LAND IS LIFE

The struggle of the Quechua people to gain their land rights

‘This land was inherited from our fathers. Now it is our time, and soon it will be the next generation’s time. But we live with the knowledge that the government might again license our territory out to oil companies at any time. For us, it’s important to be given formal land titles, not so that we can feel like owners, but to protect our territory.’

—Teddy Guerra Magin, indigenous leader and farmer, Nuevo Andoas
1 SUMMARY: THE QUECHUA PEOPLE’S STRUGGLE TO DEFEND THEIR TERRITORY

In the absence of a title to their territories, the future of the indigenous people of Nuevo Andoas community and the wider Loreto region of northern Peru is under threat. Since the early 1970s, when the government gave multinational companies permission to exploit the region’s oil reserves, indigenous people have suffered the health and environmental consequences of a poorly regulated extractives industry. Repeated contamination of their land and rivers has caused illness and deaths, particularly among children. People’s livelihoods, which are based on cultivation and hunting and fishing, have also been seriously affected.

The land on which the oil companies have been operating – known by the government and companies as ‘Block 192’ – covers the upper part of the basin of the Pastaza, Corrientes and Tigre rivers, which are all ancestral territories of indigenous populations. The Quechua people of Nuevo Andoas, a community of approximately 2,000 people who reside on the north side of the Pastaza river, are particularly affected; the community’s strategic location means much of the oil-drilling infrastructure is located here. Following indigenous people’s long campaign against the contamination of their land and waters, the government recently acknowledged the health and environmental crisis that had resulted from years of resource extraction without appropriate safety standards. However, without being granted formal title to the land which is rightfully theirs, the future of these indigenous people remains uncertain and their territories vulnerable to further exploitation without any need to compensate indigenous communities for use of their land or degradation that results. The Quechua people are the original inhabitants of this land and their rights as indigenous peoples have been constitutionally recognised in Peru since 1920. Yet caught in a complex web of regulations which favour the oil companies over the rights of the indigenous population, they have still not succeeded in getting the title they need and justly demand.

This paper highlights the injustice faced by the Quechua people of Nuevo Andoas and the wider region. It echoes their call on the government to grant them full title to their territories; fulfil their rights to health, education and development that respects their identity; and to provide reparation for the damage to their health and environment caused by the oil industry.

The paper is based on research commissioned by Oxfam in Peru, including field work and stakeholder interviews, available in an unpublished report Industrias Extractivas y Titulación Colectiva, El caso de Nuevo Andoas en el Alto Pastaza.
At the beginning of the 1970s, in the Loreto region of the Northeast Peruvian Amazon, the foundations were laid for oil extraction that would eventually be identified as the most profitable in Peru’s history.

In a country with a tradition of mineral extraction, oil exploitation was seen as a key opportunity for national development. The first explorers and workers who arrived in Loreto saw a dense and inhospitable forest that had to be conquered in pursuit of wealth. While they noted some settlements of indigenous peoples in the forest, this was considered to be of little concern to the authorities in Lima. The oil extraction activities expanded and much of the region covering the northern Pastaza, Corrientes and Tigre river basins – home to the indigenous Quechua, Achuar and Kichwa peoples – was eventually designated as ‘Block 1AB’ (today it is called Block 192).

The extent of oil extraction in the area led to a dramatic social and economic transformation in Loreto. Initially up to 15,000 rural labourers moved to Iquitos, the region’s main city. While for the government and companies who stood to gain, oil was valued as a resource capable of modernizing Loreto and generating wealth, the new Block 1AB would also have a profound impact on the lives of the indigenous communities who had lived on and protected this land for generations. In this isolated border region – where the presence of the State was and is almost non-existent – their needs and views were at odds with those of the oil companies granted permission to operate in the Block, including Occidental Petroleum Company and Pluspetrol Norte.

These companies operated within regulatory frameworks that were very favourable for promoting business, but weak in terms of protecting the rights of indigenous people and the environment. For almost 40 years, contaminated waste water was dumped into the rivers and thousands of barrels of crude oil were spilt. Even though regulatory reform over the last decade has helped to curb such practices, the effects of the past remain and must be remediated. To date, there have been hundreds of complaints about serious harm to people’s health and the degradation of their livelihoods in fishing, hunting and cultivation.

Following a four-year campaign by PUINAMUDT, an organization of indigenous federations of the region, between 2013 and 2015 the government declared health and environmental emergencies, at last acknowledging the damaging impact of the oil operations. While this development was welcome, the critical problem facing indigenous peoples remains: they do not have the collective title that would give them legal certainty and control of their ancestral territories, and with it the ability to better protect their land, health and livelihoods from future exploitation.
The Quechua communities have territorial rights pre-existing any other granted by the Peruvian State, as they are an ‘original people’. This has been constitutionally recognized in Peru since 1920 and further strengthened by Peru’s ratification of the International Labour Organization (ILO) Convention 169 in 1994; the Quechua are also protected by the 1978 law of native communities. Yet despite being covered by these national and international norms, communities in the oil region have not been able to obtain collective title to their territories.

Without a title, their lands continue to be under threat of appropriation and exploitation, and to suffer from the legacy of concessions to oil companies since the 1970s. In 2006, the Ministry of Energy and Mines granted the company Pluspetrol Norte S.A. (operator of the Block at that time) ‘free easements’, i.e. free use and control of the territories occupied by camps, roads, airport and oil wells, until the end of their contract in 2015. The government justified its decision by accepting a request from Pluspetrol indicating that these ‘properties’ didn’t possess any ‘useful purpose’ other than the company’s own economic activity.

The existence of indigenous peoples in the region, whose ancestors had lived there for centuries, was no secret. The government’s agreement to the company’s request therefore amounted to a clear abuse of the collective ownership of the land by the communities. Even more worryingly, when Pluspetrol’s contract and the agreement expired in 2015 – offering the opportunity to free up the Pastaza region and return control of the territory to its rightful owners – the Regional Government of Loreto insisted on excluding from communal title the easement areas that had been freely conceded to the oil companies, arguing that these areas appear in the public registries as ‘property of the state’.

‘Up to now we’ve been in big battles, demanding they grant titles quickly. We can’t stay like this; our children can’t live like this. Look at how we live. We’re not poor, it’s the [oil] company that put us in this situation, ruining the environment.’

Petronila, indigenous community member

Petronila Sandi has spent her entire life in Nuovo Andoas. She advocates for the land rights of her people. Photo: Percy Ramirez/Oxfam
Thus the preliminary maps drawn up by the government (and used by the oil companies themselves) have effectively carved up and reallocated ancestral lands. They show the area belonging to the communities as discontinuous blocks, cutting off indigenous people from each other and from spaces vital to their livelihoods, rituals and cultural activities. This not only represents a serious violation of the rights of the indigenous people to have title to their communities, but it also undermines other rights based on national and international law, such as being able to receive compensation for the use of their ancestral territories. To receive compensation requires formal recognition of ownership, which a title provides.

The impact of this is particularly severe in Nuevo Andoas, a Quechua community located on the banks of the River Pastaza and home to approximately 2,000 people, as much of the oil extraction infrastructure (the airfield, production well, roads and other infrastructure) lies within its territory. Although this infrastructure occupies only a small part of the community’s land, its use has a direct impact on the whole community. Nuevo Andoas was registered as a native community in 2007 (a formal step which is necessary prior to titling), but it has not yet been granted title. In the documentation of its registration, the communal area is described as being ‘74km long and 2km wide’ – a fraction of the area to which the community lays claim.

The plight facing the region’s indigenous people is a consequence of two main factors. Firstly, the government did not take measures to safeguard the territorial rights of indigenous peoples who have had customary and continuous possession. Secondly, it did not consult the indigenous peoples on the legal and administrative measures that directly affected them, violating the provisions of ILO Convention 169. In practice, ‘the State carried out a kind of disguised expropriation in these areas, without any compensation’ (Barclay and Zúñiga, 2016).

The matter of compensation is key to fulfil the rights of indigenous communities. In Peru, as in most countries, the State has exclusive rights to all sub-soil minerals and hydrocarbons in the country, meaning it can licence extractive activities to exploit the sub-soil of land that is privately or communally owned. But owners have rights to compensation for use of their land and any damages caused. And when the land belongs to indigenous communities, the State is obligated by national and international law to consult with communities to seek their free, prior and informed consent for its use. So without title to their land, the community of Nuevo Andoas lacks the legal certainty to claim the compensation they deserve or to negotiate a fair share of benefits from any economic activities in their territories.

In addition to the devastating environmental and health consequences, the presence of oil companies and the role played by the State in the region to date has generated huge uncertainty and insecurity among the people who live there. ‘We are always alert to the fact that the State could licence out our territory because of it being an oil region. We believe that it is important to defend our [natural] wealth and our territory,’ says Teddy Guerra Magin. ‘For me, [title to] the territory would mean a life fulfilled.’
The State has promised to focus on the region’s development and wellbeing, but as community members are quick to point out, without respect for a proper land titling process, such commitments are meaningless. This is expressed by Aurelio Chino, president of the indigenous federation to which Nuevo Andoas belongs. He says: ‘Without territory [titled], where will this supposed development take place? Development doesn’t take place in a void, in the air.’

Reflecting on the responsibility of the State to guarantee development that respects life, as well as the visions and aspirations of indigenous peoples, Clever Cruz Guardia (30), a Quechua inhabitant of Nuevo Andoas, commented during a community assembly, ‘We have to think of our children; they are our future and we do not want to see their rights violated.’

4 SOLUTIONS: ‘WE ONLY WANT THEM TO LET US LIVE IN PEACE!’

One of the slogans of the Quechua people that can be read in the communal area of Nuevo Andoas is eloquent: ‘Kausachun pueblo quechua (Long live the Quechua people): We only want them to let us live in peace!’

