

# Crowley supported Peru FTA, Bagua massacre, and Amazon destruction.

## Council on Hemispheric Affairs

### Peru's Less-Than-Benign Environmental Policy

Michael Reaney  
April 13, 2011



Tambopata River, Peru

The enormous segment of Amazonian rainforest that covers over half of the country has always been an issue of contention for Peru due to the number of indigenous tribes that inhabit it. As early as the 16th century, the Peruvian Amazon has been linked to the world market, providing such products as timber, rubber and quinine to an increasingly global market. Ever since the region first became an attractive venue for resource extraction, the government's economic ambitions have wantonly grown in spite of the ecological importance of preserving the Amazonian rainforest for Peru, its neighbors and the international community.

The Peruvian segment of the Amazon is the setting for a wide variety of rare plant and animal species. The Peruvian rainforest is home to 25,000 species of plants, totaling 10 percent of the world's inventory. Peru boasts the world's second largest population of birds and is among the top five countries for providing a habitat for thousands of mammals and reptiles. Of Peru's 2,937 known species of amphibians, birds, mammals and reptiles, 16 percent are endemic to the region, and every year scientists are discovering new species. In 2010, scientists found a new species of leech and a new type of mosquito. Sadly, most of these discoveries depend upon mining, logging and oil companies that have been granted exploratory rights to Amazonian lands.

Peru's Ministry of the Environment boasts that 15 percent of Peruvian territory is under a protected status, "and we're aiming for 30 percent," said Environment Minister Antonio Brack. However, such statements fail to acknowledge the prodigious amounts of ongoing illegal extraction that is occurring in these allegedly government-protected areas. These government-labeled "protected areas" are actually nothing more than forest regions without any special oversight by Peruvian officials. Furthermore, information regarding illegal extraction is provided mainly by the indigenous people, not by trained government authorities with professional responsibilities.

#### Development

Former President Alejandro Toledo's administration (2001-2006), to a shocking degree, granted large energy concessions often in ecologically sensitive areas. Current President Alan García was not hesitant to pick up where Toledo left off. Presently, oil and gas settlements cover 41 percent of the Peruvian Amazon.

Over the past three decades, mining and oil extraction have resulted in serious deforestation and widespread degradation of the country's virgin woodlands. The machinery used by Peruvian miners to expose potential gold-yielding gravel deposits has led to mercury contamination in rivers and increased sedimentation in fragile environments within the rainforest. Furthermore, companies extracting resources from the Amazon have lowered worker transportation costs by constructing makeshift residences for employees in on-site locations. These settlements inevitably pollute the surrounding rainforest due to the consumption and later disposition of subsistence materials used by the workers.

Peru exports a large amount of timber, especially mahogany, overseas. According to Jose Alvarez, from the Research Institute of the Peruvian Amazon (IIAP), 95 percent of mahogany logged from the Amazon rainforest is felled illegally. Yet, this essentially illegal yield has gone almost completely unpunished. Peru promised to enforce its forestry surveillance obligations and increase the monitoring and regulation of illegal logging with the provisions of the U.S.-Peru Free Trade Agreement (FTA) of 2006, but has failed to follow through on this commitment. This ineptitude on Lima's part has placed Peru under worldwide scrutiny from governments and environmental organizations because of its ineffective handling of the illegal cutting of prime forest by local loggers. The Peruvian government has signed many agreements as well as

having pledged to honor its obligations under its environmental protection policies. Unfortunately, as long as there are companies that continue to profit from the exploitation of the rainforest, the government is likely to continue to turn a blind eye toward routinely doctored export reports.

Despite the ongoing illegal extraction within the Amazon region, the government does provide legitimate plans, however limited, for positive economic development with these regards to the rainforests. However, serious concerns over the well being of the Amazon persist, especially as the government continues to distribute more contracts. On June 16, 2010, then Brazilian President Luiz Inácio Lula da Silva signed an energy agreement with President García outlining the construction of six hydroelectric power plants. The plants would be located in the Peruvian Amazon, but would supply Brazil with more than 6000 MW of power. On both sides of the border-split Amazon, ecologically minded citizens and indigenous populations have voiced their concern about the agreement, but found that their pleas fall on deaf ears.

