

the
**TENURE
FACILITY**



JOINING FORCES

**Titling indigenous
territories in Peru**

INDEX

- 02 **Presentation**
- 03 **An urgent need**
- 07 **Titling of indigenous territories**
- 15 **Intercultural Approach**
- 19 **Loreto**
- 25 **Madre de Dios**
- 33 **General Conclusions**



LEGAL CERTAINTY, COLLECTIVE RIGHTS AS COMMON OBJECTIVES

Silvana Baldovino
Program Director
Biodiversity and Indigenous People

Some years ago, as the Peruvian Society of Environmental Law, we started to develop several initiatives aimed at creating the necessary conditions for indigenous peoples to ensure legal certainty over their lands on the basis of an integral land management in the country.

Our legal vision included multiple and diverse strategies we sought to implement at various levels. In that sense, we understood that there was much to be done. At the institutional level, it was necessary to strengthen key actors and to promote dialogue amongst them, thus improving the legal framework and building new capacities. It was vital to empower indigenous organizations and to

make governmental entities understand the needs of the communities. It was essential to go into the field, to implement communication strategies and generate relationships of trust. Much is said about interculturality, but living and sharing intercultural lives still remains a big challenge.

We started with a rather ambitious project, which grew even bigger over time. We not only achieved our objectives but changed the lives of many of those involved. We learned that we cannot talk about indigenous peoples without involving indigenous peoples in our discussions. We understood how deeply rooted their territory is in their lives and their intimate connection to the land. We proved that working together is possible.

This project brought together multiple actors who developed a participatory strategy at different levels. All with a common objective: the legal certainty of indigenous territories and the protection of collective rights, giving us the opportunity to settle an historical debt to indigenous peoples. The road ahead is still long, but we have proven that the formula works, and that it is possible to reach a common objective through different paths and visions. We must continue strengthening indigenous organizations and promoting their leadership; we must also continue working with regional governments and acknowledge their competences and the importance of their roles, while consolidating their leading roles. The key is mutual respect as a two-way working mechanism. We must respect our differences, work towards a common objective, and generate changes for a better future; this is the way to increase the visibility of our indigenous peoples and to be really proud of our millenary heritage.



AN URGENT NEED

The Amazon, to many so vast and far away, is the biggest tropical forest in the world, twice as big as India. Its rivers are home to the largest number of freshwater fish in the planet, and are the source of the Amazon River, the mightiest river on earth in terms of volume and width. A sanctuary and heritage of humanity which is mainly protected by people who have been living in it for centuries: indigenous communities. These are people who have been there forever, respecting and protecting it, without asking anything in return. This has also been the case in Peru.

The map of Peru is mainly green; 60.3% of its territory is covered by the Amazon Rainforest, a region also rich in culture and traditional knowledge. There are 55 indigenous communities in the country, out of which 51 are located in the Amazon, a fact which underscores their importance to humankind. In recent years however, it has become one of the most threatened places. Its rich biodiversity and natural resources have lured human greed and ambition. Different activities, both legal and illegal, are seriously impacting them without any regard to future generations.



NOTE:



By January 2020, 1381 (61%) out of the 2268 native communities in Peru did not have ownership titles or could not register their property at the public registrar's office.



SOURCE:

General Directorate of Sanitation of Agrarian Property and Rural Cadaster (Digespacr).



“With the support of the Peruvian Society for Environmental Law, we were able to strengthen our institution and start working on land tenure. Their support included advocacy, transportation, technical assistance and coordination with the State. This relationship has made us stronger. We have also strengthened the structure of the Inter- Ethnic Association for the Development of the Peruvian Rainforest. For example, for the first time ever in the history of the country, we granted 66 land titles in Loreto in a ceremony attended by the President of the Republic.

More attention needs to be paid to the indigenous policy. We have the same rights as any other citizen. The government knows that indigenous organizations exist, and that we have other allies. Before, we were not even considered; now, they receive us and see us as allies.

Our territory is our only source of life. It is our source of cultural identity. Some may think that we live in extreme poverty at the forest, but our territory is our extreme richness. If we protect and preserve it, we will get life in return. It has a spiritual value that goes beyond understanding. We ask that the rights of indigenous peoples be respected”.

Lizardo
Cauper

President of the Inter-Ethnic Association for the development of the Peruvian Rainforest (Aidesepe).

A little over ten years ago, indigenous communities living in the Peruvian Amazon were neglected by the authorities. A former Peruvian president even called them second class citizens and denied the presence of peoples in voluntary isolation in that territory. Fortunately, the situation has now changed. Indigenous organizations have become stronger and their voices are being now heard. Governing authorities are more concerned about them (although not enough), and different NGOs are searching for alternatives to help them reach better living conditions. Nevertheless, there is still a great sense of urgency to protect the Amazon and its inhabitants.

And the world is listening. According to estimates by the Secretariat of the Convention on Biological Diversity, at least 80% of the land biodiversity in the planet is found in indigenous territories which, on the other hand, only represent 22% of the global territory. In 2016, the International Union for Conservation of Nature (IUCN) established a new category for indigenous organizations, which recognized their important role in the conservation of the planet; it was also instrumental in making their problems visible and in helping them obtain legal certainty on their territory in view of the great pressures they are exposed to daily.

In 2019, the Intergovernmental Panel on Climate Change (IPCC) released a report called “Climate Change and Land”, scientific basis for international negotiations on climate change which raises awareness about the need to reduce greenhouse gas emissions in all sectors in order to keep global warming below 2 °C. The report states, as one of its main findings, that “the use of land for agriculture, forestry and other land use account for 23% of the anthropogenic greenhouse emissions”; this means that good land management is key in the fight against climate change.



“Historically, it has always been very difficult for the State to take responsibility for indigenous peoples. This is due to a number of factors, amongst which are: lack of political willingness, budget and continuity. Governing authorities come and go, and every new administration makes a new start”.

**Julio
Cusurichi**

President of the Native Federation of the Madre de Dios River and its tributaries (Fenamad).

Martin Vizcarra, President of the Republic of Peru, recognized there is an outstanding historical debt in terms of ownership titles for indigenous territories, and promised to close this gap by 2021, year which marks the bicentenary of Peru’s independence.

By January 2020, the State recognized that 680 native communities in Peru still lacked ownership titles. It is worth mentioning that indigenous peoples organized as peasant communities and non-recognized native communities were not considered in this analysis.

There are rules to ensure legal certainty of indigenous territories, native communities and Indigenous peoples in voluntary isolation and initial contact (PIACI), as well as to safeguard their rights; however, there are still many legal gaps. For example, budgets allocated to provide legal certainty to these groups are still very low, and basic services that should be provided by the State do not reach those in need. The Ombudsman’s Office of Peru confirmed that 51.2% of native communities does not benefit from adequate health services nor has access to public services such as education or safe drinking water. If we also consider that they are constantly invaded to drive them off their territories, we find an even more serious situation of abandonment. Finally, we must consider that the titling process for these native communities is not an easy process.

It is within this context that the Peruvian Society for Environmental Law (SPDA), with the support of The Tenure Facility, decided to take action to settle the big historical debt the Peruvian State has towards indigenous peoples, and support native communities in achieving what is most important to guarantee their future: legal certainty on their territory.

In addition to native communities, the Amazon is also home to Indigenous Peoples in Voluntary Isolation and Initial Contact (PIACI). Thousands of individuals who were born in the forest and who are divided into two groups: those just starting to have contact with Western societies and those choosing to remain in isolation. Worth mentioning is that people living in the forest are particularly vulnerable to activities carried out around or within their territory.



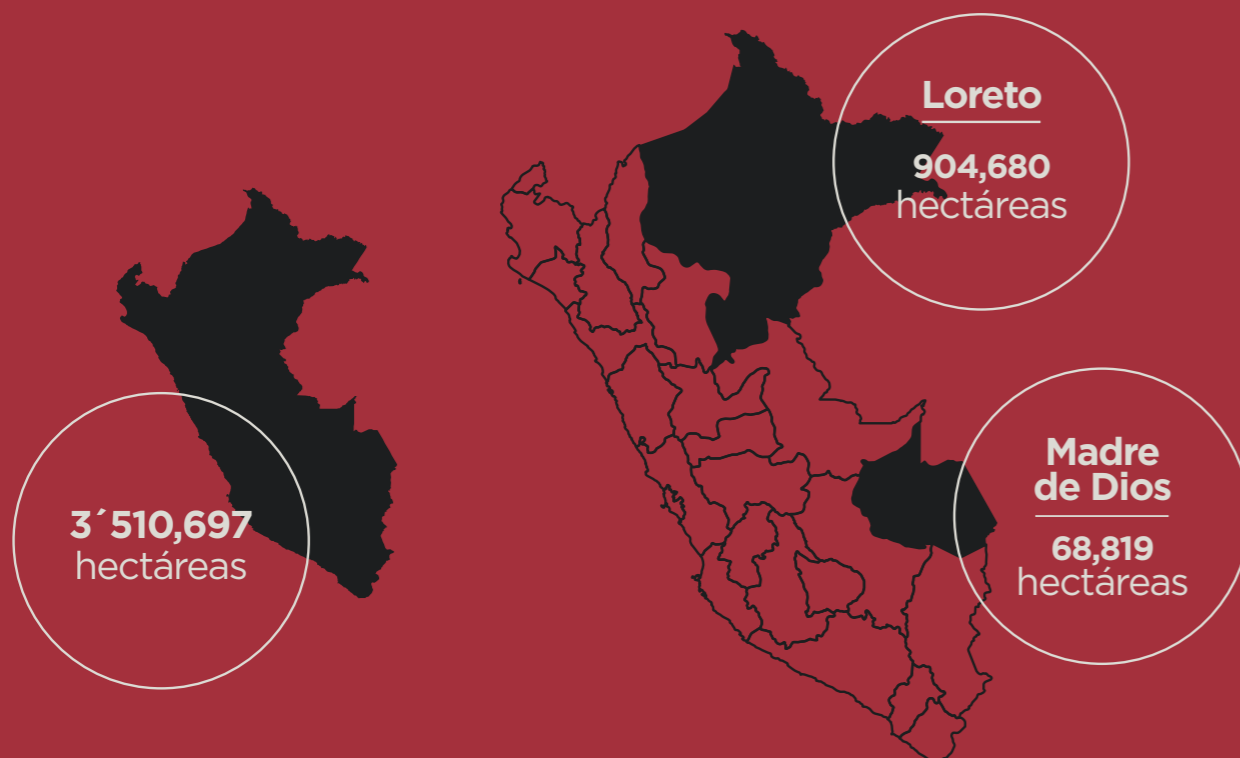
(2017-2020)

TITLING INDIGENOUS TERRITORIES IN PERU

The Project “Titling indigenous territories in Peru” implemented by SPDA with The Tenure Facility’s support, has strengthened the legal certainty of 3’510,697 hectares of indigenous territories nationwide.

This includes 2’400,000 hectares of territories for Indigenous Peoples in Voluntary Isolation and Initial Contact, 973,499 hectares of territories for native communities in Loreto and Madre de Dios, and 137,198 hectares for native communities in other regions.

In Loreto, 72 native communities covering 904,680 hectares have received this benefit, as well as 3 communities in Madre de Dios, which cover 68,819 hectares.



Regulations to protect territories of Indigenous Peoples in Voluntary Isolation and Initial Contact have been enhanced as a result of joint efforts deployed by the Ministry of Culture (Mincul) and the Native Federation of the Madre de Dios River and its tributaries (FENAMAD).

The policy and processes related to secure land tenure of indigenous territories were strengthened and promoted, by enhancing joint actions between the General Directorate of Sanitation of Agrarian Property and Rural Cadastre (Digespacr), the regional governments of Loreto and Madre de Dios, and indigenous organizations.

The working strategy reinforced the rights of indigenous peoples as 8 pieces of legislation were passed nationwide.

The goals of the Project were achieved through the implementation of a coordinated work plan to strengthen the institution at national and regional levels, as well as at the level of indigenous organizations. This enabled both authorities and indigenous organizations to resolve bottlenecks and become an integral part of secure land tenure processes as observers and promoters.



“The regulatory framework governing the titling process for native communities and agricultural lands has undergone many changes and amendments. In the past, the Ministry of Agriculture granted ownership titles of agricultural lands and native communities nationwide. During those days, the tools used were measuring tapes, GPS, compasses and other items which were not as accurate as the tools we use nowadays. This is why the available cadastral information is not accurate and has generated many inconveniences.

In addition, Madre de Dios has many resources, such as forestry, ruled by the Forest Law, small scale mining, ruled by the Mining Law, or agriculture under the jurisdiction of the regional government of Madre de Dios through the Regional Department of Agriculture. All of these entities have tried, within their own competencies, to generate their own cadaster. As a result, there has been a big overlap of rights. Therefore, we need to start a remediation process which is time consuming and requires resources and logistics we do not have.”

Percy
Santiesteban

**Director of the Regional
Department of Agriculture
(RDA), Madre de Dios.**

ROLES IN THE TITLE GRANTING PROCESS

For many years, the Ministry of Agriculture was the executing entity through its different departments and projects. Once decentralization became effective, its role became strictly that of leading body.

Over the past decades, the entities in charge of the tiling process in favour of native communities have changed:

- By the end of the 70's, the Ministry of Agriculture recognized communities, registered and granted titles recorded in the National Register of Native Communities.
- As of 2008, there is a slow and gradual transfer of authority from the central government to regional governments in matters related to consolidation and title granting of individual and community agricultural lands.
- Since 2013, and aiming at giving support to regional governments, the Ministry of Agriculture and Irrigation (MINAGRI) became the leading body in National Agrarian Policy, charged with developing national policies and data related to agrarian property, including physical and legal consolidation of agrarian property and land owned by peasant and native communities.

The duties of the Ministry of Agriculture include:

- a)** to train regional governments in matters related to physical and legal consolidation and formalization of agrarian property;
- b)** to issue the necessary rules enabling it to perform its leading role;
- c)** to coordinate with the Ministry of the Environment the classification of lands according to their greater land use capacity, amongst other features.



“For us, territory is embedded within our cultural wealth. Myths about the creation of humankind and our languages derive from it.

Land needs to be seen as the natural and intangible heritage, in the same way as identity is perceived. Indigenous people are increasingly losing their identity together with their territory. If we do not safeguard the forest, we are not protecting the identity of its inhabitants. There need to be more public policies to strengthen the identity of Peruvians. We have to revalue. By saying this, I also mean to revalue traditional knowledge. We have an intact natural wealth.”

Héctor Sueyo Yumbuyo

Sociologist, Harakmbut Indigenous Community, Madre de Dios.

STRATEGY: BUILDING BRIDGES

Despite efforts deployed by the State to grant ownership titles to native communities, there has been no continuous support to this policy. Authorities in charge have constantly changed, thus generating chaos and disorder in the passing over of information. Processes have not been very efficient and budgets very low or non-existent.

In this context, the Peruvian Society of Environmental Law (SPDA) decided to try something never done before to provide indigenous territories with legal certainty. This was first done through a pilot project implemented in Madre de Dios in 2016, and next through a nationwide project implemented between 2017 and 2020. It is a strategy bringing the State and indigenous organizations together; to make them stronger, to train them and give them the necessary

tools and, mainly, to show them that the only way to move forward is by working in close coordination. Progress would have not been possible without the involvement of indigenous organizations.

The Tenure Facility Project thus devoted to working with seven main stakeholders with whom they signed cooperation agreements:

- **Ministry of Agriculture and Irrigation (MINAGRI), through the General Directorate of Sanitation of Agrarian Property and Rural Cadaster (Digespacr).**
- **Ministry of Culture (MINCUL), through the General Directorate of Indigenous Peoples (DGPI).**
- **Regional Government of Loreto (GOREL), through the Directorate of Physical and Legal Consolidation of Agrarian Property (Disafilpa).**

- **Regional Government of Madre de Dios (GOREMAD), through the Directorate of Physical and Legal Consolidation of Rural Property.**

- **Inter-Ethnic Association for the development of the Peruvian Rainforest (Aideseop).**

- **Native Federation of the Madre de Dios River and its tributaries (Fenamad).**

- **Organization of Eastern Indigenous Peoples (ORPIO).**

In recent years, and despite many hurdles, state entities have shown openness to reinstate the rights of indigenous populations. In May 2019, Martin Vizcarra, President of Peru, promised to eliminate the existing gap in the titling process for native territories by 2021.

POLICIES TO MOVE FORWARD

In the belief that fundamental rights of indigenous peoples cannot be sustainably guaranteed without strong laws and regulations, the legal team from the Biodiversity and Indigenous Peoples Program at the Peruvian Society for Environmental Law (SPDA) worked to strengthen the legal framework supporting indigenous peoples in the country at various levels. Therefore, joint efforts were deployed with the Ministry of Agriculture and Irrigation (Minagri) and the Ministry of Culture (Mincul) to develop legal tools allowing them to safeguard collective rights of indigenous peoples.

SPDA has thus contributed in the design, promotion and implementation of rules and instruments to determine their scopes of action, clarify proceedings, and recognize the existence of indigenous territories, and the fact that these overlap with other rights granted in national territory.

- On December 11th, 2019, Ministerial Resolution No. 0442-2019-MINAGRI, “Guidelines for the Demarcation of Indigenous Territories” was published. These guidelines took into account comments made by SPDA and incorporated a solution to the overlapping of territories in communities found in Natural Protected Areas of Peru. This is a major milestone in the recognition of the rights of indigenous peoples.

- The Ministry of Agriculture and Irrigation (Minagri) approved guidelines for the resizing of Permanent Production Forests (Ministerial Resolution No.0368-2018-MINAGRI), with the project’s technical support.

- We contributed with the functioning of the new Cadastral System (SICAR) and the Cadastral System for Peasant and Indigenous Communities (SIC Comunidades) approved by Ministerial Resolution No. 0362-2018-MINAGRI.

- The project has contributed with the design of the Legislative Decree No. 1360 that has strengthened the Ministry of Culture. This decree defines that (1) the Ministry of Culture will issue the guidelines for the recognition of communities belonging to indigenous or native peoples; (2) the Vice-Minister of Intercultural Affairs, through its technical departments, (i.e. the General Directorate of Indigenous Peoples (DGPI), is charged with identifying and recognizing indigenous or native peoples; and (3) indigenous or native peoples may exercise their collective rights whether or not they have been identified or recognized.

- SPDA also supported the design of Legislative Decree No. 1374, which establishes the sanctioning proceedings for infringing Law No. 28735, Law for the Protection of Indigenous Peoples in Isolation and Initial Contact. In addition, Supreme Decree No. 28736 MC, Regulations to Legislative Decree No. 1374, was published.

It establishes sanctioning proceedings for infringing Law No. 28736, Law for the Protection of Indigenous Peoples in Isolation and Initial Contact. In addition, Supreme Decree No. 010 2019 MC, Regulations to Legislative Decree No. 1374, was published. It establishes sanctioning proceedings for infringing Law No. 28736, Law for the Protection of Indigenous Peoples in Isolation and Initial Contact.

- SPDA promoted the approval of Supreme Decree No. 005-2018-MTC, which provides for the implementation of provisions requiring infrastructure projects to respect environmental considerations related to the protection of Natural Protected Areas and territories occupied by Indigenous peoples in isolation and initial contact (PIACI).

The Political Constitution of Peru establishes that native communities have legal existence and legal identity. It further establishes that they are autonomous in terms of their organization, community work and the use and free disposal of their lands.

Therefore, the State is responsible for guaranteeing the rights of indigenous peoples by officially recognizing each native community, and subsequently granting them land titles. However, very often, communities cannot obtain titles on the lands they have occupied since ancestral times because of the many obstacles they find on the way, the most recurrent of which is overlapping of rights.





“The project has been key to us. It has helped us strengthen our foundations, which has brought us closer to the authorities. We have been able to expedite processes and work as a team with the regional government. While we have made great progress, there is still a lot to be done to ensure the livelihood of our communities.”

Julio
Cusurichi

President of the Native Federation of the Madre de Dios River and its tributaries (Fenamad).

MORE THAN A CLICHÉ: UNION IS STRENGTH

The most important accomplishment of this Project has been bringing all stakeholders together at the same table to discuss, plan ahead, and reach consensus.

They all shared a common interest: to protect indigenous communities by giving them titles on their territories; but, at the same time, they all had many needs. However, they never felt the need to belong to the same team. This integration was possible with the assistance from The Tenure Facility and the Peruvian Society of Environmental Law. Inter-agency agreements were signed with each one of them, and through these they were able to obtain support in logistics, training and professional assistance so that each part performed their duties in the best possible way.

STRENGTHENING RELATIONSHIPS

The General Directorate of Sanitation of Agrarian Property and Rural Cadaster (Digespacr), under the Ministry of Agriculture and Irrigation and leading body in the land titling process in the country, needed to strengthen its relationship with regional governments, as well as its regulations. In view of this, our main purpose was to build regional government capacities for physical and legal consolidation of indigenous land tenure and rural cadaster.

This cooperation strengthened the monitoring and oversight capacities of the General Directorate of Sanitation of Agrarian Property and Rural Cadaster, through regional coordinators with vast experience and highly committed to the sector. It was a day-to-day work, both at the field and at the office. These activities enhanced its role as leading body in matters referred to land titling for native communities.

Training sessions were organized and relationships with regional governments were strengthened. Relationships with entities throughout the country became stronger and soon they all started to work together; this synergy persists.

Prior to implementing this agreement, resources to operate in the regions were scarce. Professionals working for regional governments lacked adequate training. There was no real information about the gaps existing in the granting of titles for native communities. And things moved slowly. **The Tenure Facility** project allowed them to become more visible at the regions, to train hundreds of professionals nationwide, as well as to identify and narrow the gap in the granting of titles to native communities throughout the country. All of this greatly contributed to the preservation of life and culture at the Peruvian Amazon.

TEAM- WORK

Katherine Sánchez
Lawyer, SPDA

When the Project first started, the General Directorate of Sanitation of Agrarian Property and Rural Cadaster (Digespacr) had only been in operation for approximately 7 months. It had been created as a line agency within Minagri, in charge of physical and legal titling and the formalization of agrarian property; it covered territories occupied by peasant and native communities nationwide.

When the Project was first implemented, Digespacr was designing its action plan for the regions aiming at standardizing criteria. They were developing strategies to make a national cadaster possible, revising regulatory bottlenecks in all areas under their jurisdiction and generating spaces for joint cooperation with other government agencies, indigenous organizations, and titling projects implemented in the country.

It was in this complex scenario, where claims for the recognition of rights were turning louder and

stronger, and where PTRT3 sought to be implemented, that The Tenure Facility prioritized supporting the strengthening of Digespacr. The goal was to reach out to regional governments and promote cooperation amongst the different entities in charge of formalizing community property.

Digespacr took a lead role in providing technical training to regional governments. This allowed them to learn about the reality in each region and to have the necessary tools to put forward rules (containing intercultural criteria) that would unblock titling proceedings.

One of these rules is the document entitled “Guidelines for the Demarcation of Indigenous Territories”, published in December 2019. This standard is unique in the sector and, for the first time, clarifies and standardizes the procedure to be followed by all regional governments in the country to demark the territories of native communities.

Notwithstanding the above, this standard formalizes spaces allowing the participation of indigenous peoples in relevant proceedings. For example, it clearly states that regional governments must provide detailed information to members of the community about any works to be carried out in their territory. These provisions not only highlight the coordinating and managerial role of Digespacr, but also its willingness to provide clear tools to defend the rights of indigenous peoples. Communities and indigenous organizations have, for the very first time, technical regulatory instruments allowing them to anticipate the actions of regional governments, and accurately monitor their level of compliance.

On the other hand, setting a historic landmark, this standard confirms that it is possible to demarcate lands occupied by communities which were formally recognized prior to establishing within natural protected areas. The Executive Branch made it clear that conservation was not incompatible with the recognition of rights of indigenous peoples, and established the path to be followed in the future: to generate synergies amongst all levels of government in order to continue addressing the historical debt the country has with indigenous peoples.



“The signing of the inter-agency cooperation agreement between the General Directorate of Sanitation of Agrarian Property and Rural Cadaster and the Peruvian Society of Environmental Law occurred at a very important moment for the development of the rural sector in Peru, because the Ministry of Agriculture had and has the political willingness and the goal of to close existing gaps in land titling in the country.”

**Helen
Figueroa**

Director General of
Sanitation of Agrarian
Property and Rural
Cadaster (Digespacr).

“The Project has allowed us to learn about the reality of each regional government. Each process takes its own time in every region. Each one has its own dynamic.

And this helps us identify where the main problems are. We trust all the progress achieved with this Project will be sustainable at the regions. We must continue to generate sustainable financing mechanisms to create new work streams. It is only by doing this that we will secure the lands of native communities. We must continue to promote and help regions maintain their documents in order and their proceedings clear. We must continue accompanying the processes at the regions. It is important to have a person in every region to help them in the process. If there is a new person taking office, it is important that processes continue to be followed as opposed to starting the work from scratch.”

**Fernando
Neyra**

Cooperant Digespacr

INTER- CULTURAL APPROACH

The Ministry of Culture was created in 2010. Its main functions include the planning and coordination of activities with other levels of government to promote development of the Amazonian, Andean and Afro-Peruvian peoples. Despite being the entity in charge of designing policies and strategies to protect indigenous peoples in Peru and promoting national policies with an intercultural approach, the Ministry did not have any major participation in processes related to legal certainty of indigenous territories. In view of this, the Project considered it a priority to strengthen the role of this Ministry through its General Directorate of Indigenous Peoples (DGPI)

Thanks to the coordinated work with DGPI, the Project has contributed to strengthening the actions and competencies of the Ministry of Culture as leading body in matters concerning indigenous peoples. It has also positioned it as a key sector, capable of coordinating actions with different institutions dealing with titles for native communities.

A clear example is the support the Project gave to Legislative Decree 1360, which further strengthened the role of the Ministry of Culture as responsible of issuing the guidelines for the recognition of communities belonging to indigenous or native peoples.





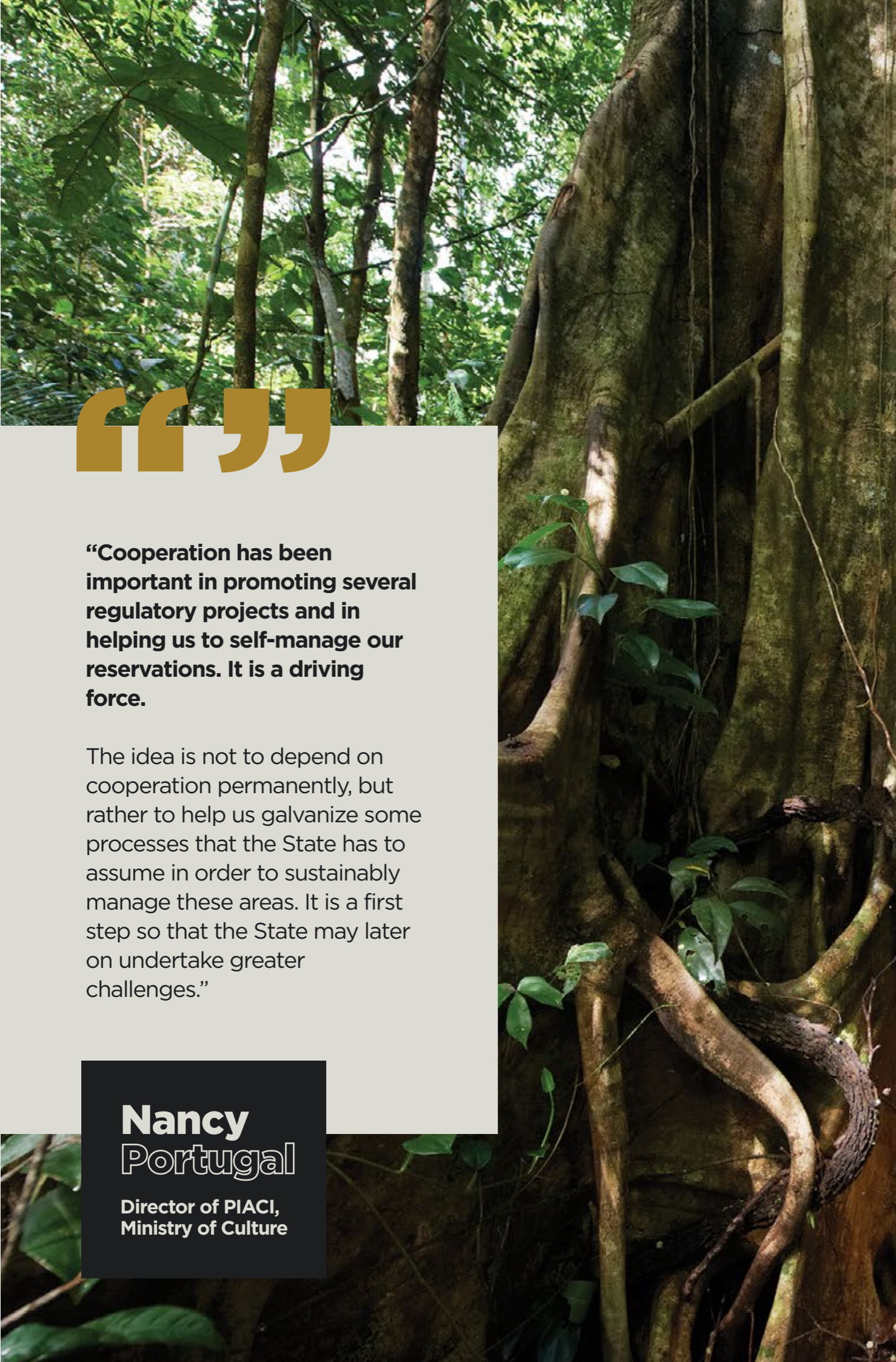
““”

“Prior to the Project, the Ministry of Culture had developed or strengthened certain lines of work such as prior consultation, indigenous languages, or guarantees for the protection of indigenous peoples in voluntary isolation and initial contact. However, the line of action referred to indigenous peoples’ lands and territories had not been specifically developed since there was no technical capacity available to identify lines of action which fell under their jurisdiction.

We have now strengthened the Ministry of Culture’s technical capacity to formulate proposals and contributions aiming at narrowing the gaps in native communities whose ownership titles are pending. We also coordinate with other strategic sectors dealing with the protection and titling of indigenous peoples’ lands and territories.”

**Nancy
Vidal**

**Cooperant,
Ministry of
Culture**



“Cooperation has been important in promoting several regulatory projects and in helping us to self-manage our reservations. It is a driving force.

The idea is not to depend on cooperation permanently, but rather to help us galvanize some processes that the State has to assume in order to sustainably manage these areas. It is a first step so that the State may later on undertake greater challenges.”

Nancy Portugal

**Director of PIACI,
Ministry of Culture**

PROTECTING INDIGENOUS PEOPLES IN ISOLATION AND INITIAL CONTACT

In Peru, there are three indigenous reserves and two territorial reserves, which protect close to 7 thousand indigenous peoples in isolation and initial contact, distributed in ethnic groups. These people are highly vulnerable. First, because they are unaware of the codes used by Western societies and cannot defend their rights. Second, they are very fragile to certain common diseases; fever or diarrhoea can be fatal. Their territory is just as vulnerable. Many actors seek to exploit the forest where they live, thus compromising their livelihood.

In this context, the Project helped the Ministry of Culture to guarantee the protection of collective rights of the PIACI in Peru, strengthening the legal security of 2 million 400 thousand hectares across the establishment of the first system of control of reserves inhabited by this group.

Specialists were hired to carry out various field researches on matters related to territory.

In addition, these specialists helped to develop technical and regulatory instruments which will ease the implementation of a special program for Indigenous Peoples in Voluntary Isolation and Initial Contact (PIACI).

This joint effort has been instrumental in strengthening actions and competencies of the Ministry of Culture in its leading role in protecting this vulnerable group.

On October 14th, 2019, with much support from SPDA, the first 3 indigenous reserves established in favour of indigenous peoples in voluntary isolation and initial contact (PIACI) were registered with SUNARP (Public Register), under the heading “Preventive Annotation”. This registration confers higher legal certainty to the Isconahua, Mashco Piro and Murunahua indigenous reserves.

WATCHING OVER LIFE

Melissa Sánchez
Lawyer, SPDA

The problem of health monitoring of PIACI living in reserves, was raised as an issue that had to be addressed. In this context, it became necessary to work with the Directorate of Indigenous Peoples in Isolation and Initial Contact (DACI), an office within the Ministry of Culture, in charge of protecting the life and health of these peoples. This office did not have the capacities to coordinate amongst entities, nor did it have the necessary authority to monitor what was happening inside these overlapping areas, and much less to punish those who put the integrity of PIACI at risk. Without such powers, this ministry could not provide a higher level of protection to these peoples.

In order to address this problem, it was necessary to provide the Ministry of Culture with the authority to apply punishments. Hence, the Legislative Decree establishing the sanctions system for infringing Law No. 28736, Law on the Protection of Indigenous Peoples in Voluntary Isolation and Initial Contact, and its Regulations

were enacted through a Supreme Decree. These rules make it possible to ensure the integrity of PIACI and to tackle the various threats they face, such as trespassing of territorial reserves and indigenous reserves by illegal loggers and fishermen, forest concessionaires, miners, residents from surrounding communities, tourists, among others.

On the other hand, it was essential to imbue this process with an intercultural approach. In this sense, the drafting process of the Regulations included holding participatory workshops in the regions of Loreto, Madre de Dios, and Lima, with the Ministry of Culture as coordinating body. All this resulted in delivering rules based on consensus, capable of adapting the traditional inspection actions and administrative sanctioning procedures to the cultural, socioeconomic, linguistic, and geographical characteristics of those constituents. The Regulations, approved through Supreme Decree No. 010 2019 MC, thus represents the first piece of regulations drafted with the participation of the indigenous community.



HAND IN HAND WITH REGIONS

The project worked at a national level and focused on Loreto and Madre de Dios, two important regions in the Amazon, where actors who shared the same vision of the project were identified, and where many needs were detected.

The Regional Governments are responsible for conducting and enforcing the titling processes. Thus, agreements were signed with communities in Loreto and Madre de Dios. