

Dams in the Amazon and the Rights of Indigenous Peoples

The development of large hydroelectric infrastructure in the Amazon is a major and emergent threat to the rights of indigenous peoples and the integrity of their homelands. Despite the existence of strong international standards to protect indigenous peoples' rights, such as the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the International Labour Organization's 1989 Convention on Indigenous and Tribal Peoples (No. 169), the economic exploitation of Amazonian rivers threatens to accelerate the destruction of the rainforest resulting in irreversible impacts upon the peoples that rely upon these waterways and their surrounding lands.

The Amazon is home to almost 400,000 indigenous people, of which 180,000 live from substance agriculture and traditional seasonal fishing. Indigenous territories (claimed or titled) comprise more than a quarter of the Amazon basin. International law recognizes the rights of indigenous peoples to be treated without discrimination, and not to be deprived of their means of subsistence. Yet the development of mega-projects such as the Belo Monte and Madeira Dams in Brazil and the Pakitzapango Dam in Peru have the potential of undermining these fundamental protections, destroying the livelihoods and traditional ways of life of thousands of indigenous communities in the Amazon Basin. Both Brazil and Peru are party to legally binding international standards (ILO Convention No. 169) on the rights of indigenous peoples that protect the fundamental rights mentioned in this fact sheet, and yet these rights are being violated to make way for large projects that may not even benefit local populations.

Key rights of indigenous peoples

International framework

In recognition of indigenous communities' cultural importance and the lack of legal representation within their own countries, and as a result of many years of negotiations between States and indigenous peoples,

international standards have been developed that protect the rights of indigenous peoples. Their key rights in this context are:

- **Self-determination:** This right is established in Article 1 of the International Covenant on Civil and Political Rights (ICCPR), which recognizes peoples' right to "freely determine their political status and freely pursue their economic, social and cultural development."¹ UNDRIP's Article 3 further specifies: "Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."
- **Rights to lands, territories and resources.** Both ILO Convention No. 169 and the UNDRIP recognize a broad range of rights of indigenous peoples to the lands, territories and resources that they traditionally occupy or otherwise use. This means that, even where indigenous peoples or communities do not have full title to their lands, they still have recognized rights to it, and in all cases should be consulted before any actions are undertaken that will have an impact on these lands²
- **Consultation, and Free, Prior and Informed Consent (FPIC):** Possibly the most important, cross-cutting right of indigenous peoples is the right to consultation, or FPIC. These rights apply to any measures at all (legislative or administrative) that may affect them, as well as more directly to measures that will impact indigenous peoples' lands, including development projects such as dams. Consultation/FPIC should be with legitimate representatives of indigenous peoples, through their traditional institutions, and be undertaken in good faith. Consent should be given freely, by people fully informed of the consequences – positive or negative – of any actions, prior to any decision being made, and according to their own decision-making processes.³

National laws in Brazil and Peru

In Brazil, the constitutional rights of the indigenous people are specified in Title VIII



Photo Credit: Sue Cunningham

of the Constitution of 1988. Article 231 of the Title states that that “Indians shall have their social organization, customs, and languages. Creeds and traditions recognized, as well as their original rights to the lands they traditionally occupy, it being incumbent upon the Union to demarcate them, protect and ensure respect for all of their property”. The Constitution goes further and articulates that the removal of Indian groups from their lands is forbidden (Article 231. 5). In Peru, the rights of indigenous peoples are specified in Law No. 22175 on native communities and Law No. 24657 on the Demarcation and Titling of Peasant Community Lands. Despite the existence of national legal frameworks and their international legal obligations, the Brazilian and Peruvian Governments do not consistently enforce legal protection of indigenous communities, violating the basic right to consultation established under national and international instruments, which has also resulted in formal proceedings under international law. In 2010, despite having been through a consultative process of drafting and obtaining parliamentary approval of a national Law on consultation, the Peruvian President refused to sign the draft law.

