preferential national interest”, prioritizing its multimodal connectivity, with a sole article:

Sole article.-

Declaration of public necessity and of preferential national interest. It is declared that the sustainable development of the province of Purús, in the department of Ucayali, is of public necessity and of preferential national interest, in order to promote its integration on equal terms with the rest of the national territory, prioritizing the multimodal connection and the unrestricted respect of protected areas and the rights of indigenous peoples, especially those in isolation and initial contact.

Box 14 - Other Bills on terrestrial connectivity in the Province of Purús - Ucayali

Bill	Title
14369-2005-CR	Law that proposes to declare the construction of the Iñapari-Purus national road axis as a public necessity and of public interest.
01295-2006-CR	Law that incorporates the Interoceanic South Axis IRSA-SUR with the Iñapari-Purus highway axis.
1035-2011-CR	Law that declares the terrestrial connectivity of Puerto Esperanza, in the border Province of Purus in the Region of Ucayali, with the city of Iñapari in the border Province of Tahuamanu, Madre de Dios Region, a public necessity and of priority national interest, by means of a road or railway line that joins Puerto Esperanza, Capital of Purus, with the city of Iñapari, Capital of Tahuamanu.

Source: Congress of the Republic

4.7.2 Bill No. 1123/2016-CR

83. On April 2017, congressman Glider Ushñahua submits Bill No. 1123/2016-CR, with a sole article:

Sole article. - It is declared that the construction of roads in border zones and the maintenance of dirt roads in the region of Ucayali without affecting the protected natural and archaeological areas as well as the environment is a national priority and of preferential national interest.

84. Bill No. 1123/2016-CR, which gave rise to Law No. 30723, establishes, in the section "Legal Grounds," the reasons for which the construction of roads in border zones and the maintenance of dirt roads in the Region of Ucayali should be declared as

national priority and of interest, noting the following:

- "(...) this vast amount of resources that the region has is not proportional to its development, it is necessary to note that one of the most important causes that impedes its sustained development and, therefore, dragging it to unnecessary underdevelopment, is the lack of communication channels, that is, the absence of roads that integrate the various districts allowing for a smooth flow of transportation towards border zones in order to market the different products already mentioned(...)."
- "(...) due to the lack of adequate road infrastructure, that is why two of its large provinces bordering Brazil, Atalaya and Purus, are unable to develop steady trade flows

with national and international markets (...)"

- » *"The province of Atalaya with five districts: Gran Pajonal, Raimondi, Sepahua, Tahuania and Yurua, with a population of 53,819 inhabitants (mostly rural), presents scant means of terrestrial transport which hinders its development and the possibility of linking with the Region's capital or with Brazil. Likewise, the Purus province (the furthest from the Region's capital), currently has a low population density (...)"*
- » *"Consequently, it is fairly clear that, to achieve a true border zone development that allows to improve the living conditions of the inhabitants of the border zones with the neighboring country of Brazil, it is necessary to improve the means of transportation. In this sense, investment in road infrastructure is essential for development, and its execution requires complementing public investment with private investment, thus stimulating economic growth and achieving the long-awaited regional development."*
- » *"It is important to note that, the Infrastructure development includes also the maintenance and improvement of the trails, the same ones that will economically integrate families of the most remote areas of the region with the purpose of commercializing its different crops, thus improving their socio-economic conditions."*
- » *"(...) it is also important to note that this regulatory proposal is compatible with Bill No. 075-2016/CR, which declares the sustainable development of the Province of Purus as a public necessity and of preferential national interest, prioritizing terrestrial connectivity."*

85. MINCUL issued Report No. 000178-2017/DGPI/VMI/MC regarding Bill No. 1123/2016-CR, dated November 15, 2017, which states the following:

- » *"In the last five years, two bills were presented aimed to propose the terrestrial interconnection in the border zones of the Region of Ucayali, specifically for the province of Purus. In both cases, the Ministry of Culture issued an unfavorable technical opinion."*
- » *"(...) it should be considered that the Isconahua Indigenous Reserve and the Murunahua Indigenous Reserve are located in the border zones of the Region of Ucayali. Likewise, the possible paths for the construction of roads could also overlap with the Mashco Piro Reserve (...)"*
- » *"(...) it should be considered that the Official Database of Indigenous and Tribal Peoples of the Ministry of Culture contains preliminary information regarding 207 native communities that would belong to 15 indigenous peoples. These communities are located in the districts of Yurua, Calleria, Masisea, Puris, Tahuania, Raymondí and Iparía, bordering the Region of Ucayali."*
- » *"The Congress of the Republic, as the competent entity for the issuance of laws, must determine which bills should be subject to a process of prior consultation depending on whether they directly affect the collective"*

“ The technical opinion of the Ministry of Culture for bills proposing terrestrial interconnection in frontier zones of Ucayali, was unfavorable. ”

Box 15 - Congress of the Republic Commissions

The Commissions are specialized working groups of Congressmen, whose main function is to monitor and supervise the operation of State bodies and, in particular, of the sectors that make up the Public Administration. Likewise, they are responsible for the study and opinion of the bills and the acquittal of consultations, in the matters that are brought to their attention according to their specialty or subject matter.

