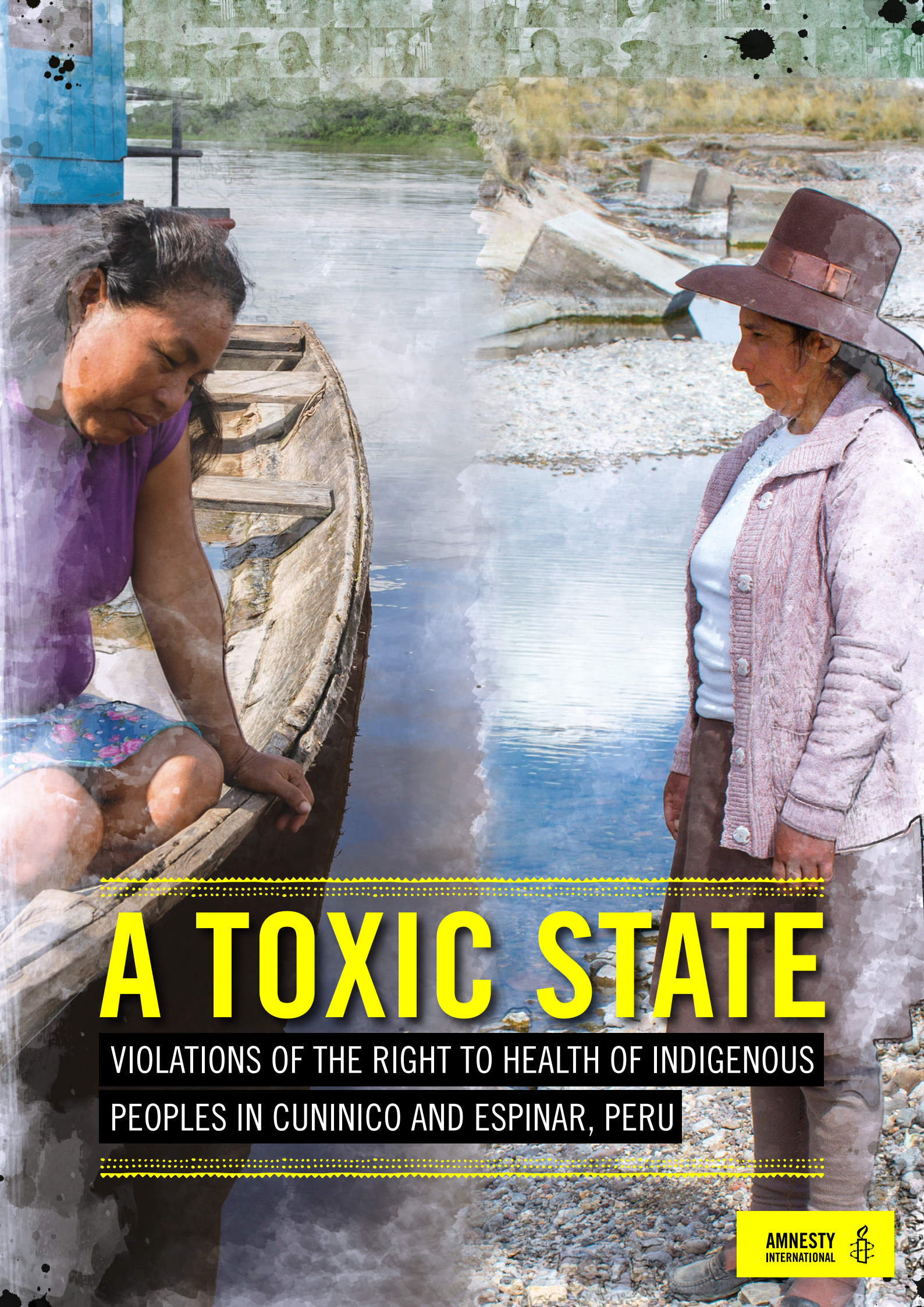

A TOXIC STATE

VIOLATIONS OF THE RIGHT TO HEALTH OF INDIGENOUS PEOPLES IN CUNINICO AND ESPINAR, PERU

AMNESTY INTERNATIONAL

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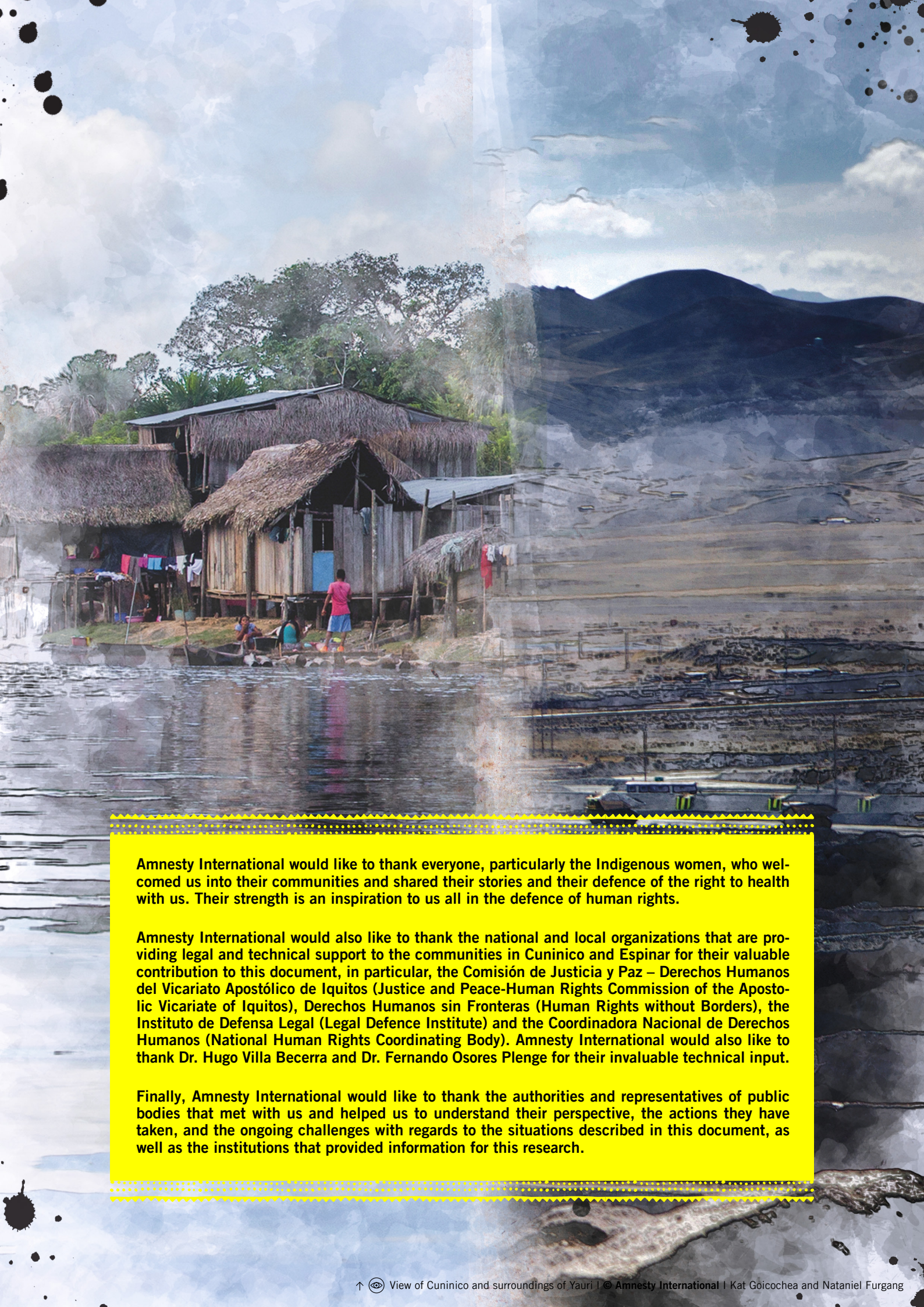
GLOSSARY

ACRONYM	DESCRIPTION
CENSOPAS	The **National Centre for Occupational Health and Environmental Health Protection** is a body within the National Institute for Health and responsible for conducting evaluations and investigations and making recommendations to prevent illness and harmful effects to health caused by economic activities that may affect workers and the community.
DIGESA	The **General Directorate for Environmental Health and Food Safety** is a body within the Ministry of Health responsible for policy making and for regulating and auditing environmental health interventions including, in particular, the quality of water for human consumption.
DIRESA	The **Regional Health Directorate** is a regional government body responsible for formulating and proposing regional health policies and running, regulating and evaluating healthcare facilities, in line with regional policies and sectoral plans.
ESNMP	**The National Health Strategy for People Affected by Contamination with Heavy Metals and other Chemical Substances** is a health care strategy of the Ministry of Health's General Directorate for Public Health.
INS	The **National Institute for Health** is a public implementing agency of the Ministry of Health and is responsible for investigating priority problems related to health and technological development.
MINSA	**Ministry of Health**
MINAM	**Ministry of the Environment**
OEFA	The **Environmental Supervision and Evaluation** Unit is a public specialist technical body attached to the Ministry of the Environment.



Amnesty International would like to thank everyone, particularly the Indigenous women, who welcomed us into their communities and shared their stories and their defence of the right to health with us. Their strength is an inspiration to us all in the defence of human rights.

Amnesty International would also like to thank the national and local organizations that are providing legal and technical support to the communities in Cuninico and Espinar for their valuable contribution to this document, in particular, the Comisión de Justicia y Paz – Derechos Humanos del Vicariato Apostólico de Iquitos (Justice and Peace-Human Rights Commission of the Apostolic Vicariate of Iquitos), Derechos Humanos sin Fronteras (Human Rights without Borders), the Instituto de Defensa Legal (Legal Defence Institute) and the Coordinadora Nacional de Derechos Humanos (National Human Rights Coordinating Body). Amnesty International would also like to thank Dr. Hugo Villa Becerra and Dr. Fernando Osores Plenge for their invaluable technical input.

Finally, Amnesty International would like to thank the authorities and representatives of public bodies that met with us and helped us to understand their perspective, the actions they have taken, and the ongoing challenges with regards to the situations described in this document, as well as the institutions that provided information for this research.

↑ View of Cuninico and surroundings of Yauri I **© Amnesty International** I Kat Goicochea and Nataniel Furgang

↑ Community of Alto Huarca, Espinar I **© Amnesty International** I Diego Cárdenas Sedano

INTRODUCTION

According to the last national census in 2007, there are almost 4 million Indigenous people living in Peru: 3,176,227 in the Andean and 332,975 in the Amazon regions.[1] The Ministry of Health (MINSA) notes that Indigenous Peoples have suffered exclusion, inequality and neglect by the State, and that this has resulted in growing disparities in terms of health.[2] MINSA has also established that the health care to which Indigenous Peoples do have access shows serious failings "in appropriateness, quality – both human and technical – and effectiveness"[3] and that the health care facilities closest to their communities suffer from a lack of medicines, supplies and equipment with which to provide adequate care.[4]

The Office of the Ombudsman has similarly demonstrated that, in the Amazon region, among other places, there are now new causes of illness and death related to pollution of the rivers and water sources,[5] despite international human rights standards establishing that the provision of clean drinking water is a fundamental element of the right to health.[6]

[1] Peru. National Institute for Statistics and Informatics (INEI). Censos Nacionales 2007: XI de Población y VI de Vivienda, Resultados Definitivos de Comunidades Indígenas, (2007 National Censuses: 11th National Population Census and 6th National Housing Census, Final Results from Indigenous Communities), December 2008. (Only available in Spanish). See also: Peru. Ministry of Health. Comunidades Indígenas: Caracterización de su Población, situación de salud y Factores determinantes de la Salud 2012, (Indigenous Communities: Description of their Population, Health Situation and Health Determinants 2012), Ministry of Health. (Only available in Spanish). General Office of Statistics and Informatics. Office of Statistics, September 2013.

[2] Peru. MINSA. Information on Indigenous Peoples' Health. https://www.minsa.gob.pe/portalweb/06prevencion/prevencion_2.asp?sub5=9 (accessed 21 August 2017).

[3] Peru. MINSA. National Institute for Health, National Health Centre. Plan de la Estrategia Sanitaria Nacional. Salud de los Pueblos Indígenas (National Health Strategy Plan. Indigenous Peoples' Health), 2010-2012, p. 25. Only available in Spanish.

[4] Peru. MINSA. National Institute for Health, National Health Centre. Plan de la Estrategia Sanitaria Nacional. Salud de los Pueblos Indígenas (National Health Strategy Plan. Indigenous Peoples' Health), 2010-2012, p. 25. Only available in Spanish.

[5] Peru. Office of the Ombudsman. La defensa del derecho de los pueblos Indígenas amazónicos a una salud intercultural. (Defending the rights of Indigenous Amazonian Peoples to an intercultural health). Ombudsman's Report No. 169, 2015. Conclusion 11, p. 127. Only available in Spanish.

[6] Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000): The right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2000/4, CESCR, 11 August 2000, para. 4.

↑ Native Community of Cuninico | © **Amnesty International** | Kat Goicochea

The Indigenous Native Community of Cuninico, in the district of Urarinas in the province and department of Loreto, and the Indigenous peasant communities of Alto Huarca, Cala Cala, Huisa, Huisa Collana, Alto Huancané and Bajo Huancané, in the province of Espinar in the department of Cusco, are just some of the Indigenous communities in Peru[7] that find themselves in a precarious health situation. Studies show that the main sources of water in these seven communities are contaminated with heavy metals and other chemical substances. In addition, medical tests have shown that the residents of these communities are exposed to heavy metals and other chemical substances which pose an imminent risk to their health.

Peru is a state party to a number of international instruments that guarantee the right to the highest attainable standard of health. The right to health is also recognized in Article 7 of Peru's 1993 Constitution. This right includes timely and appropriate access to health care as well as to underlying determinants of health, such as clean drinking water, a healthy environment and their participation in all health-related decisions at the community, national and international level.

This document focuses on the Peruvian State's duty to respect, protect and fulfil Indigenous Peoples' right to health, including its obligation to provide an appropriate response to communities that are faced with contamination by and exposure to heavy metals. This document does not, for the moment, address the possible causes of this exposure and contamination, nor the responsibilities and possible failures on the part of state or non-state actors to prevent such contamination and exposure.

Given the health crisis facing these communities, Amnesty International has decided to focus its current research on the level of care and response provided by the State in relation to health, with a view to ensuring that the Indigenous communities whose cases are brought to light in this document are able to fully exercise their right to health. Amnesty International does, however, recognize the importance of investigating the causes of the exposure to and contamination by toxic metals and the possible responsibility of state and non-state actors in this regard, including any possible legal liability, with the aim of guaranteeing the communities' right to reparation and to non-repetition.

