

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 voted in favour of the UN Declaration on the Rights of Indigenous Peoples.

The regional and local elections

The regional and local elections of 5 October set the annual agenda and the electoral campaigns were riddled with social and environmental conflict. Most noteworthy was the case of Cajamarca where Gregorio Santos, leader of the Movement for Social Affirmation (*Movimiento de Afirmación Social / MAS*) was re-elected at the first round with 44.27% of the vote, despite being on remand in prison for the duration of the campaign. The population of Cajamarca has been bitterly divided over the Conga mining megaproject and analysts put his triumph down to the rural vote, which supported his opposition to this project.

In contrast to Cajamarca, where opposition to mining won the day, Luis Otis Salazar, President of the Madre de Dios Mining Federation (*Federación Minera de Madre de Dios*) triumphed in the Amazonian region of Madre de Dios. According to reports, this professional association not only includes miners wishing to be involved in the formalisation process commenced by the government but also illegal miners working with banned machinery and in areas of high environmental impact. Both informal and illegal forms of mining will undoubtedly continue to wreak havoc as they expand across the country. In Madre de Dios alone, 40,000 hectares of forest have been destroyed by illegal mining.

The controversial Tía María mining project is located in Arequipa region. This is a project which the Southern Cooper company has, since 2010, been attempting to implement with an investment of USD 1,400 million. The young newly-elected regional president, Yamila Osorio, has expressed an interest in establishing a dialogue between the Ministry of Energy and Mines and the local population with regard to this project, which has been rejected by sectors of the population.

In Puno, Juan Luque Mamani, regional president elect, has stated his support for the Santa Ana mining project, situated on the border with Bolivia, despite the fact that opposition to this project resulted in the so-called “Aymarazo”, a serious social conflict that paralysed the initiative in 2011 at the end of Alan García’s term in office. Luque has also given his backing to the formalisation of artisanal mining, an activity that has resulted in the deaths of more than 50,000 head of cattle in Puno over the last two years.

The southern region of Tacna also appears, like other regions, to be greatly affected by large-scale mining due to Southern Cooper’s licence to use 1,950 litres of water per second in the Tacna region, despite the region’s water capacity being only 400 litres per second, thus seriously exacerbating the water shortage. The new regional president, Omar Jiménez, is not standing firm in defending the interests of the local population and says it is the central government’s responsibility for having drafted the contract signed with the company.

Pollution without compensation

One of the most serious ways in which this affects the lives and environment of indigenous communities is through the pollution of four Amazonian basins: the Tigre, Corrientes, Pastaza and Marañón. The year came and went without the



state making any progress in cleaning up and compensating the affected populations. The *apus* or traditional chiefs of the four basins' representative indigenous federations³ actively denounced the state's failure to address their most pressing demands, such as the formation of an emergency fund and the appointment of a public body responsible for resolving urgent issues and preventing, for example, the population from continuing to ingest water contaminated with heavy metals and petroleum by-products.

A report by the Environmental Oversight and Evaluation Body (*Organismo de Evaluación y Fiscalización Ambiental / OEFA*) dated 20 October 2014 confirmed the lamentable environmental performance of the company Pluspetrol, which is responsible for the cumulative impact of more than 40 years of oil activity in the four basins. Pluspetrol is accused of failing to clean up the environmental damage left by its predecessor and for spills that have occurred since it commenced its activities more than a decade ago.

The basins are affected by oil concessions 1AB and 8X, this latter situated within the Pacaya Samiria National Park. The concession contract for Plot 1AB, the largest in the country, expires in 2015 and the government intends to expand or resize it to become Plot 192, without having first addressed the request for remediation, titling, indemnity and compensation made as prior conditions by the affected populations.⁴ James Anaya, former UN Special Rapporteur on the rights of indigenous peoples, considered these conditions to be “fair and conducive to a productive consultation process” following his visit to the zone. During the global Climate Change Summit (COP 20), held in Lima in December, two UN rapporteurs - Victoria Tauli-Corpuz, Special Rapporteur on the rights of indigenous peoples and Baskut Tuncak, Special Rapporteur on hazardous substances, jointly signed a communiqué urging Peru to meet its obligation to clean up the contamination and force companies to assume their responsibilities with regard to human rights before granting further concessions and making a dreadful situation worse.⁵

Oil spill in Cuninico

Environmental irresponsibility is not the sole preserve of the private sector. In June the state company, Petroperú, suffered a spillage from its oil pipeline in Cuninico, Urarinas district, Loreto region, directly affecting five communities of the Kukama people. The situation was exacerbated by the use of local inhabitants – some of them children – to clear up the oil, without providing either appropriate clothing or equipment, and without informing them of the risks to their health. By the end of the year, only Cuninico community itself had received water and food.⁶ The Cocama Association for Development and Conservation San Pablo de Tipishca (*Asociación Cocama de Desarrollo y Conservación San Pablo de Tipishca / Acodescopat*) announced in January 2015 that it would be filing a lawsuit against Petroperú to obtain reparations for those affected. Juan Carlos Ruiz Molleda, a

lawyer from the Legal Defence Institute (*Instituto de Defensa Legal / IDL*), states that fishing, the main subsistence activity of the Kukama people, has been affected by the spill and that the government has to compensate and indemnify those affected. The damaged pipeline is more than 40 years old and the state has not yet made it safe.

Murder in Alto Tamaya-Saweto and illegal felling

On 1 September, four Ashéninka leaders from Alto Tamaya-Saweto community in Ucayali region, were murdered by alleged illegal loggers in an area bordering Brazil. They were: Edwin Chota, head of the community, and leaders Jorge Ríos, Leoncio Quinticima and Francisco Pinedo. According to David Salisbury, a geographer and lecturer at the University of Richmond, Virginia, USA, who has advised the community for more than 10 years, Chota had sent more than 100 letters to Peruvian and Brazilian institutions requesting protection and that their demands be addressed. The murders gained significant national and international coverage. The New York Times reminded the Peruvian government – shortly before the start of the UN Climate Summit in Lima in December (COP 20) – that the problem of illegal felling and the serious threats to defenders of the forest would not be resolved by mere statements alone.

The Environmental Investigation Agency (EIA) published an important piece of research in 2012 describing the impunity enjoyed by the illegal felling mafia in Peru.⁷ Alongside this, a World Bank report maintained that trees felled in the Peruvian Amazon were being trafficked and laundered using methods similar to those used by arms and drugs traffickers, resulting in high-level corruption. It concluded that illegal felling is a form of international organised crime that is undermining the rule of law and that it represents a significant threat since it encourages the development of criminal groups.⁸ It stated that up to 80% of the timber exported from Peru, primarily to China and other Asian markets, is illegal and, according to the Loreto regional government, Peru loses USD 250 million every year through illegal felling. Fabiola Muñoz, director of the National Forestry Service (*Servicio Nacional Forestal - SERFOR*), under the Ministry of Agriculture and Irrigation, has stated that drug trafficking corridors are also operating in zones where illegal felling is known to be taking place, and that areas there are also

being sown with coca. The Alto Tamaya-Saweto community itself has complained that drugs traffickers are using illegally felled timber to conceal the drugs trade.⁹

Ollanta Humala's government responded to the situation by creating a High Commissioner for illegal felling, reporting to the Presidency of the Council of Ministers. A retired police general, César Fourment Paredes, was appointed to the post despite having no experience in the extraction and marketing of timber, and despite the fact that he used to work closely with senior police chiefs linked to the sinister Vladimiro Montesinos, former security advisor to ex-president - and now prison inmate - Alberto Fujimori (1990-2000).

At the end of the year, the bombastic promises of the government with regard to the Saweto case remained empty words. The search for the body of Jorge Ríos was halted for lack of funds with which to conduct a specialised search, the communal titling of Saweto is still pending, the investigations into the perpetrators of the crime are at a standstill and the widows and children of the murdered leaders are unable to return to their community for fear of reprisals and a lack of security.

Cajamarca: the unenforced precautionary measure

Following a petition filed by the Unity Pact (*Pacto de Unidad*) on 5 May, the Inter-American Commission on Human Rights (IACHR) granted a precautionary measure in favour of 46 male and female leaders from the communities and peasant patrols of Cajamarca, the Chauper family, the patrolman Luis Mayta and the indigenous communicator César Estrada Chuquillín. The IACHR confirmed the three essential conditions: threat to the life and personal integrity of the beneficiaries in a serious, urgent and irreparable manner. This situation came about as a consequence of their opposition to the Conga mining project. The Peruvian state has failed to enforce the three provisions specified by the IACHR: adopt the measures necessary to guarantee the life and integrity of the beneficiaries; reach agreement with these latter regarding measures to be taken; and provide information on actions aimed at investigating the events that gave rise to the precautionary measure in order to "avoid its repetition". The Supranational Public Prosecutor of the Ministry of Justice and Human Rights¹⁰ argued that it lacked the regulations, staff and funds to deal with the requests for protection made by the beneficiaries, and that a law was needed to regulate compliance with the IACHR's precautionary measures. This was despite the fact that the Vienna Con-

vention on the Law of Treaties provides that the state cannot use deficiencies in its domestic legislation as a pretext for failing to comply with its international obligations, as pointed out by the International Law and Society Institute (*Instituto Internacional Derecho y Sociedad / IIDS*), an association that is advising the beneficiaries.

The indigenous peoples and the Peoples' Summit

The Conference of the Parties to the UN Framework Convention on Climate Change (COP 20), held from 1 to 12 December in Lima, resulted in civil society's organisation of the Peoples' Summit on Climate Change as a parallel event. This summit was organised by a Political Committee made up of 13 national organisations, six of them members of the Unity Pact of Indigenous Organisations of Peru (*Pacto de Unidad de Organizaciones Indígenas del Perú*). The Peoples' Summit promoted the Global March of Peoples in Defence of Mother Earth on 10 December, together with social, union, youth and environmental organisations, and civil society in general.

The Unity Pact held its III National Meeting: "Territory, Climate Change and the Self-Determination of Indigenous Peoples" on 8 and 9 December against the backdrop of the Peoples' Summit and, in the presence of nearly 500 delegates, reaffirmed their identity as native peoples with a right to self-determination. They also reaffirmed their aim of achieving the decolonisation of relations between indigenous peoples, the state and society, moving towards their reconstitution and strengthening as native peoples and fighting for a Plurinational Constitution in which all native peoples can participate as constituent members of a plurinational state that recognises the pre-existence of indigenous peoples and their integral ancestral territory.

The Unity Pact has proposed a National Community Climate Change Adaptation Programme (PRONACC) as an appropriate and realistic alternative for the whole country and, in particular, vulnerable populations. This seeks to make the native communities and peoples the true protagonists of and main state allies in the struggle against climate change. The proposal is the result of proven ecosystemic and social inter-relationships between the high Andean and Amazonian zones, making it necessary to prioritise adaptation measures that address vulnerable populations in an integral manner. PRONACC has two main components:

territorial security and food sovereignty. Territorial security includes the titling and ownership of ancestral lands. Food sovereignty is subdivided into three areas: agricultural and livestock production, fishing and water. It also proposes four basic focal points: law, gender, interculturality and governance.¹¹

For its part, the Inter-ethnic Association for the Development of the Peruvian Forest (*Asociación Interétnica de Desarrollo de la Selva Peruana* - AIDSESP) – outside of the Unity Pact – signed an agreement with the Ministry of Environment (MINAM) to participate in COP 20 through the Indigenous Pavilion and the *maloca* or traditional hut established by the government. AIDSESP and COICA distributed an Amazonian proposal focused on defending the collective rights of indigenous communities and titling indigenous territories. One area of its lobbying involves challenging “extractivist developmentalism” as a strategic driver of deforestation and degradation, highlighting the “Indigenous Full Life Plans” (*Planes de Vida Plena Indígena*) as effective alternatives for mitigation, adaptation and resilience in the face of the climate crisis, and Indigenous REDD+, a variant of the Reducing Emissions from Deforestation and Forest Degradation (REDD+) mechanism that is endeavouring to go beyond carbon and the market to take into account indigenous world visions, rights and proposals.¹²

The pending climate agenda

COP 20 led to and fostered the production of a national climate agenda and one of the outstanding issues in this regard is the discussion and approval of a mutually-agreed and transparent Framework Law on Climate Change. The year came to an end with the publication of a preliminary report by the Commission for Andean, Amazonian and Afro-Peruvian Peoples, Environment and Ecology of the Congress of the Republic (CPAAAEA), which was commented on by some Congressmen/women while awaiting the drafting of a “consensual” version. In addition, although the government presented an updated version of the National Strategy on Climate Change, this was challenged due to its lack of indicators, deadlines, procedures and sources of funding. The government tried to submit a new version during 2014 but the year ended without a strategy having been validated by civil society and formally approved.

Restricting prior consultation

In February, by means of Vice-ministerial Resolution 004-2014-VMI-MC, the Ministry of Culture approved “Guidelines establishing instruments for gathering social information and setting criteria for their application in the context of identifying indigenous and native peoples”.¹³ These guidelines take lifestyle and spiritual and historic links to the territory they traditionally occupy as an objective criterion for identifying indigenous peoples, and add to this other previously established objective criteria of a “concurrent and complementary” nature, such as indigenous and native language and “communal lands recognised by state bodies”.¹⁴ As noted in the report of the Working Group on Indigenous Peoples of the National Coordinating Body of Human Rights (*Coordinadora Nacional de Derechos Humanos*), the state continues to apply a narrow interpretation in its recognition of indigenous peoples, and this diminishes the right to consultation, particularly in the case of the native communities and peoples of the Peruvian coast and Andes. This can be seen in the fact that no consultation process has been conducted on the mining activity being developed primarily in the Andean area. The stated guidelines were approved without any consultation of the indigenous peoples. This is a serious matter if one considers that, in 2014, no progress was made in terms of creating public institutions for indigenous peoples that might provide channels and procedures to ensure their participation in the decision-making processes that affect them.

Threat to the legal security of indigenous territories

One of the state’s great historic debts lies in the lack of progress that has been made in the titling of peasant and native communities in order to strengthen their rights to own and possess the lands they traditionally occupy. In June, the Ombudsman published a report: “*Análisis de la política pública sobre reconocimiento y titulación de las comunidades campesinas y nativas*”¹⁵ (Analysis of Public Policy on Recognition and Titling of Peasant and Native Community Lands) in which it warns of a lack of budget with which to implement titling processes and the absence of guidelines with which to resolve controversies arising from the superimposition of rights. Adding fuel to the fire, the following month the government ex-

pedited Law 30230, known as the Law on Environmental Policies because it comprises different measures (fiscal, environmental, etc.) The regulation was initially rejected because it weakened OEFA's powers of environmental evaluation and supervision. However, as people began to analyse its different articles, its real threat became clear. The Safe Territories Collective for Peru's Communities (*Colectivo Territorios Seguros para las Comunidades del Perú*), the Platform for Territorial Planning (*Plataforma de Ordenamiento Territorial*), the Muqui Network (*Red Muqui*) and the Responsible Land Governance Platform (*Plataforma Gobernanza Responsable de la Tierra*) all denounced the fact that it was an attack on the peasant and native communities' right to private property and on the country's territorial organisation and because it "places more than 8,000 peasant and indigenous communities in a vulnerable situation".

Section III of this law allows the state, by means of "special procedures", to hand land over to investment projects, wherever and in whatever quantity they require, regardless of the owners' property rights. The organisations also warned that all lands, whether private or state, and whether or not supported by regularised titles or certificates of ownership, would be subject to special procedures, with no exception whatsoever. The Unity Pact denounced the fact that Law 30240 distorts the aim of regularisation by granting priority ownership to business interests over and above the ancestral rights of the native peoples. The regulation extends the area affected to the benefit of investment interests and leaves it at the discretion of the state and private companies to identify and decide what areas or plots are needed for the implementation of their projects and which therefore need to be "regularised".

In addition, the indigenous organisations of the Unity Pact and AIDSESEP have stated their concern that the Inter-American Development Bank's Titling and Registration of Lands Project (PTRT- Phase 3), to be implemented from 2015 on, will focus on individual ownership rather than communal titling, disappointing the communities yet again. According to information gathered from the project, which is the responsibility of the Department for Regularisation of Agricultural Property and Rural Cadastre of the Ministry of Agriculture and Irrigation (MINAGRI), the aim is to formalise 441,000 individual plots and only 190 Amazonian indigenous communities when, according to AIDSESEP, the regularisation of some 20 million hectares of land for 1,124 Amazonian communities is pending. Of these, 294 are demanding their recognition, 613 their titling and 262 their expansion. According to the Institute of the Common Good (*Instituto del Bien Común* - IBC) data from

the Ministry of Housing suggests that there are some 934 native communities on the coast and in the Andes awaiting titling.

Indigenous peoples in isolation and initial contact

There was a continued failure to protect the indigenous peoples in voluntary isolation and initial contact throughout 2014, despite sightings reported primarily in Madre de Dios. As of September, at least four sightings had been recorded, according to the Vice-Minister for Interculturality, Patricia Balbuena. The most critical event occurred in December when a group of around 200 indigenous Mascho Piro entered the community of Monte Salvado, Tambopata province, in Madre de Dios. The state agency, Perupetro, interested in submitting a tender for Plot 187 in this region, had denied the existence of peoples in isolation in this area. Hydrocarbon activity is not the only danger for these peoples, however. In addition to reports of package holidays offered by some tourist agencies that include contact with peoples in isolation in areas such as Yanayacu, in the Upper Madre de Dios, Manu province, the anthropologist Beatriz Huertas has warned of the presence of drug trafficking, something very few people are willing to talk about.

This lack of protection is a continuing state of affairs given that, at the start of 2014, the Vice-Ministry of Interculturality considered that the observations regarding the extension of Plot 88 in Camisea within the Kugapakori, Nahua, Nanti and Others Territorial Reserve (RTKNN) had been addressed, despite a lack of up-to-date and relevant information on the health situation of vulnerable populations in the area of impact. Such is the case of the important Analysis of Intercultural Health (ASIS) of the Nanti People of Alto Camisea, produced in 2013 but which was only published in November 2014 due to difficulties in its production. According to the association Law, Environment and Natural Resources (*Derecho, Ambiente y Recursos Naturales* / DAR), inputs of this kind should be provided with all necessary support to ensure their publication and presentation before any activity is approved within the RTKNN.

Juan Carlos Ruiz Molleda has suggested that the four-stage strategy posited is really an intention to wind up the RTKNN in order to expand extractive activities in Plot 88. The four-stage strategy consists of: providing identity documents and promoting their self-recognition as Matsigenka; recruiting linked indigenous organisations; registering and titling the communities in the area of the reserve;

and, finally, incorporating the peoples in isolation into focused poverty reduction programmes. Ruiz Molleda believes this is the intention lying “behind a set of apparently isolated measures”, as set out in “*La batalla por los Nanti. Intereses y discursos superpuestos a favor de la extinción de la Reserva Territorial Kugapakori Nahua Nanti y otros*” (The battle for the Nanti. Superimposed interests and rhetoric in favour of extinguishing the Kugapakori Nahua Nanti and Others Territorial Reserve), published by Perú Equidad and IWGIA.¹⁶

In conclusion, a concern to prioritise extractive activities over and above defending the lives of peoples in isolation explains the state’s lack of interest in implementing the framework of protection contained in Law No 28736. The five existing territorial reserves do not have Protection Plans but President Ollanta and some of his ministers have been happy to project a social welfare image by personally delivering plastic cradles and nappies to the Nanti of Camisea, where chronic malnutrition affects 67.3% of children under five, five times the national average; acute malnutrition is double the national average. ○

Notes and references

- 1 National Institute of Statistics and information (INEI), 2009: Definitive results on indigenous communities. National Census 2007: XI on Population and VI on Housing, Lima, January 2009, p. 7
- 2 Ibid, Book 1, p. 563.
- 3 The indigenous federations are: the *Asociación Coca de Desarrollo y Conservación San Pablo de Tipishca* (ACODECOSPAT) of the Marañón River basin, the *Federación de Comunidades Nativas del Corrientes* (FECONACO), the *Federación de Comunidades Nativas del Alto Tigre* (FECONAT) and the *Federación Indígena Quechua del Pastaza* (FEDIQUEP). These four federations form the *Pueblos Indígenas Amazónicos Unidos en defensa de sus Territorios* (PUINAMUDT) platform and are conducting active monitoring and reporting of oil impacts: <http://observatoriopetrolero.org/>
- 4 One of Perupetro’s first decisions in 2015 was to extend, without calls for tenders, the seven oil concessions, including Plot 192 (ex-1AB). See: La República: <http://www.larepublica.pe/04-01-2015/perupetro-prorroga-contratos-petroleros-sin-licitacion>
- 5 See: http://www.un.org/spanish/News/story.asp?NewsID=31240#_VK0x-XsY17Y y <http://unsr.vtaulicorpuz.org/site/index.php/es/declaraciones-comunicados/55-peru-oil-project>
- 6 See: El drama de los menores del petróleo, at: <http://servindi.org/actualidad/119613>
- 7 EIA: “The Laundering Machine. How Fraud and Corruption in Peru’s Concession System are destroying the future of its forests”, in: http://launderingmachine.files.wordpress.com/2012/04/english_report_eia_final2.pdf
- 8 See note on Servindi: <http://servindi.org/actualidad/96116>
- 9 See Noticias Aliadas: <http://www.noticiasaliadas.org/articulos.asp?art=7075>
- 10 “*La Procuraduría Supranacional del Ministerio de Justicia y Derechos Humanos*”

- 11 See: <http://pactodeunidadperu.org/?p=7766>
- 12 See Redd+ más allá del carbono y del mercado: Integralidad del Redd+ Indígena Amazónico: <http://www.aidesep.org.pe/redd-mas-alla-del-carbono-y-del-mercado-integralidad-del-redd-indigena-amazonico/> and <http://servindi.org/actualidad/104916>
- 13 The regulation can be found at: <http://transparencia.cultura.gob.pe/sites/default/files/transparencia/2014/02/resoluciones-del-vice-ministerio-de-interculturalidad/rvmi004-aprobarladirectiva001-2014.pdf>
- 14 See <http://bdpi.cultura.gob.pe/identificacion-de-pueblos-indigenas> 7 January 2015.
- 15 The report can be found at: <http://www.defensoria.gob.pe/Downloads/descarga/Informe-002-2014-DP-AMASPP-PP1.pdf>
- 16 The publication can be found at: http://www.iwgia.org/publications/search-pubs?publication_id=685

Jorge Agurto is a journalist and social communicator. He is president of the Intercultural Communication Services association, Servindi.

Website: www.servindi.org - E-mail: jorgeagurto@gmail.com