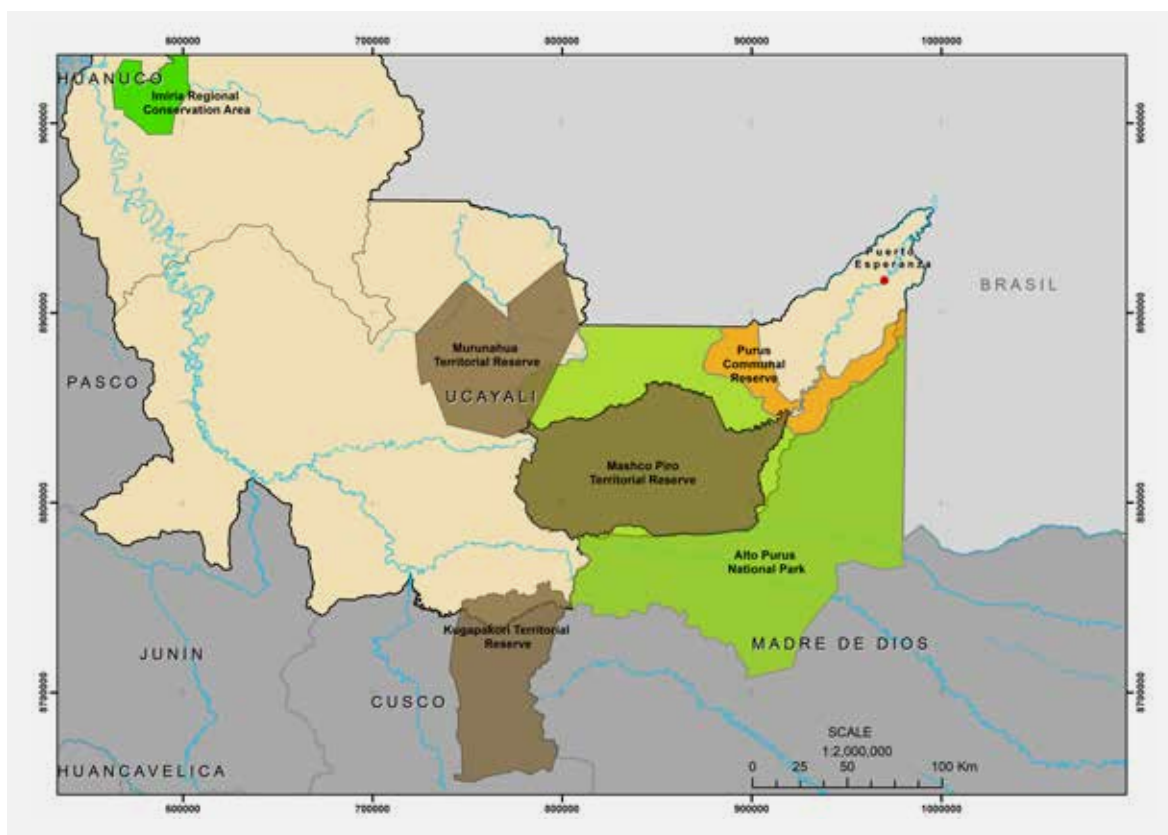
Source: Regulations of the Congress of the Republic

rights of indigenous peoples, as well as determine which parliamentary body should be in charge of said mandate, which indigenous peoples are to be consulted, and determine the opportunity to carry it out in relation to the legislative issuance procedure, among other matters."

86. Bill No. 1123/2016-CR was not sent to the Commission for Andean, Amazonian and Afro-Peruvian Peoples, Environment and Ecology of the Congress of the Republic (CPAAE).
87. As mentioned in the legal grounds of Bill No. 1123/2016-CR, the provinces of Atalaya and Purus are the ones that share a border

with Brazil and are intended to have terrestrial interconnection.

88. The terrestrial interconnection of Puerto Esperanza, the capital of the province of Purus, proves to be the most complex, since any path that is drawn could negatively impact PAs and/or Indigenous or Territorial Reserves.
89. Having been informed about Bill No. 1123/2016-CR, the Inter-American Commission on Human Rights, in accordance with Article 41 of the American Convention, requests information from the Peruvian Government, as seen in the Figure below (Figure 2).



Map 15 - Puerto Esperanza, PA and Territorial Reserves



Box 16 - Functions of the Inter-American Commission on Human Rights

Article 41

The main function of the Commission shall be to promote respect for and defense of human rights. In the exercise of its mandate, it shall have the following functions and powers:

- a) to develop an awareness of human rights among the peoples of America;
- b) to make recommendations to the governments of the member states, when it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights;
- c) to prepare such studies or reports as it considers advisable in the performance of its duties;
- d) to request the governments of the member states to supply it with information on the measures adopted by them in matters of human rights;
- e) to respond, through the General Secretariat of the Organization of American States, to inquiries made by the member states on matters related to human rights and, within the limits of its possibilities, to provide those states with the advisory services they request;
- f) to take action on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of this Convention; and
- g) to submit an annual report to the General Assembly of the Organization of American States.