[7] Indigenous Peoples in Peru are officially organized into "native" and "peasant" communities, and the communities visited by Amnesty International self-identify as such, without denying their status as Indigenous Peoples. Peru. Political Constitution, Article 89: "Native and Peasant Communities enjoy legal existence and are legal entities". See also Peru. Law on Native Communities and Agrarian Development of the Forest and Cloud Forest, Decree Law 22175, Articles 7 and 8, Peru. General Law on Peasant Communities (Law No. 24656), Decree Law No. 17716, Law on Agrarian Reform.

The information set out in this document is based on research conducted between February and August 2017, including in-depth desk research;[8] several visits to the affected communities; a series of individual interviews with 43 women; five focus groups with 15 to 60 members of the communities; and meetings with medical experts, legal advisors and representatives from government institutions.[9] Amnesty International also requested a meeting with Petroperú S.A. but, as of the date of publication, no response had been received.[10]

Amnesty International visited the communities of Alto Huarca, Cala Cala, Huisa, Huisa Collana, Alto Huancané and Bajo Huancané three times between May and August 2017 to conduct individual interviews and focus groups. In June and August, Amnesty International spent a total of eight days in the Indigenous Native Community of Cuninico interviewing residents and members of the surrounding communities, and conducting focus groups with adults and children from the communities.

Amnesty International decided to carry out research in these seven communities in the Amazon and Andean regions because they demonstrate that the health crisis being caused by water contamination and the State's lack of adequate response is affecting Indigenous Peoples in very different and varied parts of the country. The health situation of these communities is brought to light through the testimonies of women, as it is they who have consistently been at the forefront of demands to the State regarding health and taken the lead in protecting their own health and that of their families and communities.

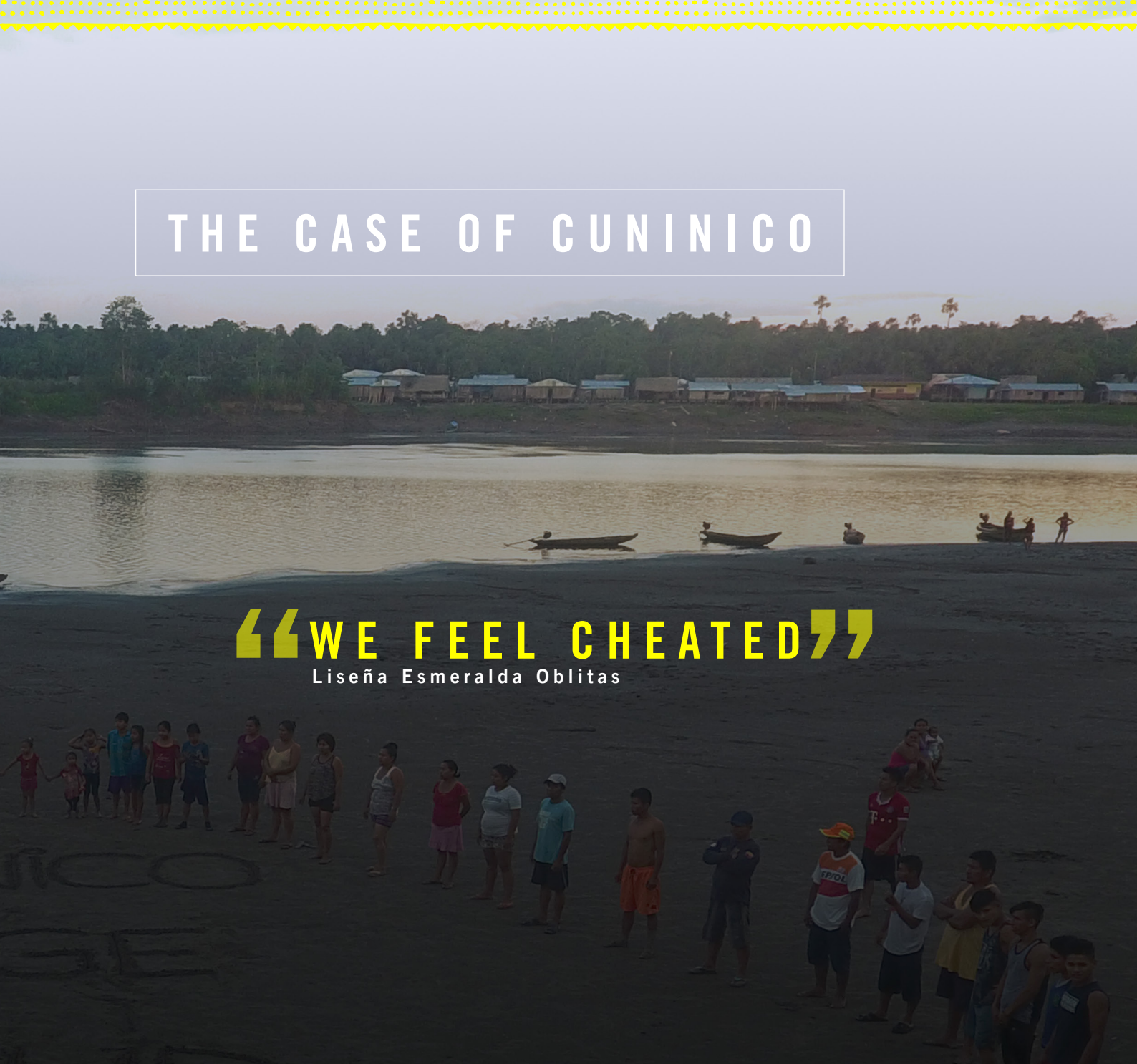
[8] Amnesty International made freedom of information requests to MINAM, MINSA, INS, DIGESA, the Geological Metallurgical Mining Institute (INGEMMET), the National Water Authority (ANA), OEFA and the National Agricultural Health Service (SENASA), and all received responses.

[9] In Lima, Amnesty International met representatives from the Ministry of Health's Indigenous Peoples' Department, the Department for the Prevention of Non-Transmissible and Cancerous Diseases of the General Directorate for Strategic Health Interventions (Ministry of Health) and the Ministry of Health's Public Prosecutor, plus CENSOPAS' Executive Directorate for the Identification, Prevention and Control of Occupational and Environmental Risks and its Executive Directorate for Occupational Medicine and Psychology. In addition, the organization met with representatives of the Ministry of Energy and Mines, MINAM, the Ministry of Justice and Human Rights, OEFA, DIGESA, (ANA), the Supervisory Body for Investment in Energy and Mining (OSINERGMIN) as well as the Office of the Ombudsman. In Iquitos, Amnesty International met representatives of the Indigenous Peoples' Coordinating Unit of DIRESA Loreto, the Department for Social Development and the Department for Regional Indigenous Affairs of the Regional Loreto Government, as well as the Office of the Ombudsman. In Cusco, Amnesty International met representatives of DIRESA Cusco's Executive Directorate for the Identification, Prevention and Control of Occupational and Environmental Risks and its Executive Directorate for Occupational Medicine and Psychology as well as the Office of the Ombudsman, and in Espinar with the Social Development Division of Espinar Municipality, the Espinar Hospital Director and staff from Yauri Health Centre.

[10] The meeting with Petroperú S.A. was requested via communication ref. INV-2017-008 dated 24 May 2017 and addressed to Managing Director César Roberto Ramírez Lynch.

↑ Native Community of Cuninico I **© Amnesty International** I Daniel Martínez Quintanilla

THE CASE OF CUNINICO



"WE FEEL CHEATED"

Liseña Esmeralda Oblitas

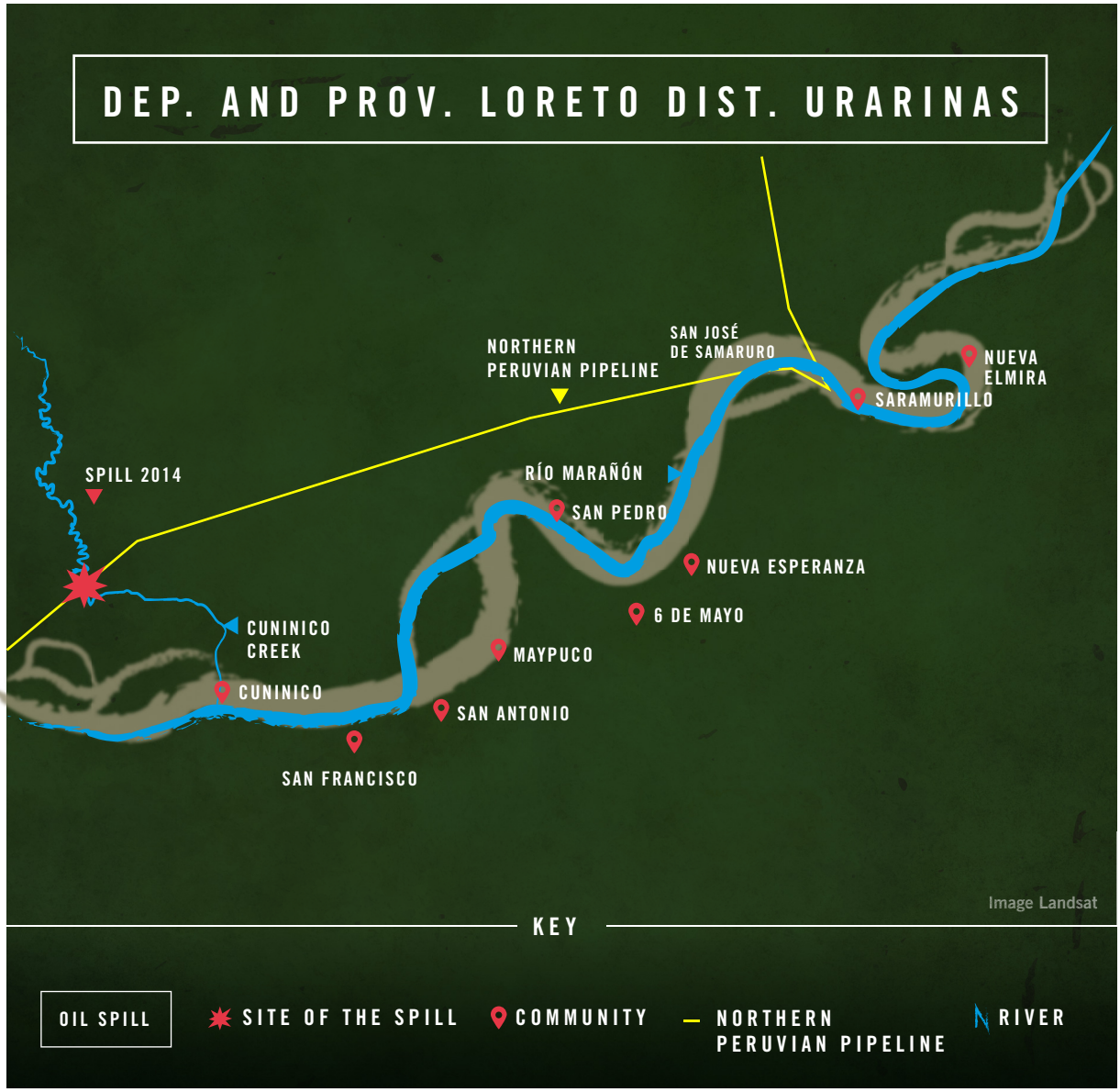
The Kukama Kukamira Indigenous People live primarily in Loreto Province. The Indigenous Native Community of Cuninico (hereinafter Cuninico or Cuninico community), whose inhabitants self-identify as members of the Kukama Kukamira Indigenous People, is located in the district of Urarinas, province and department of Loreto, on the banks of the Marañón River, where it meets with Cuninico creek. The community is home to approximately 600 people.

Cuninico community members note that, as part of their beliefs, the Kukama People have a spiritual relationship with the river on which they depend for their basic needs. They told Amnesty International that their activities have always revolved around the river or involved using water from the river, including bathing, washing clothes, cooking and drinking. In addition, the children have always played in the river and the whole community would eat fish caught in the Cuninico creek. Fishing, either individually or in groups, is the main economic activity of the Kukama People. It is also their main source of protein.[11]

[11] Rivas, Roxani. (2004). El gran pescador: técnicas de pesca entre los cocama-cocamillas de la Amazonía peruana. *(The Great Fisherman: the fishing techniques of the Kukama Kukamira People of the Peruvian Amazon)*, Fondo Editorial Pontificia Universidad Católica del Perú, 2004, pp. 24-27. (Only available in Spanish).

The communities of San Francisco, Nueva Esperanza and Nueva Santa Rosa, all a short distance from Cuninico, are also home to Kukama Indigenous communities whose main economic activity is fishing. San Francisco and Nueva Esperanza are situated on the left bank of the Marañón River, San Francisco some 6 km from Cuninico, and Nueva Esperanza some 18 km from Cuninico. Nueva Santa Rosa is on the right bank of the Marañón River, 7 km from Cuninico.

On 30 June 2014, having received a call from the Cuninico community regarding an apparent oil spill,[12] Petróleos del Perú S.A. (Petroperú) — a State owned private law company that runs the Norperuano pipeline transporting oil from the Amazon to the coast — reported a spill from the pipeline near Cuninico creek, a tributary of the Marañón River. According to Petroperú, a total of 2,358 barrels (99,036 gallons) of oil had spilled at Km 41+833 in Section I of the pipeline, 9.5 kms from Cuninico.[13]



↑ Map showing the location of the oil spill in relation to the communities. Map produced by Amnesty International on the basis of an OEFA map.

[12] Peru. OEFA. Directorate Resolution No. 844-2015-OEFA/DFSAI. File No. 1306-2014-OEFA/DFSAI/PAS, 21 September 2015, para. 7.

[13] Apart from OEFA's declaration of administrative liability in September 2015 for the "oil spill occurred at Km 41+833 in Section I of the Norperuano pipeline, creating real damage to the flora and fauna and potential harm to human life or health", there has been no conclusive study to determine the specific impact of this spill on the nearby communities, nor any study to establish the cause or source of the contamination of the Marañón River and Cuninico stream, nor of people's exposure to toxic metals. In light of the above, Amnesty International is calling on the State to investigate, establish and publish its findings on the cause of the contamination of the water sources and of the exposure to toxic metals in the community of Cuninico.