Obligations of Governments and companies

With regards to the obligations of private companies, whereas these are not directly subject to international law, national governments have a responsibility to ensure that private companies operating on their territories comply with these obligations. For Brazil and Peru in particular, the obligation is to ensure compliance with ILO Convention No. 169. UN Special Rapporteur Mr. James Anaya,

in his 2010 report to the UN Human Rights Council⁴, has contextualised this “responsibility to respect” to the situation of indigenous peoples, stating that “The international community expects companies, as part of the due diligence they must exercise in relation to human rights, to be proactive by identifying the rights of indigenous peoples in the areas in which they operate and by determining how those peoples would be affected by their activities. There is at the same time a clear expectation that companies, in carrying out their activities, will respect indigenous rights, fostering rather than blocking States’ compliance with the obligation to protect those rights”.

The approach of early action and assessment (due diligence) is in line with the guidance of the International Finance Corporation (IFC) information note on “ILO Convention No. 169 and the private sector”, which states that:

In order to minimize risk, companies would be advised to satisfy themselves that the government has fulfilled its responsibilities. Specifically, companies should look into whether:

- the process used for identifying indigenous and tribal peoples’ lands is consistent with the requirements of Convention 169
- legal or other procedures for resolving indigenous peoples’ land claims and disputes are acceptable and have been subject to consultation
- if title to land has derived originally from indigenous peoples, this title was obtained properly, in

- accordance with the law, and without taking advantage of lack of understanding of laws in order to secure possession
- the relevant government authorities have recognized the indigenous peoples' rights to natural resources
- appropriate consultation takes place prior to the granting of exploration and exploitation licenses
- mechanisms are in place to enable the communities concerned to participate in the benefits of the project and to compensate them fairly.

The rights that are being violated

The enormous impacts of mega-dams on the Amazon's indigenous peoples threaten to provoke a human rights crisis and require urgent mitigation measures or remedies. Indigenous communities have a legal right to maintain control over their homelands, and their survival is intrinsically linked to a healthy environment. As distinct peoples they have the right to choose their own future, decide their own development priorities and maintain their cultural identity.⁵

The Belo Monte and Pakitzapango Dams

Two large hydroelectric projects are currently under development in Brazil and Peru, threatening to decimate indigenous communities. The Belo Monte Dam is expected to be the world's third largest dam, flooding over 660 km², while drying out a 100 km stretch of the Xingu River, leaving the inhabitants of two indigenous territories without water, fish, or a means of river transport.

A central component of the 2010 energy accord between Peru and Brazil, the Pakitzapango Dam is planned on the Ene River in the Peruvian Amazon, threatening to destroy critical ecosystems, desecrate a highly important sacred site, flood over 90,000 hectares, and displace over 10,000 Ashaninka peoples, who have voiced stalwart opposition to the project, which is planned on their lands, and without consultation, which is contrary to the international legal instruments that Peru is bound by. Most of the energy produced by this dam is intended for export to Brazil.

For all 3 dams, the consultation process has been severely lacking, and non compliant with international law. In Peru, for example, information meetings have been held with local groups that are not representative at all of the indigenous communities that are likely to be affected by the dam. In addition, such information meetings are a far cry from the process of consultation that the Peruvian government is legally obliged to undertake, particularly considering that the local indigenous communities that have voiced their unanimous opposition to the Pakitzapango dam have not even been consulted at all. In Brazil, the consultation process was also severely inadequate, resulting in displacement of thousands from their traditional territories – again, a violation of international standards that Brazil is supposed to be bound by.

Indigenous peoples are not against "development" per se. However, there is ample evidence from all over the world that when "development" is not undertaken in line with their rights, it can have severely negative consequences, resulting in impoverishment, displacement, and even conflict. Thus, the costs of such development heavily outweigh the benefits. One of the key questions in this case is what actual benefits the proposed dams will bring to the countries concerned, and the indigenous peoples that will be affected. In the case of the Pakitzapango dam in particular, the evidence is relatively clear that the benefits of the dam will not be felt in Peru, and yet up to 10,000 people could be displaced by the dam, resulting in landlessness and impoverishment in an area that has already been seriously affected by violent conflict.

Photos courtesy of Amazon Watch, International Rivers and the Rainforest Foundation UK

¹ United Nations (1966). International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December of 1966.

² ILO Convention No. 169, Articles 13 to 19, and UNDRIP, articles 10, 25, 26, 19 and 32.

³ ILO Convention No. 169, Articles 6, 15 and 16, and UNDRIP articles 10, 19, 28 and 32.

⁴ A/HRC/15/37

⁵ As established by the Article 7 of the UN Declaration on the Rights of Indigenous Peoples