January 16, 2018

CIDH/SE/Art.41/1-2018/02

**RE: Bill 1123/2016-CR on the construction of roads and the maintenance of dirt roads in the region of Ucayali
Perú**

Mr. Minister,

It is my honor to address Your Excellency on behalf of the Inter-American Commission on Human Rights, in accordance with the provisions of Article 41 of the American Convention on Human Rights, to request information regarding the adoption by the Congress of the Republic of Peru, on December 7, 2017, of Bill No. 1123/2016-CR that declares the construction of roads in the Ucayali region of national interest.

According to the information received by the IACHR, this law would endanger six Natural Areas Protected by the State (the Alto Purús, Cordillera Azul, and Sierra del Divisor National Parks; the Purús and El Sira Communal Reserves; and the Regional Conservation Area Imiria), three indigenous reserves (Murunahua, Isconahua, Mashco Piro) and a territorial reserve for peoples in a situation of isolation or initial contact (Kugapakori Nahua, Nanti), as well as other peoples in voluntary isolation or initial contact whose presence has been confirmed in the area. The IACHR was informed that, in addition to fragmenting the territory of the indigenous reserves, the construction of this road would facilitate mining and illegal logging in these protected areas.

According to publicly available information, the bill was approved by the Congress of the Republic despite opposition from the Ministry of Culture, the governing body for peoples in voluntary isolation and initial contact in Peru, and the Ombudsman's Office. The approval by the Congress also lacked important opinions, such as those of the Commission for Andean, Amazonian and Afro-Peruvian Peoples, Environment and Ecology of the Congress; the Vice Ministry of Interculturality of the Ministry of Culture; the Vice Ministry of Human Rights and Access to Justice of the Ministry of Justice; the National Service of Protected Natural Areas; and the Ministries of the Environment and of Health. The project has also lacked input from national and international human rights organizations.

His Excellency,
Ricardo V. Luna Mendoza
Minister of Foreign Affairs
Lima, Peru



The IACHR notes that some of the communities affected by the bill are beneficiaries of precautionary measures (MC 262-05), a scope within which the Commission asked the Peruvian State to adopt all the necessary measures to guarantee the life and personal integrity of the members of the indigenous peoples in voluntary isolation—Mashco Piro, Yora and Amahuaca; in particular, the adoption of measures to avoid irreparable damage resulting from third parties carrying out activities in their territories.

Within the framework of its report *Indigenous peoples in voluntary isolation and initial contact in the Americas: Recommendations for full respect for their human rights*¹, the Commission has underscored the special obligation of States to protect and respect the rights of communities in voluntary isolation and initial contact due to their unique situation of vulnerability. In this sense, the Commission has observed that incursions into their territories lead to physical assaults, and/or serious health problems because they do not have immunological defenses, and have an irreversible impact on their capacity to survive, which may result in their disappearance. The Commission has also denounced the establishment of exceptions of public interest for the effective protection of the human rights of indigenous peoples in voluntary isolation².

Within the framework of its report, the IACHR has also recognized that the right of these communities to decide not to have contact or to remain isolated constitutes the expression of their right to self-determination, which is now also enshrined in Article 26 of the American Declaration on the Rights of Indigenous Peoples. The IACHR stressed that their manifested rejection of the presence of third parties in its territories should be taken into account in process of consultation when analyzing its consent to any presence or intrusion in its territories.

Based on the above, and by virtue of the powers conferred by Article 41 of the American Convention, the Inter-American Commission respectfully requests the Illustrious State of the Republic of Peru to provide all the information it deems appropriate on the noted facts within the 15-day period, and in particular on the following:

1. Report whether a process of consultation was carried out with the indigenous communities settled in the affected territories, aimed to reaching an agreement and obtaining their consent to the measures referred to in this letter. In the case of indigenous communities in voluntary isolation and initial contact, if, according to international standards, these peoples' rejection of contact was considered as affirmations of their rejection of interventions or projects in their territories;
2. Corroborate whether a social and environmental impacts study was carried out on roads and dirt roads referred to in this letter with aim to evaluate their possible impacts on the referred indigenous peoples and on their territories;

¹ IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for Full Respect of their Human Rights*, OEA/Ser.L/V/II., Doc.47 /13, December 30, 2013.

² IACHR, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for Full Respect of their Human Rights*, OEA/Ser.L/V/II., Doc.47 /13, December 30, 2013, para. 97.



Figure 04 –Consultation of the Inter-American Commission on Human Rights [Original in Spanish]

The following section reviews the Prior Consultation Law in relation to Bill No. 1123/2016-CR and its subsequent enactment. This connection between the bill and the law is understood through the legislative process of the Congress of the Republic.

4.7.3 On the Law of prior consultation and Bill No. 1123/2016-CR

90. ILO Convention 169, a treaty that is a part of the national law and is mandatory for

the Peruvian Government, recognizes the right to prior consultation of indigenous peoples when any administrative and/or legislative measure may affect their collective rights. Additionally, this right is an expression of the constitutional right of citizen participation recognized by Article 31 of the Political Constitution of Peru.²⁴

91. In the same way, as seen in Box 11, the Prior Consultation Law establishes *that it is the right of indigenous and tribal peoples to be consulted prior to any legislative or administrative measures that directly affect their collective rights, their physical existence, cultural identity, quality of life or development*. Thus, there is no exception to prior consultation within

the scope of the legal production of the legislative or administrative measure.

92. To date, Congress of the Republic Regulations do not establish mechanisms for the implementation of the Prior Consultation Law during the legislative process. Likewise, there is no mechanism during the legislative process to evaluate whether there is a level of impact to the collective rights of indigenous peoples in any bill.
93. Consequently, Bill No. 1123/2016-CR was not subjected to an evaluation of its potential impact on the collective rights of indigenous or tribal peoples and thus be able to determine whether it was a legislative measure that should have been consulted.
94. It is important to note that the process of developing a law is an opportunity to discuss the content and scope of the regulation. This allows the strengthening of the law, making it clear, coherent and in accordance with fundamental rights.
95. In this sense, in the process of creating a law, the mandates of the existing laws that are part of the legal system should not be

“ Although the Prior Consultation Law establishes that legislative measures that may directly affect the rights of indigenous peoples must be consulted, there is currently no mechanism in the Congress of the Republic for the evaluation of the potential impact that legislative initiatives may have, and thus decide what legislative measures should be consulted. ”

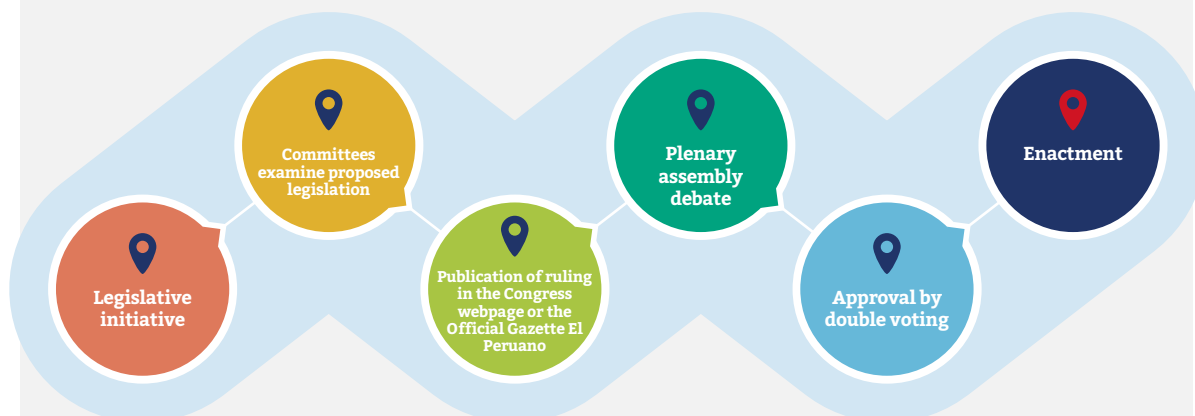
ignored. The stage of creating a law should not be exempt from the enforcement of existing laws and regulations.

96. Regarding declarative laws, they should be reviewed on a case-by-case basis, since, although legal consequences are not included in these laws, the legal text could include a provision that affects the collective rights of indigenous peoples.²⁵

24. Report on the implementation of the right to prior consultation for legislative measures formulated by the Congress of the Republic, which must be consulted within the framework of Law No. 29785, the Right to Prior Consultation of Indigenous or Tribal Peoples, recognized in Convention 169 of the International Labor Organization -ILO, Center for Analysis and Conflict Resolution – Pontifical Catholic University of Peru. April 2013.

25. Report on the implementation of the right to prior consultation for legislative measures formulated by the Congress of the Republic, which must be consulted within the framework of Law No. 29785, the Right to Prior Consultation of Indigenous or Tribal Peoples, recognized in Convention 169 of the International Labor Organization -ILO, Center for Analysis and Conflict Resolution – Pontifical Catholic University of Peru. April, 2013.

Cuadro 17 – Etapas del procedimiento legislativo



Source: Regulations of the Congress of the Republic

Box 18 – Development and enactment of laws

Article 107.- Both the President of the Republic and the Congress members have the right to carry out the development and enactment of laws.
(...)

Article 108.- As provided in the Constitution, the approved law is submitted to the President of the Republic for its enactment within fifteen days. If the President of the Republic does not enact the law, the President of Congress or the President of the Permanent Assembly is responsible for its enactment, as appropriate.

If the President of the Republic has observations to share regarding the whole or any part of the law passed by the Congress, he shall submit them to the Legislature within fifteen days.

Once the law has been reconsidered by Congress, its President enacts the law with the vote of more than half of the legal number of congressmen.

Article 109.- The law comes into force the day following its publication in the official gazette, unless a provision of the same law delays its effect in whole or in part.

The following section reviews the declaration of priority and national interest in the legislative process, due to the nature of Law No. 30723, Border roads law.