HEALTH CRISIS IN CUNINICO

> “LET THEM DRINK THE WATER WE HAVE TO DRINK”
>
> Loydi Macedo

REPORTED IMPACTS ON HEALTH

Amnesty International interviewed members of the Cuninico community who indicated that, in recent years, they had begun to experience health problems previously not seen in the community. The community states that, around the start of June 2014, the river water they use for drinking and preparing food began to taste bad and that, approximately three years ago, they began to suffer new and more acute health problems. The symptoms reported by the women include cramps, colic, stomach ache, a burning sensation on urination, allergies and/or itchy skin, and miscarriages. They report that their children have also suffered similar symptoms, some of them with fever as well, and that their academic performance in school has shown a marked decline.

CONNY LLERENA TRUJILLO

Conny Llerena Trujillo and family
© **Amnesty International** | Kat Goicochea.

Conny told Amnesty International how she bathed her baby, who was born in 2014, with water from the river and after three months he started to get a rash on his body; he still has the rash, it has never healed. They took urine samples and they showed that he had lead in his body.

LISEÑA ESMERALDA OBLITAS

Liseña Esmeralda Oblitas
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Liseña told Amnesty International that in 2014 her 15-year-old son began to develop "a severe fever and problems with his sight, pain when urinating and he was unable to get out of bed". She says that to this day, he is virtually house bound due to the pain in his bones and that, when he is out in the sunlight, his eyes water so much he can barely see.

The Apu, community leader of Cuninico, told Amnesty International that high-risk pregnancies are now being recorded in the community and that women "have lost many babies during pregnancy. This used to happen rarely, if at all, in the past."

DORCA VÁSQUEZ SILVA

Dorca Vásquez Silva
© **Amnesty International** | Kat Goicochea

Dorca told Amnesty International that she was sad and worried about the water. She also said that she had miscarried twice, in 2016 and 2017, both at three months pregnant. The doctor told her that "she clearly had a weak womb"; however, she explained that prior to 2014 she had given birth to three children without any problem and that she had never miscarried previously.

JUANA ROSA OTEJÓN

Juana Rosa Otejón
© Amnesty International | Kat Goicochea

Juana told Amnesty International that, in June 2014, she had been working on her land for a week when she began to get stomach pains and she later realized she was bleeding. The bleeding did not stop for 15 days, and so she went to the nearest health centre in Maypuco where they told her that she was pregnant. As the bleeding would not stop, they told her in Maypuco that the best thing would be to go to Iquitos, a health centre with better infrastructure, where she underwent an operation. Juana does not remember much of what happened because she was not fully conscious.

When she regained consciousness three days later in Iquitos, the doctor told her that during the operation they had discovered that the eight-week-old foetus was dead. She was told that if she had delayed any further in obtaining medical help, it was likely that she too would not have survived. Juana told Amnesty International that she had never had complications during pregnancy before, and that all her pregnancies had gone to term without any problems. Since the operation, she is no longer able to have children but says she would not want to in any case, out of fear.

"I am not a healthy woman any more, I am an invalid now. I can't even lift a bucket of water. I can't pick a bunch of bananas. It's already painful, just standing up; it makes things very hard. If I go to bathe, it gives me chills; if I bathe late it gives me chills, it gives me a fever. So now I suffer all kinds of difficulties".

Juana told Amnesty International that she drinks rainwater and, when they are far from Cuninico on a fishing trip, she drinks water from the creek. She is afraid to eat the fish, "but when there's nothing else we have to eat it, out of necessity".

Medical professionals who have treated the Cuninico community over the last three years have not established the cause of the health problems described above. However, medical experts consulted by Amnesty International agree that these problems are all possible symptoms of exposure to heavy metals and other chemical substances through water or food. It is important to note that these medical experts also stated that the health impacts of exposure to heavy metals and other chemical substances do not necessarily appear immediately but can take time to emerge, depending on the kind of chemical, the length, amount and frequency of exposure,[14] and that even individuals who are not currently experiencing any health problems or symptoms may still be suffering a negative impact on their health due to exposure to toxic substances.

[14] Interview with Dr Hugo Villa Becerra, 14 July 2017. Interview with Dr Fernando Osores Plenge, expert in environmental clinical toxicology, 21 July 2017.

EXPOSURE TO AND CONTAMINATION WITH HEAVY METALS

On 5, 6 and 7 July 2014, DIRESA Loreto visited Cuninico and other nearby villages to identify sources of water for immediate treatment and to take samples to analyse the total petroleum hydrocarbons (TPH) and heavy metals in the water.[15] The water samples taken from Cuninico creek registered aluminium and TPH levels in excess[16] of the water quality standards set for human consumption.[17] DIRESA conducted further water monitoring in September 2014 and DIGESA also did the same in June 2017. As of the date of closing of this document, the results of these last samples had not been made public.

In 2017, DIGESA and the President of the Republic both declared a health emergency due to water contamination in the district of Urarinas, which demonstrates that the contamination found in the water in 2014 is still present in Cuninico.[18] However, no effective action has yet been taken to address this lack of access to clean drinking water in Cuninico. In fact, the women interviewed indicated that they currently have to try to gather rainwater for drinking, cooking and washing. This is often not possible, however, either because many families do not have sufficient containers or because it does not always rain enough, so they are forced to draw water from the river as there is no source of potable water in the community.

CORINA TRUJILLO ACHO

Corina Trujillo Acho
© Amnesty International | Kat Goicochea

Corina told Amnesty International that since 2014 they have no clean drinking water and that if they drink or wash in the river they suffer from cramps, vomiting and diarrhoea. She also suffers pain in her body and is sometimes unable to walk. Once she realized that the river water was contaminated, she began to drink rainwater but, when it did not rain, she was forced to drink from the river again. She says that MINSA tested her for exposure to toxic metals but despite the fact that she tested positive, MINSA has not given her an explanation of the consequences of this exposure.

[15] Peru. Estrategia de Metales Pesados, DIRESA Loreto, Informe de la Atención Integral de Salud en la Comunidad de Cuninico – Rio Marañón, (Heavy Metals Strategy, DIRESA Loreto, Report on Comprehensive Health Care in Cuninico Community - Marañón River) July 2014, Section II. Objectives. (Only available in Spanish).

[16] Peru. DIGESA Official Letter No. 4606-2014/DEPA/DIGESA, 18 August 2014.

[17] As a tributary of the Marañón River, Cuninico creek is given the same category, in line with Supreme Decree No. 023-2009-MINAM, i.e. category 3 "irrigation of vegetables and watering of animals". However, the stream's water was measured under category 1 and A1 "water for human consumption", given that the waters are used by Cuninico community directly for human consumption. Peru. Report No. 4318-2014/DEPA/DIGESA, Remite información de evaluación de resultados del parámetro de Metales Pesados e Hidrocarburos Totales de Petróleo (HTP) de las muestras de agua superficial de la quebrada de Cuninico ubicada en el distrito de Urarinas, provincia y departamento de Loreto (Providing evaluative information on the levels of Heavy Metals and Total Petroleum Hydrocarbons (TPH) in surface water samples taken from Cuninico stream, district of Urarinas, province and department of Loreto, 5 August 2014. (Only available in Spanish).

[18] Peru. Directorate Resolution No. 026-2017/DIGESA/SA, *Disponen medidas de seguridad en materia de la calidad del agua para consumo humano en los distritos de Urarinas y Parinari de la provincia y departamento de Loreto (Safety measures established for the quality of water for human consumption in Urarinas and Parinari districts of the province and department of Loreto)*, 5 April 2017, first article. Peru, El Peruano Official Journal, Supreme Decree No. 018-2-17-SA.

In terms of analysing people's exposure to heavy metals, a team from CENSOPAS and DIRESA Loreto visited Cuninico and San Pedro, another nearby community, on 13 December 2015 as part of a study into the risk of exposure to heavy metals and hydrocarbons. Nonetheless, nearly two years on, the results have still not been published, presumably because the samples were taken as part of a wider study that has not yet been completed by CENSOPAS.[19]

In January 2016, CENSOPAS returned to the Cuninico and San Pedro communities and took blood and urine samples from 129 people (68 male and 61 female, 55 under the age of 18), 86.8% of whom were residents of Cuninico.[20] The report based on these results published by MINSA concluded that mercury levels among 50.54% of the total population assessed and cadmium levels among 16.81% were above the reference ranges.[21] With regards to levels of lead, MINSA recorded 84 people in Cuninico with values between 2 and 10 µg/dL and one seven-year-old child from Cuninico with 14.16 µg/dL of lead.

The World Health Organization (WHO) has indicated in this regard that there is scientific certainty of the harm caused to health by lead, cadmium, arsenic and mercury, as noted in the following table:

CHEMICAL SUBSTANCE	IMPACT ON HEALTH
LEAD	It is a toxic substance that accumulates and affects multiple parts of the body, including the neurologic, hematologic, gastrointestinal, cardiovascular, and renal systems. Children are particularly vulnerable to the neurotoxic effects of lead, and even relatively low levels of exposure can cause serious and in some cases irreversible neurological damage.[23] There is no level of exposure to lead that is safe for health.[24]
CADMIUM	Cadmium exerts toxic effects on the kidney, the skeletal and the respiratory systems, and is classified as a human carcinogen.[25]
ARSENIC	Soluble inorganic arsenic is highly toxic. Intake of inorganic arsenic over a long period can lead to chronic arsenic poisoning (arsenicosis). Effects, which can take years to develop depending on the level of exposure, include skin lesions, peripheral neuropathy, gastrointestinal symptoms, diabetes, renal problems, cardiovascular diseases, and cancer.[26]
MERCURY	Mercury is toxic to human health, and poses a particular threat to the development of the child in utero and early in life. Mercury exists in various forms: elemental (or metallic); inorganic (e.g. mercuric chloride); and organic (e.g., methyl- and ethylmercury), which all have different toxic effects, including on the nervous, digestive and immune systems, and on lungs, kidneys, skin and eyes. Based on studies of certain subsistence fishing populations, it has been estimated that between 1.5 and 17 out of each 1000 children showed cognitive impacts caused by the consumption of fish containing mercury.[27]

SOURCE: WHO, Preventing Disease Through Healthy Environments, 2010

[19] The investigation *Niveles y factores de riesgo de exposición a metales pesados e hidrocarburos en los habitantes de las comunidades de las cuencas de los ríos Pastaza, Tigre, Corrientes y Marañón del departamento de Loreto (Levels and risks of exposure to heavy metals and hydrocarbons among inhabitants of the communities of the Pastaza, Tigre, Corrientes and Marañón River Basins in the department of Loreto)* has not been published. According to the records of the National Institute for Health, it has been approved and is being implemented. It was recorded in the system on 13 April 2015. Information available from: http://www.ins.gob.pe/directorio/investigador.asp?id=30 (accessed 1 August 2017). (Only available in Spanish).

[20] According to MINSA, the taking and handling of biological samples was done in accordance with the specified technical standards. Peru. Informe Determinación de Metales Pesados en las Comunidades de Cuninico y San Pedro – Cuenca del Marañón del Departamento de Loreto, (Report Determining Heavy Metals in the Communities of Cuninico and San Pedro - Marañón Basin of the department of Loreto), January 2016, pp. 3-4. (Only available in Spanish).

[21] Peru. Informe Determinación de Metales Pesados en las Comunidades de Cuninico y San Pedro – Cuenca del Marañón del Departamento de Loreto, (Report Determining Heavy Metals in the Communities of Cuninico and San Pedro - Marañón Basin of the department of Loreto), January 2016, p. 8. (Only available in Spanish.)

[22] WHO. Ten Chemicals of Major Public Health Concern. http://www.who.int/ipcs/assessment/public_health/chemicals_phc/en/ (accessed 2 August 2017).

[23] WHO. Information on Lead. http://www.who.int/ipcs/assessment/public_health/lead/en/ (accessed 2 August 2017).

[24] WHO. Lead poisoning and health. Fact sheet. Updated September 2016. http://www.who.int/mediacentre/factsheets/fs379/en/. (accessed 2 August 2017).

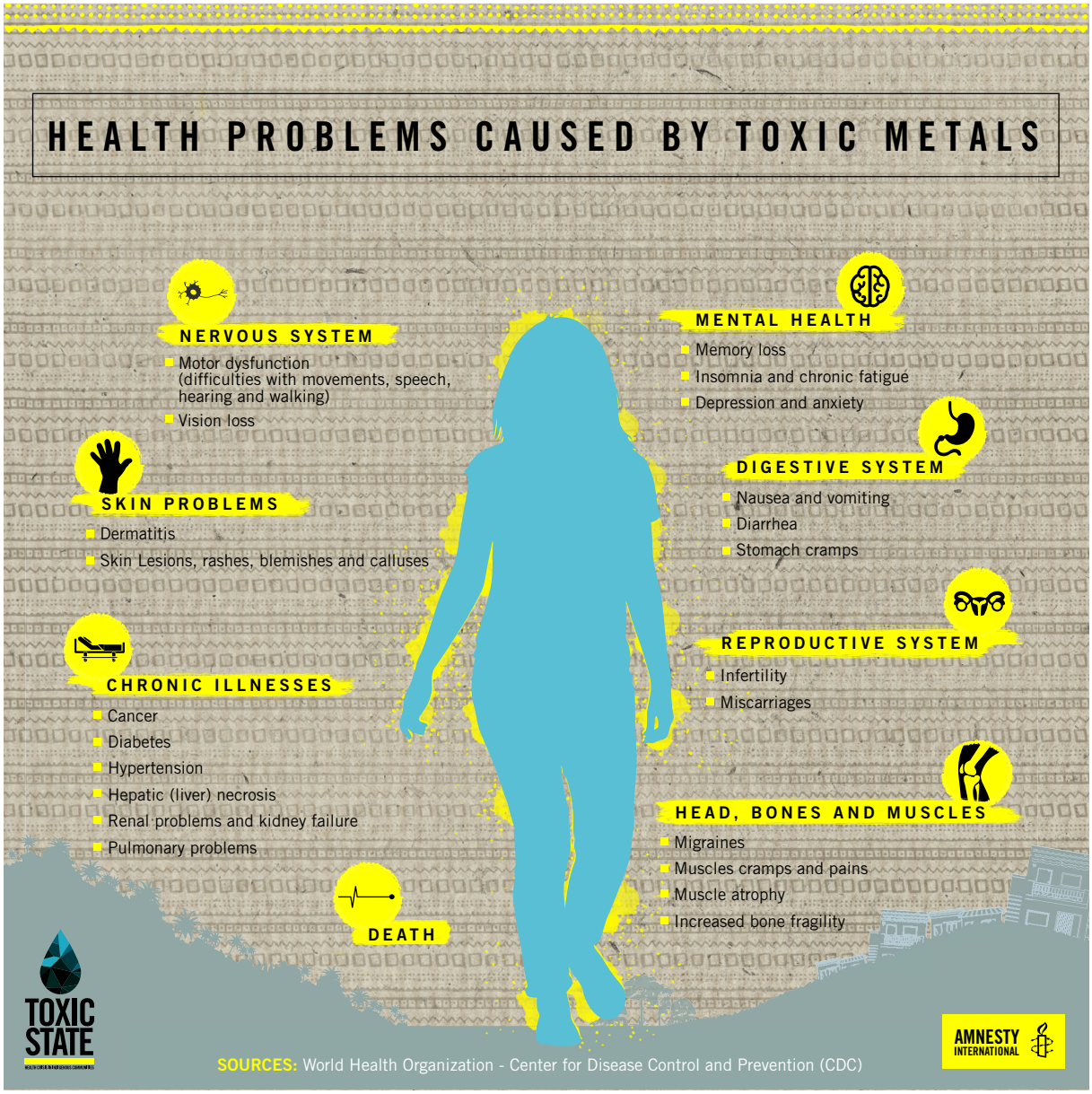
[25] WHO. Information on Cadmium. http://www.who.int/ipcs/assessment/public_health/cadmium/en/ (accessed 2 August 2017).

