

PERU

The Census of Indigenous Communities, carried out in 1,786 Amazonian communities during 2007, gathered information on 51 of the 60 ethnic groups existing in the forests. Nine of them were not recorded “because some ethnic groups no longer form communities, having been absorbed into other peoples; in addition, there are ethnic groups which, given their situation of isolation, are very difficult to reach”.¹ An Amazonian indigenous population of 332,975 inhabitants was recorded, mostly belonging to the Asháninka (26.6%) and Awajún (16.6%) peoples. 47.5 % of the indigenous population is under 15 years of age, and 46.5% has no health insurance. 19.4% stated that they were unable to read or write but, in the case of women, this rose to 28.1%, out of a population in which only 47.3% of those over 15 have received any kind of primary education. In addition, the Census noted that 3,360,331 people spoke the Quechua language and 443,248 the Aymara,² indigenous languages predominant in the coastal-Andes region of Peru.

Peru has ratified ILO Convention 169 on Indigenous and Tribal Peoples and has voted in favour of the UN Declaration on the Rights of Indigenous Peoples

The first months of 2011 were marked by presidential elections. Ollanta Humala took over office from Alan García in late July after being successfully elected, having amended his plans for the “Great Transformation” into the less ambitious “Road Map”, which perpetuates the economic model of his predecessor.

In just five months, two very different sides to the new government have become apparent. The current cabinet’s direction has been described as a “complete U turn to the right” and “authoritarian”. The economist Óscar Ugarteche considered it a “political massacre”³ when on 9 December, the left-wing bureaucrats that had headed some ministries and public bodies since July were removed from post following the political crisis created by the Conga mining project.



Right to consultation and consent

In August, the new Congress unanimously approved Law 29785 on Prior Consultation of Indigenous Peoples. Ollanta Humala promulgated this law in Im-

azita, Bagua, and it was published on 7 September in the Official Journal *El Peruano*.⁴ Although the Law was welcomed by different indigenous and social sectors, it was also criticised for failing to observe a number of international standards. One observation is that it does not specify when free, prior and informed consent must be obtained and, to all intents and purposes, the final decision in this regard falls to the relevant state body.

A Multisectoral Commission made up of 18 vice-ministers and six indigenous representatives has been given responsibility for drafting the law's implementing regulations. It is chaired by the head of the Conflicts Unit of the Presidency of the Council of Ministers. The Vice-ministry for Interculturality, under the direction of Iván Lanegra Quispe, holds the Technical Secretariat.

On 22 November, during the establishment of this commission, the government distributed draft regulations. As agreed with the indigenous organisations, six macro-regional and one national meeting are planned for January 2012 in order to collate comments.

Minimum non-negotiable principles

2011 saw the consolidation of the Unity Pact, made up of five indigenous and peasant organisations: *Asociación Interétnica de Desarrollo de la Selva Peruana* (Aidesep), *Confederación Campesina del Perú* (CCP), *Confederación Nacional Agraria* (CNA), *Confederación Nacional de Comunidades Afectadas por la Minería* (Conacami) and the *Organización Nacional de Mujeres Indígenas Andinas y Amazónicas del Perú* (Onamiap). These five organisations, along with the *Confederación de Nacionalidades Amazónicas del Perú* (Conap), are all members of the Multisectoral Commission. The *Unión de Comunidades Aymaras* (UNCA) was not invited to join, despite being a valid and dynamic organisation with a long history.

The Unity Pact published the document *Minimum non-negotiable principles for the application of rights to participation, prior consultation and free, prior and informed consent*⁵ with a view to the discussions on the implementing regulations. The text was written by Raquel Yrigoyen Fajardo, a specialist in legal pluralism and one of the first people to state that the Law on Prior Consultation had to be interpreted in line with international standards (ILO Convention 169, the UN

Declaration on the Rights of Indigenous Peoples and the doctrine and case history of the Inter-American Commission and Court of Human Rights).

In September, Yrigoyen Fajardo briefly took over as head of the National Institute for Andean, Amazonian and Afro-Peruvian Peoples' Development (Indepa), leading indigenous people to place some trust in the state; there was even talk of a "radical reform of state/indigenous peoples' relations". However she was later removed from post without any reasonable explanation, despite having initiated some intense activity with the indigenous organisations. Her last action was to overrule a report issued at the start of the year giving Pluspetrol (Camisea Consortium) the go-ahead to expand its exploratory work on the Kugapakori Nahu Nanti territorial reserve⁶ for indigenous peoples in voluntary isolation and initial contact.