4.7.4 On the declaration of priority and national interest

97. In accordance with article 109 of the Constitution, laws come into force the day following their publication in the Official Gazette El Peruano, unless a provision of the same law delays its effect in whole or in part. There is no formal “declarative” category in the Constitution or in the Regulations of the Congress of the Republic (see Box 19) as one of the variants of the legislative process.
98. Consequently, declaratory laws remain in force and binding, even though they are issued as valid statements in and of themselves, rather than as hypotheses that such assumption must be followed by such consequence, so they have the exceptional feature of lacking an explicit assumption.²⁶
99. In general, declarative laws are mandates that the legislator submits to the Executive Power so that the latter prioritize the execution of a particular construction work or infrastructure, in view of the impossibility that the legislator propose an expenditure initiative in the budget execution. In this sense, declarative laws, although they do

Box 19 - Variants of the legislative process

Article 72. The legislative process seeks to approve general laws and legislative resolutions, which may be:

- a) Ordinary laws
- b) Laws to reform the Constitution;
- c) Organic laws;
- d) Budgetary and financial laws, including those of special tax treatment referred to in the last paragraph of article 79 of the Political Constitution;
- e) Authoritative laws of delegated legislation;
- f) Amnesty laws;
- g) Demarcation laws;
- h) Legislative resolutions; and,
- i) Legislative resolutions for the approval of internal regulations of Congress.

26. Rubio Correa, Marcial. The Judicial System: Introduction to Law Fondo Editorial PUCP, 2012, p. 90.

not generally regulate a specific mandate, in some cases they could contain articles that, beyond their declarative nature, could affect the legal situation of the subjects they regulate; therefore, the analysis of this type of law must be carried out on a case-by-case basis to determine whether they should be subject to prior consultation.²⁷

100. Although Law No. 30723, Border roads law, is a declarative law, it may be capable of producing direct, immediate and concrete legal effects. As it is a law that refers to border zones of the department of Ucayali, an area where the PA, territorial reserves, indigenous reserves and territories of indigenous peoples come together, it is more relevant to evaluate this type of law for its potential impact to the collective rights of indigenous or tribal peoples and thus be able to determine what legislative measures should be consulted.

101. As mentioned in this Factual Record, the potential effects of Law No. 30723 have been noted by diverse entities of the Peruvian Government itself. The Specialized Supranational Public Prosecutor's Office recognized that Law No. 30723, Border roads law, could result in exposing PIACI Mashco Piro and others to contact. Report No. 160-2019-JUS/CDJE-PPES, related to Case No. 13.572 - Mashco Piro, Yora and Amahuaca Indigenous Peoples, states the following:

“80. As it can be seen, observations were made to Law No. 30723 before its approval and enactment by various institutions; these observa-

“ Although the Prior Consultation Law establishes that legislative measures that may directly affect the rights of indigenous peoples must be consulted, there is currently no mechanism in the Congress of the Republic for the evaluation of the potential impact that legislative initiatives may have, and thus decide what legislative measures should be consulted. ”

tions took into account the possible exposure of the PIACI Mashco Piro and others and highlighted the precautionary measures the IACHR granted them”.

102. Certainly, several Government institutions expressed their concern about the content of Law No. 30723, Border roads law, in its stage of legal development (preparation, deliberation, approval and enactment). These institutions include the CPAAAE of the Congress of the Republic, the Vice-Ministry of Interculturality of the MINCUL, the Vice-Ministry of Human Rights and Access to Justice of the Ministry of Justice, the National Service for Protected Areas, MINAM, the Ministry of Health and the Ombudsman. Some of the aforementioned opinions have been included in this report.

²⁷ Report on the implementation of the right to prior consultation for legislative measures formulated by the Congress of the Republic, which must be consulted within the framework of Law No. 29785, the Right to Prior Consultation of Indigenous or Tribal Peoples, recognized in Convention 169 of the International Labor Organization -ILO, Center for Analysis and Conflict Resolution - Pontifical Catholic University of Peru. April, 2013, p. 41.

Box 20 - Prior Consultation of the Forest and Wildlife Law

In November 2010, the Agrarian Commission of the Congress of the Republic stated the following in the document “Analysis of the Law of Prior Consultation for Indigenous Peoples, and criteria for its implementation in the context of the debate on the Bill of the Forest and Wildlife Law”:

Although there is consensus that the existence of a framework law on the right to consultation would help carry out the obligations assumed by the State in Convention [169 of the ILO], and its prompt approval is recommended, its lack of approval cannot be the cause for postponing compliance with the obligation to consult regarding legislative and administrative measures that continue to be proposed and affect indigenous peoples.

In this sense, the Constitutional Court has ruled that “it is not a constitutionally valid argument to excuse the enforcement of fundamental rights due to a lack of legal or infra-legal regulations. This would mean leaving the fulfillment of fundamental rights in the hands of state discretion, a position that collides with the Constitutional State of Law.”

Therefore, according to what is described in the previous paragraph, the Bill No. 4141/2009-PE, the Forest and Wildlife Law, which is being processed in the Congress of the Republic, should be consulted with indigenous peoples, because of the impact it would have on the rights of indigenous peoples, such as their right to the integrity of forest ecosystems, which are part of the territory they inhabit, to participate in the use, administration and conservation of existing forest and wildlife resources in their lands, the right to life, health, respect for their culture, an adequate environment for their development, among others.

Therefore, the responsibility for consulting the Bill on Forests and Wildlife falls on Congress. It would be up to Congress to develop a specific procedure to carry it out in accordance with the principles already put forth in the Enrolled Bill.