[26] WHO. Information on Arsenic. http://www.who.int/ipcs/assessment/public_health/arsenic/en/ (accessed 2 August 2017).

[27] WHO. Information on Mercury. http://www.who.int/ipcs/assessment/public_health/mercury/en/ (accessed 2 August 2017).

In addition, given the scientific certainty of the harmful effects of these four substances on health, Clinical Guidelines for the Diagnosis and Treatment of Poisoning by such substances have been developed in Peru.[28]

Some heavy metals tests use the term "reference value (or range or limit)" as a way of measuring the amount of heavy metals in an organism. According to the medical specialists consulted by Amnesty International, the reference values are indicative of the average presence of metals in the population and do not represent thresholds for safety or health, nor normal values. In other words, being below the reference value does not mean a total absence of risk or damage to health, it simply indicates that the magnitude of the risk or damage is not known.[29]



[28] Practical Clinical Guidelines for the Diagnosis and Treatment of Arsenic Poisoning, approved by Ministerial Resolution No. 389-2011/MINSA, and Practical Clinical Guidelines for the Diagnosis and Treatment of Lead Poisoning, approved by Ministerial Resolution No. 511-2011/MINSA; Practical Clinical Guidelines for the Diagnosis and Treatment of Mercury Poisoning and Practical Clinical Guidelines for the Diagnosis and Treatment of Cadmium Poisoning, both approved by Ministerial Resolution No. 757-2013/MINSA.

[29] Interview with Dr Fernando Osores Plenge, expert in environmental clinical toxicology, 21 July 2017.

ACCESS TO HEALTH SERVICES

Since it was discovered that the water in the Cuninico creek is contaminated and that the people are exposed to heavy metals and other chemical substances, there has been no State intervention aimed at determining the impact of this exposure on people's health nor at establishing whether the health issues reported by the community are linked to this contamination. Nor has there been any intervention aimed at cleaning up the water or ensuring that the communities have access to other sources of clean drinking water. In addition, the health services available to the community are inadequate and do not meet even their basic needs, much less address the risks and acute needs linked to exposure to heavy metals and other chemical substances.

In July 2014, DIRESA Loreto visited Cuninico and provided medical care to 56 community members, most of them women between the ages of 20 and 49 years, out of a community of more than 500 inhabitants. No explanation was given for the lack of care provided to the rest of the community. Following that visit, DIRESA Loreto recommended continuing the "comprehensive health care"[30] and educational guidance for community members on the importance of consuming "safe" water[31] but there has been no continuation of these measures since then.

Cuninico currently has no functioning health care facility, and the nearest one is in Maypuco, around one and a half hours away by speed boat. According to information from the Indigenous Peoples' Coordination Unit of DIRESA Loreto, the Maypuco Health Centre[32] has only two general practitioners neither of whom are specialized in issues relevant to the health needs of the Cuninico community, such as gynaecology or toxicology.

The leader of Cuninico indicated that, in April 2017, DIRESA Loreto visited Cuninico and built a health care unit but this was never equipped and has never been fully operational. He said that no-one had come to staff the unit 20 days following its completion and so the community wrote a request for the unit to be made operational with the necessary professional staff and medicines, giving a two-month period in which to reply. The leader of Cuninico indicates that this document was delivered to DIRESA Loreto and he later went twice to the office to follow up their request; however, the response he received was that the unit could not be made operational because of lack of funding.

During Amnesty International's visit to Cuninico, from 13 to 16 June 2017, the organization was able to observe that the health care unit had indeed been constructed but was empty and not operational.

External and internal view of the health care unit in Cuninico, 13 June 2017 © Amnesty International/ Kat Goicochea

In an interview with Amnesty International on 17 June 2017, DIRESA Loreto's Indigenous Peoples' Coordination Unit said that the health unit in question was aimed at providing care via telemedicine. This consists of providing a 72-inch television and

↑ External and internal view of the health care unit in Cuninico, 13 June 2017 | **© Amnesty International** | Kat Goicochea

[30] Peru. Estrategia de Metales Pesados, DIRESA Loreto, Informe de la Atención Integral de Salud en la Comunidad de Cuninico – Rio Marañón, (Heavy Metals Strategy, DIRESA Loreto, Report on Comprehensive Health Care in Cuninico Community - Marañón River) July 2014, Section II. Objectives. (Only available in Spanish).

[31] Peru. Estrategia de Metales Pesados, DIRESA Loreto, Informe de la Atención Integral de Salud en la Comunidad de Cuninico – Rio Marañón, (Heavy Metals Strategy, DIRESA Loreto, Report on Comprehensive Health Care in Cuninico Community - Marañón River) July 2014, Section II. Objectives. (Only available in Spanish).

[32] The Maypuco Health Centre is a category I-3 unit. Ministerial Resolution No. 546-2011/MINSA NTS No. 021-MINSA/dgsp-v.03 Technical Health Standard "Categories of Health Sector Facility."

↑ External and internal view of the health care unit in Cuninico, 13 June 2017 | **© Amnesty International** | Kat Goicochea

a laptop, which are connected to hospitals in Lima. Such a system is operated by a nurse and requires electricity and an internet connection, neither of which are readily available in Cuninico. Not only is this kind of technology inappropriate to the resources available in Cuninico, but the community representatives also indicated that the proposed telemedicine service was culturally unacceptable to the Kukama Indigenous People of Cuninico.

The local authorities' lack of understanding of the needs, cultural context and actual resources in Cuninico community has resulted in an inappropriate provision of health services that corresponds neither to their way of life nor their health needs, and even less to the specific requirements related to exposure to heavy metals. This lack of understanding became clear in an interview on 17 June 2017 with the Social Development and Indigenous Affairs departments of the Loreto Regional Government, whose representatives initially assured Amnesty International that Cuninico had a fully functioning health unit and water treatment plant, neither of which actually exist in that area.

The community told Amnesty International that one week prior to the announced visit of the Inter-American Commission on Human Rights to Cuninico on 8 July 2017, a nurse finally arrived so that the unit could begin to function partially, with some basic medicines, some of which required refrigeration but were not refrigerated. The community reported that this nurse worked in the unit every day until 14 July, when a second nurse arrived and worked until 28 July. Since then, the unit has remained unstaffed, except on 9 August when a new nurse arrived from the Maypuco Health Centre. This person, however, left the same day stating that they did not have a contract with DIRESA to remain in Cuninico.

Community representatives also said that the nurses were only able to treat minor ailments such as fever, cramps or allergies. The health unit still lacks the necessary resources, so the inhabitants of Cuninico have to go to the Maypuco Health Centre when they need medical care. However, Maypuco does not have health professionals able to provide specialist information to the community on the health risks of exposure to heavy metals and other chemical substances. Consequently, the women who were assessed as having been exposed to heavy metals in the studies conducted by the State have no access to the health services necessary for their particularly high-risk situation. They told Amnesty International that they had still not been given any explanation of the risks and impacts on their health of exposure to toxic metals and they did not know how this might affect their health or what to do about it.

“WE ARE DYING OF HUNGER AND THIRST”

FLOR DE MARÍA PARANA

Flor de María Parana
© Amnesty International | Kat Goicochea

Flor de María is 43 years old and a Kukama Indigenous woman from the Indigenous Native Community of Cuninico. Of her five children, four survive, aged 22, 18, 9 and 5. She said that community members have been eating fish from the river even though the water is contaminated and that they sometimes see deformed fish. *“We don’t really want to eat it, so we are choosy about which ones to eat now. It means we don’t eat like we used to, we have to be careful and check it all thoroughly.”* Sometimes Flor de María and her neighbours have to find food elsewhere. As for water, she says they wait until it rains to have water to drink and cook with, but if it doesn’t rain, they take water from the river.

Flor de María told Amnesty International that she now has headaches and, when she bathes, it feels like her skin is burning. She finds urinating painful and sometimes gets gastro-intestinal infections. She said that there are now new health problems in the community that they did not have before, including complications during pregnancy. *“Nearly every month you hear of someone who is one, two, three months pregnant, then by month four they’re having to go to Maypuco because of bleeding. The next week, another one has the same problem. And we are now known by the doctor at Maypuco for our recurrent miscarriages. The ‘miscarrying women of Cuninico’ because women are going there with this kind of problem so often.”*

Since the toxic metal studies conducted by DIRESA Loreto in 2016, Flor de María says that the government has given no explanation of the test results. *“They didn’t want to tell us. [I] asked: ‘Tell us what it means if we have lead or mercury in our blood.’ ‘No, that doesn’t mean anything. There’s nothing wrong with you. Just forget about it’ they told us. I’ve got my results, but I don’t know what they mean, whether they are high or low”.*

Flor de María has also noticed that her youngest son is losing weight, he sometimes doesn’t want to eat and is depressed, and now she is scared that her children are going to get some kind of illness when they bathe in the river.

The leader of the Cuninico community told Amnesty International that “things [in the community] are going from bad to worse” and that “very little support has been received from the State”.

PAPER PROMISES

> "PAPERS, PAPERS AND MORE PAPERS"
>
> Galo Vásquez Silva

The report published by MINSA in 2016 showed that the population was exposed to heavy metals and other chemical substances but did not try to establish the cause of the exposure, instead limiting itself to issuing three general recommendations, without specifying which authorities were responsible for implementing them:

- Ensure the responsible authorities pay a medical visit and evaluate the specific cases according to the results given in the report, and include a psychological assessment, given the concentrations of mercury found.
- Evaluate these communities once again after the prior evaluation and provision of their results.
- The people who were previously tested should be included in the four basins study (to be conducted by CENSOPAS in 2016)[34] so that they have two measurements of their state of health.[35]

According to the people interviewed in Cuninico, to date none of these recommendations have been implemented.

CONSTITUTIONAL COMPLIANCE COMPLAINT AND PRECAUTIONARY MEASURE

In January 2015, the leaders of the Indigenous Native Communities of Cuninico, Nueva Esperanza, Nueva Santa Rosa and San Francisco filed constitutional compliance proceedings against a number of State bodies because, according to the plaintiffs, they had failed to comply with various health regulations.[36]

On 9 March 2015, Nauta Local Court I admitted the lawsuit, which is currently under consideration. A precautionary measure was also requested in the context of the compliance proceedings, and this was granted by the Nauta Local Court I on 22 February 2017 and ordered the following health-related measures:[37]

1. The Ministry of Health was ordered to design and implement an emergency Public Health Strategy, within a 30-day period, that would establish a medical care programme, along with environmental and public health epidemiological monitoring, and to implement a health care and treatment programme for the population, in particular children, pregnant women and the elderly, in order to identify anyone who may have been affected by the consequences of the oil spill and provide them with the necessary medical care.

[33] Peru. Informe Determinación de Metales Pesados en las Comunidades de Cuninico y San Pedro – Cuenca del Marañón del Departamento de Loreto, (Report Determining Heavy Metals in the Communities of Cuninico and San Pedro - Marañón Basin of the department of Loreto), January 2016, p. 8. (Only available in Spanish.)

[34] It should be noted that this "four basins study" is the CENSOPAS pilot study on the risk of exposure to heavy metals and hydrocarbons that has still not been published.

[35] Peru. Informe Determinación de Metales Pesados en las Comunidades de Cuninico y San Pedro – Cuenca del Marañón del Departamento de Loreto, (Report Determining Heavy Metals in the Communities of Cuninico and San Pedro - Marañón Basin of the department of Loreto), January 2016, p. 8. (Only available in Spanish.)

[36] With regard to the health standards that the plaintiffs claim have been violated, see Appendix I.

[37] Peru. Local Court I, Nauta, Case No. 00001-2015-86-1901-JM-CI-01, Compliance Proceedings, Resolution Number One, 22 February 2017.

2. At the end of the stated period, the Ministry of Health was required to give a detailed report on progress made on the Public Health Strategy to the Loreto Nauta Provincial Court and on the actions taken in compliance thereof.

3. The Loreto Regional Government and the Loreto Nauta Provincial Municipality were urged, in coordination with the district municipalities, to urgently participate in actions that would enable the health of affected community members to be protected, at all times prioritizing the treatment of children, pregnant women and the elderly.[38]

Members of the communities covered by this precautionary measure, along with their legal representatives, told Amnesty International that the measures ordered by the Nauta Court almost seven months earlier had not yet been fully implemented. In a meeting held with Amnesty International in June 2017, the Prosecutor of the Ministry of Health stated that they were providing monthly implementation updates to the Nauta Court and that they had submitted three reports to the Court in this regard. In the meeting, the Prosecutor did not provide any information regarding the content of these reports and the supposed actions taken, stating that it was "confidential within the context of a judicial process".

However, according to the community, MINSA's interventions in relation to the precautionary measure have been limited to providing basic medical care and tooth extractions. The community reports that no personalized care nor specialist care or information has been provided related to exposure to and poisoning by heavy metals and other chemical substances.

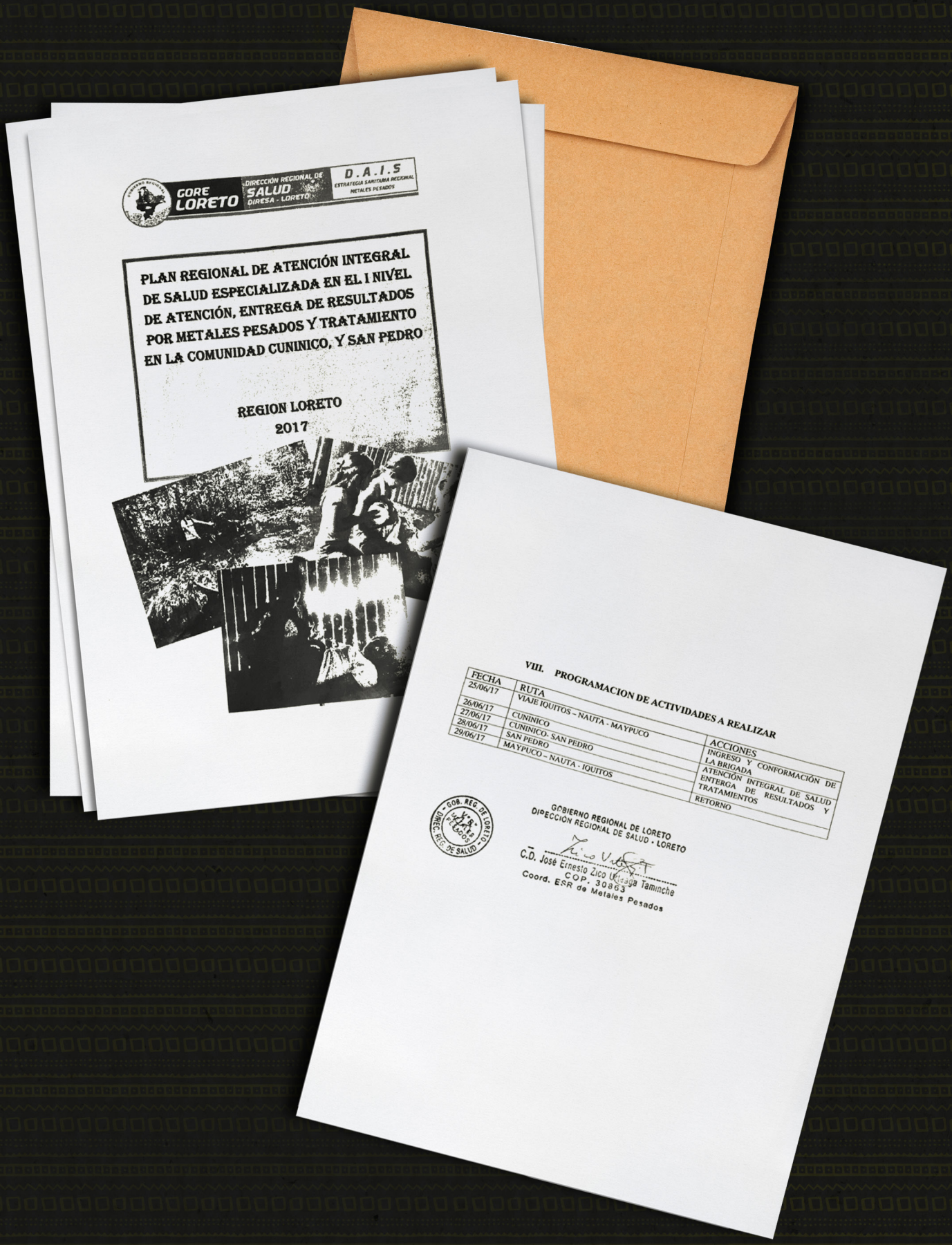
It should be noted that, in accordance with ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples,[39] the four Kukama Indigenous communities referred to in the precautionary measure must be consulted on the design and implementation of any Emergency Plan. The women and community leaders interviewed in Cuninico state that at no point have the national or regional health authorities contacted their communities to engage in such a consultation process, nor has an Emergency Plan covering the elements set out in the Nauta Court order been submitted to the community.

It should also be noted that health staff from MINSA[40] and DIRESA Loreto did visit Cuninico on 13 June 2017 and submitted two two-page documents to the community (comprised of a cover page and one page of contents, see images on the following pages), ostensibly to comply with the precautionary measure. However, the images show that, apart from a travel itinerary, they gave the community no information on the supposed care to be provided in the community or the emergency Public Health Strategy ordered by the precautionary measure.

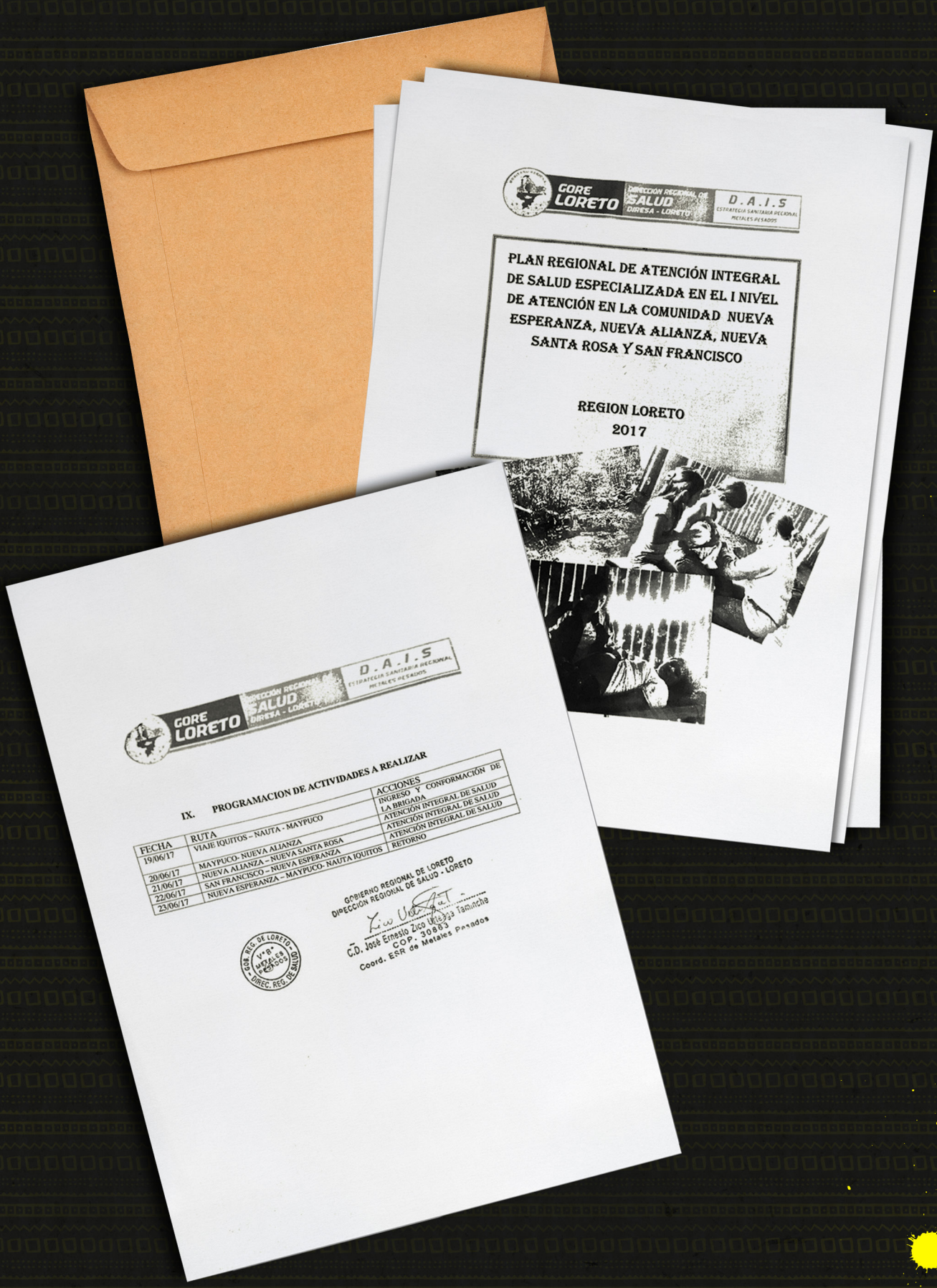
[38] Peru. Local Court I, Nauta, Case No. 00001-2015-86-1901-JM-CI-01, Compliance Proceedings, Resolution Number One, 22 February 2017.

[39] Article 6 (a) of ILO Convention No.169 and Article 19 of the UN Declaration on the Rights of Indigenous Peoples.

[40] Staff from DIGESA, the Disease Control and Prevention Centre (CDC) and the General Directorate for Strategic Public Health Interventions (DGIESP) participated in this visit.



↑ Document entitled “Regional Plan for Comprehensive Specialist Health Care at Level I, provision of results of to heavy metals and treatment in the Cuninico and San Pedro community”



Document entitled “Regional Plan for Comprehensive Specialist Health Care at Level I in the Nueva Esperanza, Nueva Alianza, Nueva Santa Rosa and San Francisco community”

“PAPERS, PAPERS AND MORE PAPERS, AGREEMENTS AND MORE AGREEMENTS”

GALO VÁSQUEZ SILVA

Galo Vásquez Silva
© Amnesty International | Kat Goicochea

Galo Vásquez told Amnesty International that he had travelled to Lima during the first week of June 2017, in his capacity as President of the Federation of United Kukama Peoples of Marañón, to follow up on the agreements reached with the Federation and different communities and he indicated that, as of that date, there had been no solution to their problems.

“Nothing’s happening right now, [just] papers, papers and more papers, agreements and more agreements. What we [in the community] want is immediate action, to deal with the reality, with the problems, with the critical situation that the communities are facing. This needs urgent action. Above all the water, the food.

I don’t know why the State can’t understand until now, why it can’t recognize the conditions in which the population is living... it shows how marginalized we are.

And this is what forces us travel there, to make demands. We are forced to make demands because of the situation we find ourselves in. So now since we’ve come to Lima... [the State bodies] have ruled in this regard but we have our doubts about this ruling, although we hope we are wrong. We were told that in 80 days they would install water, wells, and that meanwhile they would provide water filters for every family. I hope that’s the case but, if not, we will have to carry on, we have no choice.”

The Cuninico community has also taken its complaint to the Inter-American Commission on Human Rights (IACHR), which held a thematic hearing in this regard in June 2016.[41] At this hearing, Petroperú's representative invited the IACHR to visit Cuninico, a visit which took place in July 2017.[42] Following this, in a press release, the IACHR noted the information received from the community regarding their concerns over food, contamination of the river and the lack of clean drinking water. They also expressed concerns about the increase in health problems and the children's exposure to contaminants (reflected in the blood and urine samples taken). In addition, the community drew the IACHR's attention to the need for the proper implementation of the health care facility constructed in the community, and the fact that, to date, according to the community, they have received only one visit from a doctor in three years.[43]

The IACHR urged the State to "continue and expand the dialogue with the affected communities, so as to protect the full enjoyment and exercise of their human rights, and to adopt the necessary measures to provide water, food, and adequate health services to the communities …".[44]

Despite these multiple agreements, recommendations, precautionary measures and promises, the Cuninico community is still waiting for the State, at all levels, to protect and guarantee its right to health.

[41] IACHR. Hearing on Impacts on Human Rights of Oil Spills in Peru, requested by: Native Community of Cuninico / Autonomous Territorial Government of the Wampis Nation / Regional Organization of Indigenous Peoples of the Peruvian Northern Amazon (ORPIAN-P) / Justice and Peace-Human Rights Commission of the Iquitos Vicariate / National Human Rights Coordinating Body (CNDDHH), on 9 June 2016.

[42] IACHR. IACHR Announces Visit to Peruvian Amazon Region, 7 July 2017.

[43] IACHR. Press Release. "IACHR Carries Out Visit to Peruvian Amazon Region", 25 July 2017.

[44] IACHR. Press Release. "IACHR Carries Out Visit to Peruvian Amazon Region", 25 July 2017.

↑ View of Yauri, capital of the Province of Espinar | **© Amnesty International** | Diego Cárdenas Sedano

THE CASE OF ESPINAR

“NO ONE CARES ABOUT US”

Member of the Huisa Chipta community

Amnesty International visited the Kana Indigenous communities of Alto Huarca, Cala Cala, Huisa, Huisa Collana, Alto Huancané and Bajo Huancané[45]. These communities live in the area of influence of the Tintaya-Antapaccay mining operation[46] in the province of Espinar, department of Cusco.

The communities visited are located in the Cañipía and Salado river basins, which flow into springs that the communities use as their source of water for human consumption, for cooking and bathing, and for livestock.

There has been mining activity in the province of Espinar for 100 years, ever since exploration began in 1917 for the Tintaya mine, which effectively began operations in 1985. The expansion of mining operations at Tintaya-Antapaccay began in the last quarter of 2012[47] and continue operating to this day.[48]

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[45] Peru, Ministry of Culture, Database of Indigenous or Native Peoples, available at: http://bdpi.cultura.gob.pe/pueblo/quechuas (accessed 23 June 2017).

[46] The Environmental Impact Assessment defined the area of direct influence as “los asentamientos y las personas con potencial de experimentar los impactos sociales del Proyecto [Antapaccay – Expansión Tintaya] relacionados a consecuencias de potenciales cambios ambientales, adquisición de tierras, oportunidades económicas, tráfico y/o efectos socio-culturales. Más aun, algunas de estas comunidades se están actualmente beneficiando de la inversión social que se hace posible debido a la mina Tintaya y que continuarán recibiendo beneficios durante el desarrollo de[l] Proyecto [Antapaccay – Expansión Tintaya]” (settlements and people who will potentially experience the social impacts of the project [Antapaccay - Tintaya Expansion] related to consequences of potential environmental changes, land acquisition, economic opportunities, traffic and/or socio-cultural effects. Moreover, some of these communities are currently benefiting from the social investment that is made possible because of the Tintaya mine and will continue to receive benefits during the development of the Project [Antapaccay - Tintaya Expansion]). Although there are 11 communities in the area of influence of the Tintaya-Antapaccay project, issues around access and availability meant Amnesty International was only able to visit and interview women in six communities. Golder Associates, Volumen A Resumen Ejecutivo EIA Proyecto Antapaccay - Expansión Tintaya, No. Informe: 089-4153121 (Volume A, Executive Summary, Environmental Impact Assessment (EIA) of the Antapaccay Project -- Tintaya expansion, Report No. 089-4153121), December 2009, pp.14-15 and 179. (Available only in Spanish).

[47] Xstrata Copper División Operaciones Perú, Informe de Sostenibilidad (Sustainability Report), 2012, p. 5. Available only in Spanish.

[48] No conclusive study has been undertaken or published to determine the specific impact of the Tintaya-Antapaccay mining operations on the communities located in its area of influence. Nor has any study been done to determine the cause or source of the contamination of the water or the exposure of the population to toxic metals. Therefore, Amnesty International calls on the State to investigate and establish the cause of the contamination of the water sources and exposure to toxic metals and to make the findings public.