Indepa is the public body responsible for promoting the indigenous agenda but, during Alan García's government, it lost much of its functional autonomy and transectoral nature.⁷ It was finally absorbed into the recently-created Ministry of Culture (Mincu) as one of its Implementation Units by Law 29565 of 22 July 2010.

The Unity Pact is demanding the reinstatement of Indepa's tasks and responsibilities as stipulated in the law that created it, and the recovery of its autonomy and ministerial rank. This issue is an outstanding debt on the part of the state given that successive governments have proved incapable of creating a public institutional structure able to deal appropriately with indigenous issues.

Mining vs. communities

Conflicts over concessions granted to the extraction industry on indigenous peoples' and communities' territories and in natural protected areas were the focus of the country's social agenda last year. The environmental impacts have led many communities, indigenous and *mestizo* alike, to protest, forming a sword of Damocles hanging over governments which, on the one hand, want to maintain economic growth on the basis of extractivism but, on the other, cannot control or mitigate the impacts of this activity.

At the start of 2011, President García was juggling 239 different social conflicts, of which 116 were socio-environmental. Despite criticism, he issued emergency decrees 001 and 002 in January deferring the need for environmental

certifications in the process of issuing mining and hydrocarbon infrastructure projects.

Ban Ki-moon, UN Secretary-General, arrived in the country amidst the controversy surrounding the decrees and expressed his concern for indigenous peoples' right of participation and consultation throughout the whole region. Nine months later, both decrees were declared unconstitutional by the Constitutional Court.

Another important setback for Alan García's government was having to declare the EIA from the Tía María open pit mining project (Islay, Arequipa) of the Southern Peru Cooper Corporation inadmissible following a protest on the part of the farmers in relation to concerns that the water volume in the Tambo River would decline and that possible damage would be done to the ecosystem, along with the conclusive report of the United Nations Office for Project Services (UN-OPS), which raised 138 points requiring rectification.

The altiplano region of Puno was also the setting for fierce and massive protests. Aymara from the southern part and Quechua from the north led various protests in defence of their water resources, Lake Titicaca, the environment, the right to consultation, and against contamination of the Ramis River and mining activity. After 21 days of strike action, on 1 June, the government suspended requests for mining concessions for one year in the provinces of Chucuito, Yunguyo, El Collao and Puno. It also declared one of the Aymara's guardian hills as the "Cerro Khapia Landscape Reserve". However, the population's indignation increased following the distribution of two videos in which a supposed police officer can be heard ordering: "Anyone with a slingshot, anyone with a slingshot, kill them, kill them, kill the shits".⁸ On 25 June, Alan García's government was forced to issue further regulations in order to calm the protests.⁹

The Conga Mining project

The Humala government's U-turn to the right took place following the country's most significant social and environmental conflict of the year, the struggle of the Cajamarca people against the Conga Mines megaproject of the Yanacocha Mining Company, the biggest gold mining company in South America, the majority shareholder of which is the Newmont Mining Corp, from the United States, and the Buenaventura Group.¹⁰

Conga Mines is planning to invest US\$ 4,800 million, the largest investment in the country's history, in order to obtain around 9 million ounces of gold over the 19 years of the project's lifecycle.

The social and environmental costs of this project will be enormous as it involves the destruction of four headwater lakes. Two of them - El Perol and Mala – will be drained to extract the gold and the other two - Azul and Chica – will be used to deposit the cleared soil. The open pit mine will affect not the 8,000 people indicated in the environmental impact assessment (EIA) but 100,000 inhabitants of six districts and 697 settlements.¹¹

An internal report on the project's EIA, written by the Ministry for the Environment, admits that the Conga project, as it stands, "will significantly and irreversibly transform the basin headwaters, leading to the disappearance of various ecosystems and fragmenting the remainder in such a way that environmental processes, functions, interactions and services will be irreversibly affected". Moreover, "the assessment of the wetlands (high Andean lakes, wetlands) failed to take sufficient account of the fragility of the ecosystem that would be affected".¹²

The rural population of Cajamarca, organised into traditional peasant militia groups and coordinated in environmental defence fronts, are not prepared to give up their water, a scarce resource in other areas of Cajamarca where Yanacocha has undertaken operations in the last 20 years. They are therefore suspicious of and have rejected the four reservoirs which the company claim would store more than twice the amount of water of the lakes in question and provide year-round availability to cover the needs of farmers who currently suffer from an unreliable supply in times of drought.