Other projects currently underway include the transoceanic highway in the Southeast, meant to connect ports in Peru with those in Brazil. Amazon conservationists worry that the planned roads will spur excessive human settlements and more deforestation. This process repeatedly has transpired with similar road projects conducted within the Brazilian Amazon.

### **Indigenous response**

Indigenous people account for approximately 40 percent of Peru's population, with an estimated 60 uncontacted indigenous groups (groups of indigenous people that voluntarily live in isolation from other civilizations of the world) being scattered across the Peruvian terrain. According to the 1993 constitution, Peru considers itself to be a diverse and multicultural nation, ensures "the right to cultural identity," and "upholds customary law and special jurisdiction (indigenous and peasant justice), alongside with other rights for peasant and native communities." The authors of the Peruvian Constitution issued by the earlier Fujimori administration, ostensibly recognized the importance of addressing indigenous rights to strengthen the Peruvian state, but this was as much a matter of style as substance.

The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly on September 13, 2007. *Article 10* of that declaration states that indigenous peoples are entitled to their land and must be consulted in regard to anything affecting their territorial claims. This is not a legally binding document; however, it does reflect the members' commitment to their indigenous rights. In addition, the Peruvian government signed the International Labor Organization's (ILO) Convention No. 169, the American Convention on Human Rights, and Decision No. 5427-2009-PC/TC (paragraphs 68 and 69) of the Constitutional Court of Peru. All of these articles emphasize, in accordance with the constitution, the process and methodology behind a "free, prior, and informed consultation" that is needed in order to enact any measure affecting the indigenous territory in the Amazon. On December 13, 2010, a group of organizations and networks from the United States, Belgium and England questioned the alleged consultation process of Peru's Forestry Act and asked Lima officials to respect obligations mandated by their constitution.

### **Free trade with Peru**

The U.S. Congress approved the U.S.-Peru FTA on December 4, 2007. It was met with robust opposition within Peru and abroad due to its ambiguous section regarding the protection of the nation's forest reserves. Under *Article: 18.1: Levels of Protection*, "Recognizing the sovereign right of each Party to establish its own levels of domestic environmental protection and environmental development priorities, and to adopt or modify accordingly its environmental laws and policies (italicized for emphasis), each Party shall strive to ensure that those laws and policies provide for and encourage high levels of environmental protection and shall strive to continue to improve its respective levels of environmental protection." Unfortunately, protecting the world's shrinking lungs is dependent upon the frangible honor code of President García and his administration.

By signing the FTA, the Peruvian government was able to significantly sidestep the legislature and indigenous people by adopting a series of contracts with corporations, while emphasizing the rights given to it by *Article 18* of the FTA. The FTA also hindered the government's authority in the Amazon due to rights allocated to corporations who now may sue the government if Lima's enforcement of environmental laws results in lost profit. *Public Citizen* writers and researchers Travis McArthur and Todd Tucker reported that less than a month after former President George W. Bush signed the agreement with Peru, García's administration pushed the measure Law Number 29157 through legislation allowing new powers to the García administration in order to implement any FTA-related measure without legislative approval for a period of six months. With this new authority, García was able to restructure land rights through dozens of decrees that decimated environmental regulations, destroyed arable land in preparation for livestock grazing, and permitted previously allocated land for indigenous populations as production reserves to be siphoned off and sold to foreign oil and mining companies.

Reportedly, the Bush administration was directly involved with the formulation of the Peruvian decrees. According to *Inside U.S. Trade*, two teams of U.S. officials traveled to Peru to finalize at least 35 of the new Peruvian laws with the García administration. The administration claimed that the anti-environment foreign-investor-land-use decrees were necessary to implement the FTA, but this statement sparked hostility among environmental activists. After President Barack Obama entered the White House, several U.S. environmental groups that had worked with the U.S. Trade Representative (USTR) on the FTA's forestry index (environment section) voiced their issues with its use. They advocated for the repudiation of the García administration's claim—that the anti-environment foreign-investor-land-use decrees were necessary in order to implement the Peru FTA—the USTR (main composer of the Peru FTA) refused to show that these decrees were both not necessary nor supportive by the Peru FTA. In response, Amazon conservationists and indigenous peoples organized protests against García's issued decrees, which led up to the Bagua Massacre.

On June 5, 2009, Peruvian indigenous groups, the Awajun and Wami, gathered in a peaceful protest outside of Bagua to voice their discontent regarding rainforest degradation in the area. Reportedly, 600 Peruvian police along with several helicopters attacked the protesters, killing 125 and injuring 150. Police are said to have fired tear gas and live ammunition into the crowd. After the protest had been staged, Peruvian authorities reported that 22 police officers had been killed and that two were missing. The government-controlled media claimed that the indigenous groups had been the instigators and the police were the victims. Indigenous advocates such as the National Organization of the Amazon Indigenous people of Peru (AIDSEP) believe that the government prevented the media from reporting the event in any way

sympathetic to the indigenous population of the Northern Peruvian Amazon.

On the night of the Bagua massacre, President García admonished, "When one thinks of the final moments of those officers who were disarmed, tied up and then had their throats slit like animals, one understands the barbarity and savageness. ... There is a conspiracy aimed at stopping us from using our natural resources for the good, growth and quality of life of our people." Even though this opinion is widely supported, indigenous groups have repeatedly maintained that they do not wish to hinder the nation's economic progress. They are merely defending the ownership rights guaranteed by the 1989 United Nations International Labour Convention 169 (held by the ILO), which require indigenous consultation on development projects. The Peruvian government bypasses these rights through a political loophole of the FTA mentioned earlier, which allows them to pass laws that undermine Convention 169. García has argued that Peru cannot reject the commitment made through the FTA; however, the FTA should not take priority over constitutional and international obligations.

García is not only sanctioning the ransacking of the rainforest, but he is also disregarding human beings who reside there. Speaking to the Council on Hemispheric Affairs about the uncontacted indigenous groups in Peru Christina Chauvenet, a Survival International Press Officer, says, "There are threats from illegal logging and poaching gangs that the Peruvian government has not done anything to restrain. ... President Alan García himself refuses to acknowledge that they even exist." Ultimately, logging and prospecting crews could do irreparable harm to these indigenous tribes by contaminating food and water supplies in addition to other natural resources necessary for their survival. The large number of workers needed for these construction projects very often facilitate the bringing of new diseases to the tribes, against which they have no biological resistance, resulting in the contraction of grave illness and even death. The illegal loggers are known to use violence toward the Amazonian inhabitants obstructing their operations. This combination could result in the complete decimation of these tribes. According to Survival International, "More than 50 percent of the previously uncontacted Nahua tribe were wiped out following oil exploration on their land in the early 1980s, and the same tragedy engulfed the Murunahua in the mid-1990s, after it was forcibly contacted by illegal mahogany loggers." Due to the recent exploration boom under García's administration, an expected 70 percent of the Peruvian Amazon will be leased to oil and gas companies, making regulation vital.

Peru's foreign ministry announced on February 2 that it will work with Brazil's world-renowned National Indian Foundation (FUNAI) to protect the rights of Amazonian tribes, in order to preserve uncontacted indigenous and their lands. This was in reaction to photos released January 31 showing uncontacted tribes on the border of the Peruvian Amazon. Christina Chauvenet says this is "a huge step in the right direction," but her organization will be closely monitoring the Peruvian government to ensure they follow through on their statement in the coming months. Following this, the government has begun to put pressure towards ongoing illegal extraction, like having the Air Force destroy illegal dredgers, but questions and resentment still rise amongst citizens. Protests against the Tia Maria project in Peru's Southern Copper mines were able to suspend the owner, Southern Copper Corp. from further progress for 180 days. However, it took a martyr, fighting for his right to protect potential damage to his water supply and environment, for Peru's Mining and Energy Ministry to shed light on the event by paralyzing the project for half a year. In a statement, the Ministry acknowledged that they halted the project in order to keep "social peace." As commodity prices rise, such as copper, investors will look to Peru's investment-led economy for their resources.

García ascended to the presidency hoping to improve Peru's economic growth and has succeeded. As reported by *The Economist*, Peru had experienced a GDP growth rate of 9.8 percent in 2008, but the consequence is that the Peruvian Amazon is paying the bill; despite economic growth, social development remains stagnant. Now, thanks to the efforts of organizations fighting to preserve the rainforests, the Peruvian government is beginning to realize that, indeed, these uncontacted tribes do exist and indigenous rights need to be respected.

*Michael Reaney is a research associate for the Council on Hemispheric Affairs (COHA). This is the first of a two-part article originally published by COHA: [www.coha.org](http://www.coha.org).*