4.7.5 Bills that propose the repeal of Law No. 30723, Border roads law

103. After the enactment of Law No. 30723, Border roads law, some bills were presented that propose the repeal of the aforementioned law: Bill No. 2360/2017-CR, Bill No. 2354/2017-CR and Bill No. 2414/2017-CR. Two of the three projects mentioned have been shelved.

104. Regarding Bill No. 2354/2017-CR (which seeks to repeal Law No. 30723, Border roads law), MINAM issued Report No. 176-2018-MINAM/SG/OGAJ, dated March 5, 2018. In this report MINAM concludes that:

“Regarding the proposal to repeal Law No. 30723, Law that declares the construction of roads in border zones and the maintenance of dirt roads in the region of Ucayali as a national priority and interest,” in accordance with what was stated by SERNANP in Report No. 02-2018-SERNANP-DGANP/OAJ, we consider said proposal as viable, since, in the framework of the aforementioned Law, road infrastructure projects could be carried out and these could affect the Alto Purus National Park, Cordillera Azul National Park, Sierra del Divisor National Park, Purus Community Reserve, El Sira Communal Reserve and Imiria Regional Conservation Area, located in the department of Ucayali.”

**“ In the opinion
of MINAM, Law No.
30723 collides with
the Law of PAs.”**

105. In Report No. 00692-2018-MINAM/SG/OGAJ, dated November 15, 2018, on Bill No. 2360/2017-CR, “Law that repeals Law No. 30723 that declares the construction of roads in border zones and the maintenance of dirt roads in the region of Ucayali is a national priority and interest,” MINAM reaches the following conclusion:

- » *“Law No. 30723, which is intended to be repealed, contravenes what is established in Law No. 26834, Law on Natural Protected Areas, since the construction of roads and maintenance of dirt roads in the department of Ucayali, represent a potential and significant change of the wilderness qualities and the good state of conservation of the Natural Protected Areas located in said department”.*
- » *“Law No. 30723, collides with Law No. 30574, which declares the sustainable development of the province of Purús, in the department of Ucayali, as public necessity and of preferential national interest (...).”*





Mr. Dino Delgado Gutiérrez
Executive Director
Secretariat for Submissions on Environmental Enforcement Matters
1889 F Street N.W., Suite 719
Washington, D.C. 20006

September 2, 2020

Dear Mr. Delgado:

With this letter, the United States of America confirms receipt of the Factual Record Corresponding to Submission SACA-SEEM/PE/002/2018, submitted to the Environmental Affairs Council on August 4, 2020 by the Secretariat for Submissions on Environmental Enforcement Matters (Secretariat) of the United States-Peru Trade Promotion Agreement (PTPA). In accordance with Article 18.9.7 of the PTPA, the United States instructs the Secretariat to make the Factual Record corresponding to Submission SACA-SEEM/PE/002/2018 publicly available.

Sincerely,



Kelly K. Milton, Acting
Assistant U.S. Trade Representative
for Environment and Natural Resources
Office of the U.S. Trade Representative



John E. Thompson, Acting
Deputy Assistant Secretary of State
for Environment
Bureau of Oceans and International
Environmental and Scientific Affairs
U.S. Department of State

U.S. Representatives on the United States-Peru Trade Promotion Agreement
Environmental Affairs Council

Instruction to the United States-Peru Trade Promotion Agreement Secretariat for Submissions on Environmental Enforcement Matters Regarding the Factual Record Corresponding to Submission SACA-SEEM/PE/002/2018 Asserting that the Government of Peru is Failing to Effectively Enforce its Environmental Laws in the Drafting, Deliberation, Approval and Enactment of Law 30723 that Declares the Construction of Roads in Border Areas and Maintenance of Truck Paths in the Ucayali Region a Priority and National Interest.

THE UNITED STATES OF AMERICA:

SUPPORTIVE of the process provided for in Articles 18.8 and 18.9 of the *United States-Peru Trade Promotion Agreement* (PTPA) regarding Submissions on Enforcement Matters and the preparation of factual records;

CONSIDERING Submission SACA-SEEM/PE/002/2018 (the “Submission”) filed by the Native Federation of the Madre de Dios River and its Tributaries (FENAMAD) on July 9, 2018, and the Responses provided by the Government of Peru on February 5, 2019, and March 12, 2019;

RECALLING the Secretariat’s May 24, 2019 Notification in accordance with Article 18.9(1) of the PTPA, informing the Environmental Affairs Council that the Secretariat considers the Submission to warrant the development of a Factual Record;

FURTHER RECALLING the June 17, 2019 communication from U.S. Representatives to Environmental Affairs Council instructing the Secretariat to prepare a Factual Record, pursuant to Article 18.9(2);

HAVING REVIEWED the Factual Record transmitted to the Environmental Affairs Council on August 4, 2020; and

PURSUANT to Article 18.9(7) of the PTPA,

HEREBY INSTRUCTS the Secretariat to make the Factual Record corresponding to Submission SACA-SEEM/PE/002/2018 publicly available.