HEALTH CRISIS IN ESPINAR

> “WE ALL KEEP SAYING: WE FEEL ILL, BUT WE DON’T KNOW WHY”
>
> Marleny Surco

REPORTED IMPACTS ON HEALTH

The women interviewed by Amnesty International in Espinar described how they and their families are suffering from health problems. They reported a consistent pattern of health issues including headaches, pain in their bones, stomach pains accompanied by diarrhoea, burning and watery eyes, respiratory problems including cough and burning in their throats, and urinary and kidney problems, among others.

CARMEN CATALINA CHAMBI SURCO

Carmen Chambi Surco | **COMMUNITY OF ALTO HUANCANÉ**
© Amnesty International | Diego Cárdenas Sedano

Carmen told Amnesty International that of her six children, four are ill; the two eldest are apparently healthy, although she said *“perhaps they are like me, they keep quiet about the pain and suffer in silence.”* She explained that one of her children was born with a closed ear and another one had a cyst removed from his lung. The doctor who operated on him told him that his lung was “like a rotten apple”. She said that her other children have problems concentrating and suffer from headaches.

She has pain in her body and lungs, has lost her hearing in one ear, and has had surgery to remove stones from her liver. *“Do not kill us slowly. Remember that we are human beings too and we need to live like [the authorities] do. Think about the environment, think about how we live. Think about why they are slowly killing us here, the people as well as the animals.”*

MARLENY SURCO

Marleny Surco | **COMMUNITY OF HUISA COLLANA**
© Amnesty International | Nataniel Furgang

Marleny is 41 years old and she told Amnesty International that three to four years ago, doctors discovered that she had problems with her heart valves. Doctors have told her she needs an operation to replace her aortic valve, but she doesn't have the money to pay for the operation.

She said that her children tell her *"Mama, I feel tired"*, which makes her think *"they might be like me. New illnesses are appearing and almost all of us are ill"*. She described how when they wash, the water stings and it gives them diarrhoea, so now her children don't want to bathe.

Those interviewed said that when they go to see State health professionals, they are not given any explanation as to what the causes of their problems might be. However, medical experts consulted by Amnesty International have confirmed that these health issues are possible symptoms of exposure to heavy metals and other chemicals via water or food. The women interviewed told Amnesty International that whenever they take water from the rivers or springs they sick feel sick. They also pointed out that their animals, which drink the same water, have been dying without explanation.

EXPOSURE TO AND CONTAMINATION BY HEAVY METALS

Many studies carried out by the State have established that the population of various communities in Espinar is exposed to heavy metals and other chemical substances and that their main sources of water are also contaminated with these substances.

Between September 2012 and February 2013, water samples were taken in 15 communities in Espinar for environmental health monitoring. The final report of this study, which was published by the Ministry for the Environment in June 2013[49], revealed that of the 58 sites where water was tested, 41 contained at least one heavy metal or other chemical substance in concentrations above the maximum permissible limits allowed under national law.

The following table presents the results for the communities in Espinar in which at least one metal or chemical substance exceeded the maximum permissible limits:

LOCATIONS IN WHICH THE WATER FOR HUMAN CONSUMPTION EXCEEDS AT LEAST ONE OF THE MAXIMUM PERMISSIBLE LEVELS AND STANDARDS FOR WATER FIT FOR HUMAN CONSUMPTION

RIVER BASIN	COMMUNITY	SUBSTANCES FOUND THAT EXCEED MAXIMUM PERMISSIBLE LIMITS
CAÑIPÍA	ALTO HUARCA	mercury, PH
	HUISA	mercury, phosphorus, PH
	HUISA COLLANA	arsenic, total coliforms, thermotolerant coliforms
	YAURI	iron, mercury, total Coliforms, thermotolerant coliforms
SALADO	HUANO	arsenic, aluminium, mercury, lead, total coliforms, thermotolerant coliforms, residual chlorine
	PACOPATA	mercury
	HUNI CCOROCOHUAYCO	mercury
	ALTO HUANCANÉ	aluminium, mercury, lead
	BAJO HUANCANÉ	arsenic, aluminium, iron, chlorides, phosphorus, lead, total coliforms, PH, conductivity
	ANTACOLLANA	arsenic, aluminium, mercury, PH
	SUERO Y CAMA	arsenic, phosphorus, lead, total coliforms, thermotolerant coliforms
	TINTAYA MARQUIRI	arsenic, total solids, chlorides, lead, conductivity, turbidity

Environmental Subgoup, February 2013, Informe Final Integrado de Monitoreo Sanitario Ambiental Participativo de la Provincia de Espinar (Final Comprehensive Report of Participative Environmental Health Monitoring in the Province of Espinar, June 2013)[50]

It is worth noting that to date the State has not identified the source of the heavy metals and other chemical substances present in the communities' water sources.

[49] Peru, Espinar Roundtable Discussion, Environment Subgroup, Informe Final Integrado de Monitoreo Ambiental Participativo de la Provincia de Espinar (Final comprehensive report on participatory environmental monitoring in the province of Espinar), June 2013.

[50] Table based on the Espinar Roundtable Discussion, Informe Final Integrado de Monitoreo Sanitario Ambiental Participativo de la Provincia de Espinar (Environment Subgroup Final comprehensive report on participatory environmental monitoring in the province of Espinar), June 2013, p. 115. (Available only in Spanish).

“THEY TELL US ‘WE’RE TIRED OF LISTENING TO YOU TALK ABOUT CONTAMINATION ALL THE TIME.”

HERMELINDA UMASI MAGAÑO

Tomasa Vásquez Ima and Hermelinda Umasi Magaño
COMMUNITY OF BAJO HUANCANÉ
© Amnesty International | Nataniel Furgang

Hermelinda and Tomasa told Amnesty International that the sources of the water they and their livestock drink are contaminated and the authorities have to bring water in a cistern so that they can have clean water to drink. This happens every two or three months or *“when they feel like it”*. The women explained that they had health problems. For example, Hermelinda has a tumour in her leg that she was told was benign; she had an operation to remove it, but it grew back. Tomasa said that her young children complain of headaches and stomach aches and that she tries to cure them naturally because *“the doctors in Espinar don’t give good medical care”*. They described how many of their animals have died and that the livestock they eat is contaminated, but that they have no other choice of work or food.

In addition, CENSOPAS has published two studies that establish that the people living in Alto Huancané, Huisa and Huisa Collana are exposed to heavy metals and other chemical substances.

In 2010, CENSOPAS carried out a baseline health study on the exposure to heavy metals[51] of seven communities in Espinar, two of which are among those visited by Amnesty International, specifically Huisa and Huisa Collana. A total of 506 people (352 women and 154 men) from different age groups[52] were tested for lead in their blood and cadmium, arsenic and mercury in their urine.

The results showed that 97.3% of the people tested had lead in their blood, and the urine tests revealed 50.2% had cadmium, 45.6% had mercury and 65.6% had arsenic in their bodies. From these results, it is possible to conclude that almost all of the people tested are exposed to at least one toxic metal that poses a significant risk to human health[53].

[51] Peru, INS, CENSOPAS, DIRESA Cusco, Línea de Base en Salud de las Comunidades Afectadas por el Proyecto Minero Quechua, Cusco – Espinar 2010, Informe Técnico (Baseline study of the health of the communities affected by the Quechua Mining Project, Cusco - Espinar 2010, Technical Report), p. 12. (Available only in Spanish).

[52] Peru, INS, CENSOPAS, DIRESA Cusco, Línea de Base en Salud de las Comunidades Afectadas por el Proyecto Minero Quechua, Cusco – Espinar 2010, Informe Técnico (Baseline study of the health of the communities affected by the Quechua Mining Project, Cusco - Espinar 2010, Technical Report), pp. 35-36. (Available only in Spanish). The study does not specify how many people were tested from each community.

[53] Peru, INS, CENSOPAS, DIRESA Cusco, Línea de Base en Salud de las Comunidades Afectadas por el Proyecto Minero Quechua, Cusco – Espinar 2010, Informe Técnico (Baseline study of the health of the communities affected by the Quechua Mining Project, Cusco - Espinar 2010, Technical Report),pp. 60-65. (Available only in Spanish).

CENSOPAS did not make public nor provide the individual results of the blood and urine analyses to the people tested in 2010 until three years after the tests were conducted, and only after the people tested had lodged claims before State bodies demanding to be given their results[54].

These claims and proceedings resulted in a second study by CENSOPAS, this time to assess exposure to metals of the inhabitants of Alto Huancané and Huisa. On 16 January 2013, urine samples were taken from 180 people from these communities[55].

It should be noted that the people who participated in this study only gave their consent for tests to measure the presence of six metals in their bodies: cadmium, arsenic, lead, thallium, manganese and mercury[56]. However, CENSOPAS[57] tested the samples for the presence of 17 metals, without the consent of the participants. The 11 metals for which consent was not obtained but for which the samples were tested were antimony, barium, beryllium, cobalt, caesium, tin, strontium, molybdenum, platinum, uranium and tungsten.[58]

The results of the tests for the six metals initially agreed to were given to people tested in August 2013.[59] On the same day, the findings and conclusions of the study were published. These stated that:

- "The levels of metals in urine reflect primarily recent exposure [that is, rom the previous days/weeks], and therefore have limited value in terms of assessing chronic exposure. Nevertheless, urine tests are a practical way to analyse various metals at the same time and to determine the exposure of a population.
- The results of the study show that the population of the Alto Huancané and Huisa communities is exposed to lead, mercury, cadmium, thallium, manganese and arsenic. 100% of the participants had detectable levels of arsenic, lead and thallium.
- This analysis is a first study of exposure to metals in the population tested, but it does not provide a diagnosis of illnesses or identify the sources of the exposure. The decision has, therefore, been taken to examine the health of the people in these communities.
- It was agreed that individual laboratory results will be handed over in the context of a comprehensive health care programme. This will be provided through health networks to ensure continuity.[60]

Participants in the 2013 study who were interviewed by Amnesty International reported that, despite the known risks associated with the highly toxic metals found in the study, none of the recommendations made by CENSOPAS were implemented. The WHO has stated that exposure to lead, cadmium, arsenic and mercury has an impact on neurological, haematological, gastrointestinal, cardiovascular and renal systems and poses particular dangers for foetal development in the womb and in the early stages of life, as well as other effects set out in the previous chapter.[61] In addition, the WHO has stated that there is a substantial risk of nephritis (inflammation of the kidneys) in people exposed to uranium.[62]

As long ago as 2010, CENSOPAS had already recommended that the sources of the exposure to heavy metals in the people tested be identified[63]. However, it did not indicate which institution was responsible for implementing this and, to date, the sources have not been identified.

[54] Compliance Claim, 11 May 2015, p.21.

[55] The taking of samples, cold chain, storage and transport were carried out in accordance with the protocols of the Centres for Disease Control and Prevention (CDC), Atlanta, USA, the laboratory chosen to analyse the samples in accordance with, according to CENSOPAS, the guidelines of the Ethics Committee of the INS to safeguard the rights of individuals. Ministerial Resolution No. 164-2012-PCM, 10 July 2012. MINAM. Resumen Ejecutivo del Informe Final de la Mesa de Diálogo de Espinar (Executive Summary of the Final Report of the Espinar Roundtable Discussion), June 2014. (Available only in Spanish).

[56] The footnote to the "Consent for participation in the study – adult: heavy metals in two communities in Espinar, Cusco, Peru, 2012", states: "Título del Protocolo: Determinación de la Exposición a los Metales Pesados: Cadmio, Arsénico, Plomo, Talio, Manganeso y Mercurio en las comunidades Huisa y Alto Huancané en el distrito de Yauri-Espinar, provincia de Espinar, departamento de Cusco" (Title of the Protocol: determination of exposure to heavy metals: cadmium, lead, arsenic, thallium, manganese and mercury in the communities of Huisa and Alto Huancané, district of Yauri-Espinar, Espinar province, Department of Cusco).

[57] Analysis of samples taken by CENSOPAS was carried out in the laboratory of the Centers for Disease Control and Prevention of the US Department of Health.

[58] Broederlijk Delen, Cooperacción, Derechos Humanos sin Fronteras, Institute for Legal Defence. Metales Pesados Tóxicos y Salud Pública: El Caso de Espinar, (Toxic Heavy Metals and Public Health: The Case of Espinar), Lima, 2016, pp. 18-19.

[59] Peru. MINAM, Resumen Ejecutivo del Informe Final de la Mesa de Diálogo de Espinar (Executive Summary of the Final Report of the Espinar Roundtable Discussion), June 2014, p. 37. (Available only in Spanish).

[60] Peru. MINAM, Resumen Ejecutivo del Informe Final de la Mesa de Diálogo de Espinar (Executive Summary of the Final Report of the Espinar Roundtable Discussion), June 2014, p. 37. (Available only in Spanish).

[61] WHO, "Ten chemicals of major public health concern", available at: http://www.who.int/ipcs/assessment/public_health/chemicals_phc/en/ (accessed 25 July 2017).

[62] WHO, Information sheets on chemical substances, p. 359. (accessed 16 August 2017). [English see: http://www.who.int/water_sanitation_health/en/]

[63] Peru, CENSOPAS, Riesgos a la salud por exposición a metales pesados en la provincia de Espinar, Cusco (Health risks caused by exposure to heavy metals in the province of Espinar, Cusco), 2010, p. 74. (Available only in Spanish).

ACCESS TO HEALTH SERVICES

The health situation of the communities in Espinar reflects the weaknesses in the healthcare system. Even though the ESNMP has acknowledged that Espinar is an area where there is a risk of exposure to heavy metals[64], the healthcare system is not equipped to meet the needs of the population.

The health facilities closest to the communities interviewed in Espinar are located in the town of Yauri: the Yauri Health Centre[65] which offers preventive care and health promotion; and Espinar Hospital which offers general health services. Both are located on the same site and are part of the Canas, Canchis and Espinar Health Network, which comes under the DIRESA of Cusco. The Yauri Health Centre and Espinar Hospital are located 22km from the community of Alto Huarca, 25km from Cala Cala, 22km from Huisa, 10km from Huisa Collana, 20km from Alto Huancané and 17km from Bajo Huancané.

The Director of Espinar Hospital told Amnesty International that "the issue of metals is complex [to treat]" because the hospital does not have staff who are trained in that area. However, he confirmed that some weeks before the interview with Amnesty International, an expert from Lima had come to provide training to staff on treating the effects of heavy metals. However, the hospital has no budget or human resources specializing in the area to provide specialist care.

The lack of health professionals trained to deal with exposure to heavy metals not only puts the health of people suffering from exposure at risk, but it has also created anxiety in the community, as people who know that they have heavy metals in their bodies do not have access to specialist information or services. The women interviewed who had tested positive for heavy metals expressed fears about not knowing what the implications of this were for themselves and their families.