The Quechua people have long been calling for title to their community lands. However, their efforts have been stymied by the government’s limited capacity for intercultural dialogue and by regulations that discriminate against indigenous people in favour of business interests, applying more conditions for titling land to indigenous communities than to individuals in the Amazon region (Barclay and Zúñiga, 2016).

The PUINAMUDT alliance brings together the region’s indigenous organizations of the Pastaza, Corrientes, Tigre and Marañón river basins. United by a common agenda in the face of the devastating impact of 40 years of oil extraction in their territories, alliance members are engaged in dialogue with the Peruvian government to seek justice for their communities. Since 2008, they have engaged in numerous meetings with public officials, protests in their territories, and dialogue with high-level political actors including presidents, ministers, parliamentarians and regional governors. In this struggle to win respect for their rights they have constantly come up against regulatory vacuums, political indifference, and complex bureaucracy.

Despite these challenges, the PUINAMUDT is demanding title to their communities and reparations for the damages caused by oil extraction activities, as well as the fulfilment of their rights to health, education and development that respects their identity as guaranteed by national law. As mentioned above, its campaigning has already led to government recognition of the health and environmental damage caused by the oil industry. As a result, in 2015, the alliance succeeded in getting the government to commit to create a fund of 3.5 million Peruvian soles, which was allocated to the Regional Government of Loreto to title their communities (Lima Act, 10/3/2015).

This was an important victory. However, there continue to be delays in implementation, and the regional government still insists on excluding from community title all areas of ‘free easements’ that were granted by the national
government to the company Pluspetrol Norte in 2006 – despite the fact that the relevant contract expired in August 2015.

In May 2015, frustrated by the delays and indecision, the indigenous organizations of PUINAMUDT filed a court claim for ‘omission in titling of indigenous territories due to the imposition of free easements for oil companies without compensation’. This calls on the authorities to respect the rights of communities such as Nuevo Andoas, by granting full title which incorporates those areas that were previously excluded.
In the past, the State has obstructed and failed to protect the right of indigenous peoples, exposing them to health risks and environmental degradation. ‘The territory is our life,’ claim the indigenous peoples. As long as their right to legal certainty in the control of their territories is unfulfilled, the future of these peoples and their potential for development will remain under threat.

To ensure the right to territory of indigenous communities, the Peruvian authorities urgently need to take action to:

1. **Comply with the Lima Act (March 2015) and other agreements** signed by government ministers, high-level government officials, the current regional governor of Loreto, and the indigenous organizations FEDIQUEP, FECONACO, OPIKAFPE and ACODECOSPAT, in which the government committed to address community land titling demands, serious environmental damage, inadequate access to healthcare and sanitation services, and other issues.

2. Prioritize the development and implementation of public policies to ensure formal recognition and defence of the rights of indigenous peoples in a context such as that of the Upper Pastaza, in which there is still evidence that nothing happens without the consent of the oil companies. To that end:
   - The **regional government of Loreto** must complete the process of collective titling for the community of Nuevo Andoas and for the other communities where Block 192 is located.
   - Peru’s **national government** must actively promote a national policy for collective titling that guarantees the right of indigenous peoples to their lands and territories in a timely manner. This should include a clear plan with specific goals, indicators and coordination mechanisms among all
agencies involved, as well as measures to strengthen institutions at the highest level to prioritize and effectively carry out the titling process.

3. Ensure indigenous peoples participate in the implementation of these agreements and of public policies, and in monitoring their progress, in order to avoid the commitments being diluted by administrative red tape or empty promises. In particular, a formal mechanism is needed to engage indigenous organizations directly in the design, as well as the implementation and monitoring, of the titling process and to ensure effective coordination of titling programs with regional government structures.

‘The territory is our life’

'Why are we in this situation?' asks Aurelio Chino, president of the Quechua Peoples Indigenous Federation of Pastaza (FEDIQUEP). For many years now, the Quechua people have had to grapple with the same question: why have uncertainty and fear been sown in the communities and territories, by the State which ought to be protecting them? They have not ceased to seek reasons and answers, or to demand solutions. For generations their people have lived here, worked here, and shared beliefs and rituals that are central to their culture and identity. Without title to the land, all this is under threat.

Aurelio continues, ‘Despite it being the duty of the State, and it being a right of indigenous communities to get titles, they're not interested [in our problem]. We’re obliged ourselves to stand up and tell them to carry out the titling process.’

Infographic from LaRepublica.pe/Rocio Medina
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NOTES

1 Pueblos Indígenas Amazónicos Unidos en Defensa de sus Territorios (Amazonian Indigenous Peoples United in Defence of their Territories), an organization of indigenous federations affected by the oil industry, is comprised of the following organizations: Federación de Indígenas Quechua del Pastaza, Federación de Comunidades Nativas Achuar del Corrientes, Organización de Pueblos Indígenas Kichuas Amazónicos de Frontera Perú-Ecuador, and Asociación de Conservación y Desarrollo de la Cuenca de San Pablo de Tipishca.