Kelly K. Milton, Acting
Assistant U.S. Trade Representative
for Environment and Natural Resources
Office of the U.S. Trade Representative



John E. Thompson, Acting
Deputy Assistant Secretary of State
for Environment
Bureau of Oceans and International
Environmental and Scientific Affairs
U.S. Department of State

U.S. Representatives on the PTPA Environmental Affairs Council

Figure 05 – Instruction to publish Factual Record



FINAL NOTES

- 106.** This Factual Record has been developed based on the Submission filed by FENAMAD, the Determinations and Notification of the Secretariat, the response of the Government of Peru and publicly available information. This document seeks to provide factual information on the matters addressed in the Submission. Consequently, this Factual Record documents the facts related to the process of preparation, deliberation, approval and enactment of Law No. 30723, Border roads law.
- 107.** In accordance with the legislation in force, the laws referred to as “declarative” laws remain valid and binding and can produce immediate and concrete legal effects.
- 108.** In accordance with the legislation in force, including the Prior Consultation Law, the Peruvian Government is responsible for carrying out processes of prior consultation regarding any legislative or administrative measures that affect the collective rights of indigenous peoples. This obligation does not exclude the legislative process for which the Congress of the Republic is responsible.
- 109.** In accordance with the legislation in force, including Law No. 28736, PIACI Law, the Peruvian Government is responsible for the protection of indigenous peoples and their territories, ensuring the intangibility of Indigenous Reserves and Territorial Reserves, addressing the vulnerability of the PIACI and their special relationship with the access and use of the resources found in their territories.
- 110.** In accordance with the legislation in force, including the Forest and Wildlife Law, the Peruvian Government is responsible for ensuring that any law or activity that could directly or indirectly affect forest and wildlife heritage, is consistent with the Forest and Wildlife Law and respects the rights of indigenous peoples, in accordance with ILO Convention 169.
- 111.** In accordance with paragraph 3 of article 18.9 of the TPA, “the preparation of a factual record by the secretariat in accordance with this Article shall be carried out without prejudice to any further steps that may be taken with respect to any Submission.”





CONSULTED DOCUMENTS

1. Political Constitution of Peru.
2. American Convention on Human Rights (Pact of San José).
3. Convention 169 on Indigenous and Tribal Peoples in Independent Countries of the International Labour Organization (ILO).
4. United Nations Declaration on the Rights of Indigenous Peoples.
5. Supreme Decree N 031-2001-AG, establishment of the Cordillera Azul National Park.
6. Supreme Decree N 037-2001-AG, establishment of the El Sira Communal Reserve.
7. Supreme Decree N 028-2003-AG, Declares surface located in the departments of Cusco and Ucayali as “State Territorial Reserve in favor of ethnic groups in voluntary isolation and initial contact Kugapakori, Nahua, Nanti and others”.
8. Supreme Decree N 040-2004-AG, establishment of the Purús Communal Reserve.
9. Supreme Decree N 040-2004-AG, establishment of the Alto Purus National Park.
10. Supreme Decree N 006-2010-MINAM, establishment of the Imiria Regional Conservation Area.
11. Supreme Decree N 001-2014-MC, Declares the recognition of the Indigenous or Original Peoples in a Situation of Isolation and Initial Contact located in the Territorial Reserves named “Madre of Dios” located in the department of Madre de Dios; “Isconahua”, “Murunahua”, and “Mashco Piro” located in the department of Ucayali, and the Territorial Reserve “Kugapakori, Nahua, Nanti and others”, located in the departments of Ucayali and Cusco.

12. Supreme Decree N 014-2015-MINAM, establishing Sierra del Divisor National Park.
13. Supreme Decree N 007-2016-MC, Supreme Decree that declares the Categorization of the Indigenous Reserves Isconahua, Mashco Piro and Murunahua.
14. Supreme Decree No. 002-2018-MC, Supreme Decree declaring recognition of the Matsés, Remo (Isconahua) and Marubo indigenous peoples in isolation and other indigenous peoples in isolation whose ethnic affiliation cannot be identified, corresponding to the scope of the request for the creation of the Tapiche Yavari Indigenous Reserve and the Matsés, Matis, Korubo or Kulina-Pano and Flecheito (Takavina) Indigenous peoples in isolation, from the scope of the request for the creation of the Mirim Yavari Indigenous Reserve.
15. Guidelines for the protection of indigenous peoples in isolation and in initial contact in the Amazon region, the Gran Chaco and eastern Paraguay. Outcome of the consultations carried out by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the region: Bolivia, Brazil, Colombia, Paraguay, Peru and Venezuela, 2012.
16. Document of consultation of the Inter-American Commission on Human Rights to the Peruvian State CIDH/SE/Art.41/1-2018/02.
17. Follow-up document on Draft Law 1123/2016-CR.
18. Report No. 355-2016-MINAM/SG/OAJ, Opinion on Bill N 75-2016/CR.
19. Legal Technical Report No. 002-2016-SERNANP/DDE/DGANP/OAJ, Analysis of Bill No. 75/2016-CR, which declares the sustainable development of the province of Purús to be a public necessity and of preferential national interest, giving priority to land connectivity.

20. Report No. 000084-2016/DGPI/VMI/MC, Opinion on the bill declaring the land connectivity of the province of Purús to be of national interest.
21. Report No. 000178-2017/DGPI/VMI/MC, Opinion on the favorable opinion issued by the Transport Commission of the Congress of the Republic on Bill No. 1123-2016/CR.
22. Report No. 176-2018-MINAM/SG/OGAJ, Opinion on Bill No. 2354-2017/CR.
23. Report No. 00692-2018-MINAM/SG/OGAJ, Opinion on Bill N 2360-2017/CR, “Law which repeals Law No. 30723 declaring the construction of roads in border areas and the maintenance of motorized paths in the department of Ucayali” to be of national interest and priority.
24. Report of the Supranational Specialized Public Prosecutor's Office, Report No. 160-2019-JUS/CDJE-PPES of July 8, 2019 of the Ministry of Justice and Human Rights to the Inter-American Commission on Human Rights.
25. Report on the situation of peoples in isolation and initial contact in the Peruvian Amazon (2018). Interethnic Association for the Development of the Peruvian Forest. Lima. December, 2018.
26. Report on the Indigenous and Tribal Peoples of the Panamazonia - Inter-American Commission on Human Rights, 2019.
27. Report on Indigenous Peoples in Isolation and in Initial Contact in the Americas. Inter-American Commission on Human Rights, 2013.
28. Report on the implementation of the right to prior consultation for legislative measures formulated by the Congress of the Republic, which must be consulted within the framework of Law No. 29785, Law on the Right to Prior Consultation of Indigenous or Native Peoples, recognized in Convention 169 of the International Labor Organization - ILO, Center for Conflict Analysis and Resolution - Pontificia Universidad Católica del Perú, 2013.
29. National Institute of Statistics and Information Technology. Compendio Estadístico Departamental 2008-2009, 2009.
30. National Institute of Statistics and Informatics. Peru: Sociodemographic Profile - National Report, 2017.
31. Law No. 22175, Law of Native Communities and Agrarian Development of La Selva and Ceja de Selva.
32. Law No. 26834, Law on Natural Protected Areas
33. Law No. 28736, Act on the Protection of Indigenous or Aboriginal Peoples in Isolation and in Initial Contact

34. Law No. 29763, Forest and Wildlife Act.
35. Law No. 29785, on the right to prior consultation of indigenous or aboriginal peoples, as recognized in International Labour Organization (ILO) Convention No. 169.
36. Law No. 30574, which declares the sustainable development of the Province of Purús to be a public necessity and of preferential national interest, giving priority to its multimodal connectivity.
37. Law No. 30723, which declares the construction of roads in border areas and the maintenance of motorized tracks in the department of Ucayali to be a matter of priority and of national interest.
38. Indigenous Peoples in Isolation and Initial Contact in the Peruvian Amazon. Mechanisms for the protection of their rights Ministry of Culture. Lima, 2016.
39. Advisory Opinion OC-23/2017. State obligations in relation to the environment in the framework of the protection and guarantee of the rights to life and personal integrity - interpretation and scope of articles 4.1 and 5.1, in relation to articles 1.1 and 2 of the American Convention on Human Rights. Inter-American Court of Human Rights.
40. Bill No. 075-2016/CR
41. Bill No. 1123/2016-CR
42. Bill No. 2354/2017-CR
43. Bill No. 2414/2017-CR
44. Bill No. 2360/2017-CR, which repeals Act No. 30723 declaring the construction of roads in border areas and the maintenance of motorized tracks in the department of Ucayali to be a priority and a matter of national interest
45. Regulations of the Congress of the Republic.
46. Ministerial Resolution No. 046-90-AG-DGRAAR, establishing the State Territorial Reserve for the Kugapakori and Nahua ethnic groups.
47. Regional Directorial Resolution No. 189-97-CTARU-DRA, Establishing the Territorial Reserve in favor of the Murunahua Ethnic Group.
48. Regional Directorial Resolution No. 190-97-CTARU-DRA, Establishes the Territorial Reserve in favor of the Mashco - Piro Ethnolinguistic Group.



ANNEXES

To view the Annexes, please visit <https://www.saca-seem.org/en/fenamad-details/> or scan the QR code on your mobile device.



Submission process:

- 7.1 Submission SACA-SEEM/PE/002/2018
Author: FENAMAD
- 7.2 Determination SACA-SEEM/PE/002/2018/D1
Author: Secretariat
- 7.3 Determination SACA-SEEM/PE/002/2018/D2
Author: Secretariat
- 7.4 Peruvian Government response
Author: Peruvian Government
- 7.5 Article 18.9 (1) Notification
Author: Secretariat
- 7.6 Instruction to develop a factual record
Author: Government of the United States of America

Additional documents:

- 7.7 Official letter 028-2019-MINCETUR-VMCE
 Author: Government of Peru
- 7.8 Response to Official letter 028-2019-MINCETUR-VMCE
 Author: Secretariat
- 7.9 Request to extend timeframe
 Author: Government of Peru
- 7.10 Extension of timeframe
 Author: Secretariat
- 7.11 Regarding the recommendation to develop a Factual Record
 Author: Peruvian Government
- 7.12 Response to the Peruvian Government
 Author: Secretariat

FACTUAL RECORD

**Border Roads Law
Ucayali**

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