In September 2011, the population of Cajamarca poured onto the streets in a mass protest of tens of thousands of people in defence of water and the environment, headed by the Regional President, Gregorio Santos, and other social leaders.

The breaking point in the conflict came, however, when President Ollanta Humala openly pronounced himself in favour of the project, stating that: "Conga will go ahead". In an attempt to reconcile the opposing positions, he said, "Let me show you that it is possible to have both gold and water at the same time", asking Yanacocha for not "concrete reservoirs" but "cutting edge artificial lakes".

An indefinite regional strike commenced on 24 November but was stifled after 11 days by a declaration of a state of emergency in four provinces of Cajamarca and their occupation by army troops. In an unusual attempt to put pressure on the

region, the central government blocked the regional government's bank accounts. The members of the Unity Pact called on the Inter-American Commission on Human Rights (IACtHR) to grant relief measures with regard to the state of emergency and the arrests of leaders.

Faced with national and international reaction at its repressive measures, the government lifted the state of emergency on 16 December in the midst of a ministerial crisis. Gregorio Salas issued a regional ordinance¹³ declaring the Conga project unviable but, at the end of the year, the government lodged an appeal claiming that this ordinance was unconstitutional.

The struggle continues

Conflicts between mining and agriculture also affected the peasant communities of the provinces of Andahuaylas and Chincheros (Apurímac), who in October called for mining exclusion zones to be declared. After strikes and protests, the conflict died down following the ministerial resolution of 2 December, which establishes a "Sectoral Working Committee".

Conacami held the National Peoples' Forum in Arequipa at which the *Misti Declaration* was signed, including the innovative agreement to establish a Truth Commission on Mining and other extractive industries.¹⁴ This request, however, has still not been acted upon.

The "struggle for water" lies at the root of these conflicts and was this year raised by the indigenous peoples as a banner in defence of their rights. This conflict will continue throughout 2012. At the time of going to press, the Great National March for Water had been announced from Cajamarca to Lima, a ten-day route picking up people from other regions along the way.

Peruvian Amazon

For the very first time, the Congress of the Republic has an indigenous representative from an Amazonian ethnic group. His name is Eduardo Nayap Kinin, from the Awajún people, and he supports the government's parliamentary group. Nayap had to fight to avoid his election being over-ruled for supposed electoral fraud. Under his auspices, it has been possible to get the Peoples' Commission to hold a decentralised hearing in his department, Amazonas, and for an agree-

ment to be reached to investigate the case of the Afrodita mining company, whose presence in the Condor Mountains has led to conflict with the indigenous peoples as the areas it has been granted have been carved out of the territory of the Ichigkat Muja National Park, on the border with Ecuador (see *the Indigenous World 2010*).

Aidesep denounced an agreement between Afrodita and the Sixth Reserves of the Peruvian Army to provide medical care, energy and the payment of PEN 20,000 a month to the military in exchange for transport, security and communication.¹⁵

One visible case of criminalisation was the arrest warrant issued for the Awa-jún Wampís leader, Zebelio Kayap Jempekit, president of the *Organización de Desarrollo de los Pueblos Fronterizos del Cenepa* (Odecofroc), for detaining workers from Afrodita when they entered the Cenepa communities (January 2009). The warrant was lifted at the end of the year.

Law 29760 declaring the diversion of the Marañón River,¹⁶ a tributary of the Amazon, to be in the national interest, along with the damming and diversion of the Huallaga River for hydro-electrical and farming purposes, was cancelled in October after indigenous and *mestizo* protests in Loreto and San Martín. Complaints regarding contamination of the Malinowski, Inambari, Tambopata and Madre de Dios rivers by illegal mining forced the government to remove around 100 dredger rafts, *carrancheras* and *chupadoras* (boats equipped with various suction mechanisms to retrieve the gold) by means of operation Aurum 1.

The Peru-Brazil energy agreement (see *the Indigenous World 2011*) was signed without any discussion in the Congress of the Republic. The problem was raised by environmental NGOs who emphasised the impacts that would ensue from the construction of the various dams. The *Central Asháninka del Río Ene* (CARE) launched an activity entitled "Asháninka October" to demonstrate the meaning of *Kametza Asaika* (Asháninka Good Living) and to illustrate the incompatibility between their development vision and the displacement that would be forced on them should the Tambo 40 and Paquitzapango hydroelectric power station megaproject go ahead. At the end of November, the Brazilian company Odebrecht announced it would be withdrawing from the Tambo 40 concession. The strong indigenous opposition to the Tambo 60, Mainique 1 and Paquitzapango projects has led to concern among other Brazilian construction companies such as Electrobrás, Andrade Gutierrez and Engevix. There is speculation that they could also abandon these projects. The Inambari dam project also led to

negotiations between various regional leaders and the government in an attempt to reverse the concession granted in Amazonas Sur.¹⁷

In terms of the indigenous organisations, the Asháninka leader, Miqueas Mishari Mofaf, founder and former president of AIDESEP, passed away on 30 March from complications caused by severe anaemia. He was much loved and respected by the grassroots. In December, the organisation's Congress re-elected Segundo Pizango Chota, from the Shawi people, as its president for a third term.

Prospects for 2012

The conflicts inherited from the previous government have not been resolved and are continuing, albeit most of them in a latent rather than an active manner. The lack of agreement between the state and indigenous peoples with regard to applying the Law on Prior Consultation in line with international standards, as demanded by the organisations, may undermine the path to social inclusion and rights and could lead to renewed confrontation between an increasingly authoritarian government and the indigenous peoples, whose legitimate expectations with regard to this law may be frustrated.



Notes and references

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- 3 **Óscar Ugarteche, 2011:** "Ser elegido con la izquierda para gobernar con la derecha". In ALAI, 19 December 2011: <http://alainet.org/active/51685>
- 4 See: <http://www.congreso.gob.pe/ntley/Imagenes/Leyes/29785.pdf>
- 5 See: <http://servindi.org/pdf/ComunicadoPactodeunidad2.pdf>
- 6 An Indepa official improperly handed the report to the Ministry of Energy and Mines so that it could conduct the expansion studies for the Exploration and Development Plan in San Martín Este Lote 88.
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- 8 "Enfrentamiento en el aeropuerto de Juliaca": http://www.youtube.com/watch?v=1PSs73X70aY&feature=player_embedded#at=95 and "Masacre policial de DINOES in Juliaca No. 2": <http://www.youtube.com/watch?v=lkRgBFZpPcs&feature=related> 9 Supreme Resolutions 161-2011-

- PCM and 162-2011-PCM; Supreme Decrees D.S. 032-2011-EM, D.S. 033-2011-EM, D.S. 034-2011-EM, D.S. 035-2011-EM and Emergency Decree 028-2011.
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- 12 **Gorriti, Gustavo, 2011:** "De lagunas a desmontes". In *IDL-Reporteros*, 25 November 2011: <http://idl-reporteros.pe/2011/11/25/de-lagunas-a-desmontes/>
- 13 See: http://ia600803.us.archive.org/33/items/OrdenanzaRegionalDeCajamarcaSobreConga/Ordenanza Regional_Cajamarca.pdf
- 14 *Misti Declaration*, in: <http://servindi.org/actualidad/51634>
- 15 Aidesep submitted the complaint in April which was picked up in: <http://www.aidesep.org.pe/index.php?codnota=2001> and http://www.rpp.com.pe/2011-04-28-denuncian-que-minera-contrato-a-ejercito-peruano-en-bagua-noticia_360136.html See norm at: <http://www.congreso.gob.pe/ntley/Imagenes/Leyes/29760.pdf>
- 16 See norm at: <http://www.congreso.gob.pe/ntley/Imagenes/Leyes/29760.pdf>
- 17 Ministerial Resolution 265-2011-MEM/DM, dated 13/06/2011, declaring the temporary concession in favour of Empresa de Generación Eléctrica Amazonas Sur SAC concluded and extinguished.

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