In 2010 CENSOPAS recommended increasing staffing in health centres in the area so that they had the capacity to engage in preventive care in relation to risks to health "associated with exposure to new economic activities"[66]. The communities and the Director of Espinar Hospital pointed out that seven years later, this has yet to be implemented.

The communities in Espinar, despite proven exposure to heavy metals and other chemical substances, do not have access to a health facility that can respond to their health problems or the risks they face.

[64] National Health Strategy on Heavy Metals and Other Chemicals. https://www.minsa.gob.pe/portalweb/06prevencion/prevencion_2.asp?sub5=3 (accessed 18 August 2017).

[65] The Yauri Health Centre is in turn part of the Yauri Micro Health Network made up of the Health Centre and 11 local health clinics: P.S. Occocunca. P.S. Condoroma, P.S. Coporaque, P.S. Urinsaya, P.S. Huayhuahuasi, P.S. Tintaya Marquiri, P.S. Occoruro, P.S. Pallpata, P.S. Pichigua, P.S. San Miguel and P.S. Suykutambo. The Yauri Health Centre is a Comunidades Locales de Administración de Salud (CLAS – local community health administration) facility and so receives funding from the municipality, which has enabled it to acquire a few pieces of high-tech medical equipment.

[66] Peru. INS, CENSOPAS, DIRESA Cusco, Línea de Base en Salud de las Comunidades Afectadas por el Proyecto Minero Quechua, Cusco – Espinar 2010, Informe Técnico (Baseline study of the health of the communities affected by the Quechua Mining Project, Cusco - Espinar 2010, Technical Report), p. 84. (Only available in Spanish).

“WHY SHOULD I WANT TO LIVE? SUFFERING LIKE THIS, IT MAKES ME WANT TO DIE”

MELCHORA SURCO RIMACHI

Melchora Surco Rimachi | **COMMUNITY OF ALTO HUANCANÉ**
© Amnesty International | Nataniel Furgang

Melchora was born and has lived most of her life in Alto Huancané. She is leader of the Association for Defence of Pacpacco Affected by Mining (Asociación para Defensa de Pacpacco Afectada por la Minería, ADEPAMI). Melchora is 63 years old, but says she seems a lot older because she is worn out.

Melchora told Amnesty International that she suffers from several health problems: *“My head hurts, my eyesight has deteriorated. My whole body hurts, I no longer have the strength to work... My bones [hurt]. I can’t travel far. It seems all my bones are thin, full of holes, so I really feel the cold, and the sun.”*

She described how in 2002 while she was washing clothes in in the river, she noticed that even the soap was no longer lathering because of how contaminated the water was.

Regarding the tests for metals carried out in 2013, she said “they tricked us”. She noted that in Alto Huancané there are 68 people who are exposed to toxic metals and she is asking the authorities “to cure us, to provide medicines, I don’t know where they would take us to cure us,... the children with malformations, with cancer in Huisa”.

Finally Melchora said: *“it’s all a trick, a con... Peru is taking our gold, our silver, our copper, and we have nothing. What’s left of our resources for us?... In Pacpacco [an area of Alto Huancané] there is no water. You cannot turn a blind eye to this.”*

PAPER PROMISES

"THE STATE IS NOT DELIVERING WHAT IT PROMISED"

Melchora Surco Rimachi

In Espinar Indigenous communities have made claims at various times over the past three decades to demand better protection of their health.

On 21 May 2012, concerned about the socio-environmental situation in the province, the population started an indefinite strike in Espinar. This resulted in the setting up of roundtable discussions on 11 July 2012. The roundtable agreed that a study would be carried out to analyse the reasons for the presence of the metals found in the water in Espinar. OEFA tasked the Peruvian Institute for Nuclear Energy (Instituto Peruano de Energía Nuclear, IPEN) to carry out the analysis. Four years after the end of the roundtable discussions, people are still waiting for the results of this study to be published.

In 2015, two government health plans were developed to address the health situation in Espinar; these were either not implemented at all or only partially implemented. On 1 April 2015, the Ministry of Health approved the *Health Action Plan for the Province of Espinar* - Cusco 2015,[67] with the general objective of "carrying out activities related to Health Promotion, Risk Monitoring and Comprehensive and specialized Care, for the population at risk of exposure to heavy metals". The Plan also set out specific objectives to provide comprehensive and specialist medical care and follow-up for the 180 people identified in the 2013 CENSOPAS study as being exposed to toxic metals. However, according to the women interviewed in Espinar who had been identified by that study as affected, the Ministry of Health has failed to provide specialist care or follow-up.

Subsequently, on 24 April 2015, the Cusco Regional Government approved the *Comprehensive Health Intervention Plan for the Province of Espinar for Exposure to Heavy Metals and Other Chemical Substances 2015-2017*[68] with the general objective of preventing and reducing the risks to health associated with exposure to toxic metals. One of the specific activities set out in the plan was to carry out a comprehensive health campaign with a specialist focus on the needs of the 180 people suffering from exposure to heavy metals; repeating what had already been called for in the previous plan. However, again, health care for the 180 people affected was not provided. The Cusco DIRESA told Amnesty International that they have only been in contact with 14 of the 180 people affected.

According to the Ombudsman's Office in Cusco, there has been very little progress in implementing the health care plans because insufficient budget has been allocated to health services and because of a lack of coordination between the different levels of government.

[67] Approved 1 April 2015 by Ministerial Resolution No. 205-2015-MINSA.

[68] Peru, GORE, Cusco Comprehensive Health Intervention Plan for the Province of Espinar for Exposure to Heavy Metals and Other Chemicals 2015-2017, approved by Directorate Resolution No. 0531-2015-DRSC-DGDPH, 24 April 2015.

CONSTITUTIONAL COMPLIANCE COMPLAINT

In May 2015, ADEPAMI and others[69] filed a constitutional action to enforce compliance by various State bodies. Those bringing the action claim in their written submission that these State bodies have breached various regulations regarding health[70]. The complaint is the subject of an ongoing proceeding in Espinar.

Decades of demands, studies and unfulfilled health plans in Espinar have come to nothing. Meanwhile the Indigenous peasant communities are still waiting for the State, at all levels, to fulfil its obligation to protect and guarantee their right to health.

[69] The directors of the Huisa community, the Comité de Usuarios de Agua de Qquetara, (Qquetara Committee of Water Users); the Frente de Defensa de Regantes de la Microcuenca Ccañipia-Espinar (Irrigation of the Ccanipia-Espinar Micro-Basin Defence Front); and the Federación Unificada de Campesinos de Espinar (United Federation of Espinar Indigenous peasants – FUCAE).

[70] For a list of the health norms which the plaintiffs claim have been violated, see Appendix II.

OBLIGATIONS OF THE PERUVIAN STATE

"Indigenous individuals also have the right to access, without any discrimination, to all social and health services... Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health."

Article 24.1 and 24.2 of the UN Declaration on the Rights of Indigenous Peoples

The right to enjoy the highest attainable standard of health is recognized in various international instruments to which Peru is a party. These include: the International Covenant on Economic, Social and Cultural Rights (ICESCR)[71], to which Peru has been a party since 1978; the American Declaration on the Rights and Duties of Man[72]; and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)[73], to which Peru has been a party since 1995.

The right to health is also recognized in Article 7 of the 1993 Constitution of Peru. Article 9 of the Constitution establishes that "the State determines the national health policy. The Executive branch sets standards for and oversees its implementation and is responsible for developing and directing it in a pluralistic, decentralized manner to facilitate equal access for everyone to health services." Similarly, Peru's General Law on Health states that in the case of a health crisis, the State should enact measures to minimize and manage the risks to people's health[74].

THE RIGHT TO ACCESS TO HEALTH SERVICES

The ICESCR provides that state parties shall take the necessary steps to create the "conditions which would assure to all medical service and medical attention in the event of sickness."[75] In this regard, the Committee on economic, social and cultural rights (CESCR) has stated that the obligation of the

[71] UN International Covenant on Economic, Social and Cultural Rights. Adopted and opened for signature, ratification and accession by the General Assembly in its resolution 2200 A (XXI) of 16 December 1966, Article 12.

[72] OAS, American Declaration of the Rights and Duties of Man, Ninth International Conference of American States in Bogotá, Colombia, 1948, Article XI.

[73] Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, (Protocol of San Salvador). Peru ratified the Protocol of San Salvador on 17 May 1995.

[74] Peru, Article 105 of the General Law on Health, Law No. 26842, 1997.

[75] UN International Covenant on Economic, Social and Cultural Rights. Adopted and opened for signature, ratification and accession by the General Assembly in its resolution 2200 A (XXI) of 16 December 1966, Article 12.2.

State extends to "equal and timely access to basic preventive, curative, rehabilitative health services and health education;... appropriate treatment of prevalent diseases, illnesses, injuries and disabilities ... preferably at community level; the provision of essential drugs"[76]. The CESCR has also established that "the right to treatment includes the creation of a system of urgent medical care in cases of accidents, epidemics and similar health hazards, and the provision of disaster relief and humanitarian assistance in emergency situations"[77].

With regard to health facilities, the CESCR also establishes the essential elements of the right to health,[78] namely:

I. **Availability:** each state party shall have public health and health-care facilities, goods and services in sufficient quantity to provide health care to the population.

II. **Accessibility:** health facilities, goods and services have to be accessible to everyone. Accessibility has the following overlapping dimensions:

- **Non-discrimination:** health facilities, goods and services must be accessible to the most vulnerable or marginalized sections of the population, without discrimination of any kind.
- **Physical accessibility:** health facilities, goods and services must be within reach for all sections of the population, especially vulnerable or marginalized groups, such as Indigenous populations. Accessibility also implies that medical services and the underlying determinants of health, such as clean drinking water and adequate sanitation facilities, are within reasonable physical reach, including in rural areas.
- **Economic accessibility (affordability):** health facilities, goods and services must be affordable for all.

III. **Quality:** health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, among other things, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, clean drinking water and adequate sanitation.

Cuninico and Espinar are areas which should have been prioritized immediately to receive specialist health services. As this report shows, the community in Cuninico does not have a functioning health facility nor access to health personnel who are able to provide necessary medical services. The same is true for Espinar, where the nearest health facilities do not have the resources to provide specialist care to those exposed to harmful substances. Despite knowing about the exposure and contamination and the potential risks to health in these areas, the State has not taken sufficient measures to develop an emergency health plan to ensure that the necessary, good quality health services are available and accessible in Cuninico and Espinar.

THE RIGHT TO CLEAN DRINKING WATER

CESCR General Comment No. 14 stresses that the right to health includes access to clean drinking water and adequate sanitation[79].

Similarly, Article 12 (2) of the ICESCR stipulates that in order to achieve the full realization of the right to health, state parties to the Covenant shall take the steps necessary for: "the improvement of all aspects of environmental...hygiene". In this regard, the CESCR has determined that this obligation extends to "the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population's exposure to harmful substances...that directly or indirectly impact upon human health."[80]

Given that access to "safe and potable water" and protection from "exposure to harmful substances" are integral elements of the right to health,[81] the fact that the Peruvian State continues to fail to provide access to safe drinking water for communities whose only sources of water are contaminated with heavy metals is a violation of the right to health of these communities that puts their lives at risk.

[76] Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000): The Right to the Highest Attainable Standard of Health, Article 12 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/2000/4, CESCR, 11 August 2000, para. 17.

[77] Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000): The Right to the Highest Attainable Standard of Health, Article 12 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/2000/4, CESCR, 11 August 2000, para. 16.

[78] Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000): The Right to the Highest Attainable Standard of Health, Article 12 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/2000/4, CESCR, 11 August 2000, para. 12

[79] Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000): The Right to the Highest Attainable Standard of Health, Article 12 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/2000/4, CESCR, 11 August 2000, para. 4.

[80] Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000): The Right to the Highest Attainable Standard of Health, Article 12 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/2000/4, CESCR, 11 August 2000, para. 15.

[81] Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000): The Right to the Highest Attainable Standard of Health, Article 12 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/2000/4, CESCR, 11 August 2000, para. 15.

THE RIGHT TO ACCESS TO INFORMATION CONCERNING HEALTH ISSUES

The CESCR has stated that one of the dimensions of the right to health is access to information, which includes: "the right to seek, receive and impart information and ideas concerning health issues"[82].

The State has failed in its duty to provide information related to the health of the communities of Cuninico and Espinar. Despite having evidence of the communities' exposure to heavy metals and other chemical substances, the State still has not properly informed those affected about the results of the studies of human exposure to heavy metals and chemical substances and contaminated water, or on the consequences and implications of the presence of harmful substances in their bodies and sources of water. As a result the communities have not been in a position to make informed decisions about their health.

THE RIGHT TO HEALTH OF INDIGENOUS PEOPLES

The right to health of Indigenous Peoples has been recognized in the American Declaration on the Rights of Indigenous Peoples and the UN Declaration on the Rights of Indigenous Peoples,[83] which states that: "Indigenous individuals also have the right to access, without any discrimination, to all social and health services" and "have an equal right to the enjoyment of the highest attainable standard of physical and mental health"[84].

In addition, Article 25 of the ILO Indigenous and Tribal Peoples Convention (Convention No. 169) states that:

> **1.** Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.
>
> …
>
> **3.** The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services.
>
> **4.** The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country[85].

[81] Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000): The Right to the Highest Attainable Standard of Health, Article 12 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/2000/4, CESCR, 11 August 2000, para. 15.

[82] Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000): The Right to the Highest Attainable Standard of Health, Article 12 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/2000/4, CESCR, 11 August 2000, para. 12.

[83] United Nations Declaration on the Rights of Indigenous Peoples, 2007, Article 24.

[84] American Declaration on the Rights of Indigenous Peoples, adopted at the second plenary session, held on 14 June 2016), Article XVIII (AG/RES. 2888 (XLVI-O/16).

[85] International Labour Organization, Indigenous and Tribal Peoples in Independent Countries Convention, 1989 (No. 169). Ratified by Peru on 2 February 1994.

For its part, the CESCR has recognized that Indigenous Peoples "have the right to specific measures to improve their access to health services and care"[86]. It has also stressed that health services should be culturally appropriate; that is, they should take into account traditional preventive care, healing practices and medicines. States should provide resources for Indigenous Peoples to design, deliver and control such services so that they can enjoy the highest attainable standard of physical and mental health[87]. The CESCR has also highlighted the importance of "the participation of the population in all health-related decision-making at the community, national and international levels"[88].

Thus, in terms of its particular obligations towards Indigenous Peoples, the State has failed in a number of ways, notably in its duty to provide resources to enable Indigenous Peoples to establish, organize and control adequate, culturally appropriate health services[89]. For example, in Cuninico, there were plans to set up telemedicine services in a community health unit, without considering whether this service was culturally appropriate for the community. Moreover, the communities of Cuninico and Espinar have not participated in the design and implementation of the health plans or measures adopted for their communities.

[86] Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000): The Right to the Highest Attainable Standard of Health, Article 12 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/2000/4, CESCR, 11 August 2000, para. 27.

[87] Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000): The Right to the Highest Attainable Standard of Health, Article 12 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/2000/4, CESCR, 11 August 2000, para. 27.

[88] Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000): The Right to the Highest Attainable Standard of Health, Article 12 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/2000/4, CESCR, 11 August 2000, para. 11

[89] Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000): The Right to the Highest Attainable Standard of Health, Article 12 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/2000/4, CESCR, 11 August 2000, para. 27.

CONCLUSIONS AND RECOMMENDATIONS

> **"The Ministry of Health visits when they know that lawyers are coming here, but they don't come other than that to see how we are."**
>
> Conny Llerena Trujillo, Indigenous Native community of Cuninico

The Indigenous Native community of Cuninico and the Indigenous peasant communities of Espinar have urgent health needs that the State has so far not met. Meanwhile the communities continue to be exposed to heavy metals and other chemicals and their only sources of water remain contaminated.

The State has an obligation to adopt measures to meet the urgent health needs of the Indigenous Native community of Cuninico and of the Indigenous peasant communities of Alto Huarca, Cala Cala, Huisa, Huisa Collana, Alto Huancané and Bajo Huancané; an obligation it has so far failed to fulfil.

The Peruvian authorities must immediately implement urgent measures to guarantee the right to health of the communities of Cuninico and Espinar.

AMNESTY INTERNATIONAL CALLS ON

THE PERUVIAN GOVERNMENT (INCLUDING THE RELEVANT GOVERNMENT BODIES AT NATIONAL, REGIONAL AND MUNICIPAL LEVELS) TO

- Design and implement, in a coordinated manner, Emergency Health Plans to address the effects of exposure to heavy metals and other chemical substances in Cuninico and Espinar. These plans should be developed, implemented and monitored with the participation of experts in harmful metals and representatives of the affected communities, and should also include specific strategies for communication with and accountability to the communities of Cuninico and Espinar.

- Ensure that the Indigenous Native community of Cuninico and the Indigenous peasant communities of Espinar have access to the health services they need, including the full operation of existing health facilities, ensuring they are staffed by personnel trained in and capable of

providing diagnoses and health care to people exposed to heavy metals and other chemical substances, in accordance with national Clinical Guidelines and international standards. Information on health issues and health services and goods must be accessible, acceptable and of good quality.

- Ensure that the Indigenous Native community of Cuninico and the Indigenous peasant communities of Espinar have access to sufficient, secure, acceptable, physically accessible and affordable water for personal and domestic use and adequate sanitation. .

- Carry out an investigation in order to identify and make public the cause of the contamination of the water sources in the communities of Cuninico and Espinar, with a view to bringing it under control. In the interim, the State should take urgent action to ensure that the communities do not have to rely on contaminated water sources that put their health at greater risk.

- Finalize and make public the results of the study commissioned to the IPEN on the cause of the presence of metals found in the water in Espinar. These results should be shared with the Indigenous peasant communities in Espinar in an accessible format.

- Ensure that the CENSOPAS has the necessary capacity and infrastructure to conduct regular evaluations of the exposure of the communities of Cuninico and Espinar to heavy metals and other chemical substances.

- Ensure that the right to informed consent is respected when people are tested for exposure to heavy metals and other health problems, and that the test results are processed and shared within an appropriate timeframe agreed with the communities involved.

- Comply fully with the precautionary measure ordered by Nauta Local Court I in favour of the Indigenous Native communities of Cuninico, San Francisco, Nueva Esperanza and Nueva Santa Rosa.

- Implement health promotion and awareness-raising campaigns specialized in the prevention and mitigation of the risks associated with exposure to and poisoning by heavy metals and other chemical substances, focusing particularly on Cuninico and Espinar.

THE OFFICE OF THE OMBUDSMAN TO

- Monitor the State's response to the health situation of the Indigenous Native community of Cuninico and Indigenous peasant communities in Espinar set out in this document, and issue a report on the implementation of measures to meet the State's obligations towards the affected Indigenous communities in matters of health.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS TO

- Monitor the implementation by the Peruvian State of the recommendations of the report *Pueblos Indígenas, comunidades afrodescendientes y recursos naturales: protección de derechos humanos en el contexto de actividades de extracción, explotación y desarrollo* (Indigenous Peoples, Afro-descendant communities and natural resources: protecting human rights in the context of mining, exploitation and development).

APPENDIX I

In January 2015, the leaders of the Indigenous Native communities of Cuninico, Nueva Esperanza, Nueva Santa Rosa and San Francisco filed a complaint before the Constitutional Court alleging that various state agencies had breached a number of norms. The claims relating to health issues are set out in the table below:

INSTITUTION (RESPONDENT)	ALLEGED BREACH	REGULATION ALLEGEDLY CONTRAVENED
MINISTRY OF HEALTH	Failure to implement an emergency system to address the health needs of people exposed to the oil spill in the Indigenous Native community of Cuninico and other nearby affected communities, despite the fact that they should have prioritized providing specialist medical care for children and pregnant women to ensure their immediate recovery.	Articles 103, 105, 106 and 123 of the General Law on Health (Law No. 26842), Article 5, paragraph 7) Organic Law of the Ministry of Health, Law No. 27657; Article 55 (d), and Article 57 (b) of the Regulation on the Organization and Functions of the Ministry of Health, approved by Supreme Decree No. 023-2005-SA; and Articles 5, 6 and 7 of Legislative Decree No. 1156 and its Regulation, approved by Supreme Decree 001-2014-SA.
DIGESA (GENERAL DIRECTORATE FOR ENVIRONMENTAL HEALTH AND FOOD SAFETY)	Failure to carry out daily monitoring of water in sources contaminated by the oil spill in Cuninico; failure to provide safe drinking water and food to all affected communities, until such time as it was safe to drink water from the river; and failure to develop an environmental and health care and epidemiological monitoring programme during the period the environmental emergency was declared.	Points 2 and 3 of Annex 4 of the "Procedure for monitoring emergencies", in the "Regulations on the transportation of hydrocarbons by pipeline", approved by Supreme Decree No. 081-2007-EM, Article 6 of the Law Governing the Declaration of Environmental Emergencies (Law No. 28804) and the *"Technical health standards for epidemiological monitoring after (man-made/natural) disasters and other health emergencies in Peru"* (NTS No. 053-MINSA/DGE-V.01), approved by Ministerial Resolution No. 1019-2006 - Ministry of Health, 26 October 2006.
MINISTRY OF HEALTH GENERAL DIRECTORATE FOR EPIDEMIOLOGY	Failure to provide various environmental and health care services and epidemiological monitoring for the Indigenous Native community of Cuninico and other Indigenous communities affected by the oil spill.	Article 6 of the Law Governing the Declaration of Environmental Emergencies (Law No. 28804) and the *"Technical health standards for epidemiological monitoring after (man-made/natural) disasters and other health emergencies in Peru"* (NTS No. 053-MINSA/DGE-V.01), approved by Ministerial Resolution No. 1019-2006 - Ministry of Health, 26 October 2006.
LORETO REGIONAL GOVERNMENT	Failure to comply with the obligations of regional governments in cases of emergency and with the obligation of the State to prevent violations of the right to health at the regional level.	Article 14 of Law No. 29664, which created the National System of Disaster Risk Management, Articles 11, 31, 32, 33 and 34 of the Regulation of Law No. 29664, approved by Supreme Decree. No. 048-2011-PCM and Article 49 of the Organic Law on Regional Governments, Law No. 27867.

APPENDIX II

In May 2015, ADEPAMI and other plaintiffs[90] from Espinar filed a complaint for constitutional compliance against various State bodies, stating in their pleadings that these bodies had failed to comply with a number of regulatory provisions. Their health-realted demands are listed in the following table:

INSTITUTION (RESPONDENT)	ALLEGED BREACH	REGULATION ALLEGEDLY CONTRAVENED
MINISTRY OF HEALTH	For not declaring a health emergency and for not having implemented an emergency system aimed at providing healthcare to those exposed to above-permissible levels of heavy metals, despite the fact that they should have prioritized specialist medical care for children, pregnant women and the elderly, in order to ensure their rapid recovery.	Article 6 and following of Legislative Decree No 1156, Articles 103, 105, 106 and 123 of the General Health Law (Law No 26842), Article 5(7) of the Organic Law on the Ministry of Health, Law No 27657; Article 48(d) and 50 of the Regulation on the Organization and Functioning of the Ministry of Health, approved by Supreme Decree No 023-2005-SA; and Articles 5, 6 and 7 of Legislative Decree No 1156 and its Regulations approved by S.D. 001-2014-SA, Articles 3, 5, 6,7 (item j) and 14 of Legislative Decree No 1161, approving the Law on the Organization and Functioning of the Ministry of Health. In addition, for failing to comply with its first and final additional provisions and the single additional amending provision.
DIGESA	For not fulfilling, through its Basic Sanitation Department, its responsibility to monitor the quality of water and sanitation systems in order to protect the health of the population. For not monitoring the quality of water, air and soil resources in order to identify the risks to public health through its Department for Ecology and Environmental Protection. For not monitoring the activities of agents that can affect environmental quality in order to protect human health, in the context of the health sector's responsibilities, through its Department for Ecology and Environmental Protection. For not supervising compliance with health standards and regulations as regards ecology and environmental protection, in coordination with the health departments, the health sector bodies and other related sectors, through the Department for Ecology and Environmental Protection. For not designing or implementing the spillage registration and control system in terms of impact on the receiving water body; nor for implementing the registration and control of insecticides and disinfectants for domestic and industrial use and in public health. For not assessing the environmental risks or verifying compliance with environmental quality standards for health protection, through its Department for Ecology and Environmental Protection.	Articles 6, 7, 8, 9, 15, 16, 35 S.D. No 031-2010-SA, approving Regulations on the Quality of Water for Human Consumption and their first transitional provision, Articles 48 and 50 of the Regulation on the Organization and Functioning of the Ministry of Health, approved by S.D. No 023-2005-MINSA; Ministerial Resolution No 258-2011/MINSA, approving the National Environmental Health Policy 2011 – 2020.

[90] Los directivos de la comunidad de Huisa, del Comité de Usuarios de Agua de Qquetara, del Frente de Defensa de Regantes de la Microcuenca Ccañipia-Espinar, Federación Unificada de Campesinos de Espinar –FUCAE.

INSTITUTION (RESPONDENT)	ALLEGED BREACH	REGULATION ALLEGEDLY CONTRAVENED
MINSA'S GENERAL DIRECTORATE OF EPIDEMIOLOGY	For failing to adopt a programme of environmental care, healthcare and epidemiological surveillance for the duration of the emergency declaration, with the participation of the social organizations affected by the emergency, on behalf of the affected Indigenous peasant communities.	Article 6 of the Law on Environmental Emergency Declarations (Law No 28804) and the "Technical Health Regulation for epidemiological surveillance following (natural/man-made) disasters and other health emergencies (EPIDES) in Peru" (NTS No 053-MINSA/DGE-V.01), approved by means of Ministerial Resolution No 1019-2006-MINSA on 26 October 2006; Articles 17 and 18 of the Regulation on the Quality of Water for Human Consumption, approved by S.D. No 031-2010-SA.
MINSA'S GENERAL DIRECTORATE FOR PUBLIC HEALTH	For not implementing the tasks of the General Directorate for Public Health as the regulatory technical body in processes related to comprehensive care, health services, quality, sanitation management and mental health activities; one of these tasks is to establish standards, and implement and evaluate the development of national health strategies that are within its scope, as well as the programmes for each life stage of public health in the context of decentralization. For not implementing the National Health Strategy for Care of People Affected by Contamination with Heavy Metals and other Chemical Substances.	Article 41 of the Regulation on the Organization and Functioning of the Ministry of Health, approved by S.D. No 023-2005-MINSA; Practical Clinical Guide for Diagnosis and Treatment of Arsenic Poisoning – approved by Ministerial Resolution No 389-2011/MINSA– and the Practical Clinical Guide for Managing Patients with Lead Poisoning –approved by Ministerial Resolution No 511-2011/MINSA; Practical Clinical Guide for Diagnosis and Treatment of Mercury Poisoning and Practical Clinical Guide for Diagnosis and Treatment of Cadmium Poisoning –both approved by Ministerial Resolution No 757-2013/MINSA–, Ministerial Resolution No 425-2008-MINSA.
NATIONAL CENTRE FOR OCCUPATIONAL HEALTH AND ENVIRONMENTAL HEALTH PROTECTION (CENSOPAS)	For failing to comply with its Organization and Functions Manual - INS; for failing to comply with its guidelines for the presentation, approval, implementation, monitoring and completion of planned observational research/National Health Institute-Lima, Ministry of Health.	Director's Resolution of the National Health Institute No 337-2014-J-OPE/INS, dated 17 November 2014, No 157-2010-J-OPE/INS; Regulation of the Institutional Research Ethics Committee of the National Health Institute approved by Director's Resolution No 245-2012-J-OPE/INS, items 7.3.3, 7.3.4 and 7.4.1 of the Procedure for registering, receiving and distributing biological samples and material from the national public health centre, of the National Health Institute, approved by Director's Resolution No 400-2001-J-OPD/INS.
DIRESA CUSCO	For failing to comply with the obligations of Regional Governments in emergency situations, and with the State's duty to prevent violations of the right to health at regional level; for failing to comply with the activities established in the "Local Plan for Comprehensive Health Intervention for Espinar Province in the Contamination due to Exposure to Heavy Metals and Other Chemical Substances 2013-2014".	Article 14 of Law No 29664, creating the National Disaster Risk Management System, Articles 11, 31 32, 33 and 34 of the Regulations governing Law No 29664, approved via S.D. No 048-2011-PCM and Article 49 of the Organic Law of Regional Governments, Law No 27867.
CUSCO REGIONAL GOVERNMENT	For failing to provide the funds necessary to undertake the planned activities envisaged in the results-based budgeting application for the "Local Comprehensive Health Intervention Plan for Espinar Province in the Contamination due to Exposure to Heavy Metals and Other Chemical Substances 2013-2014".	"Local Comprehensive Health Intervention Plan for Espinar Province in the Contamination due to Exposure to Heavy Metals and Other Chemical Substances 2013-2014", Law No 28411, the National State Budget System, Law on Fiscal Accountability and Transparency - Law No 27245, amended by Law No 27958.

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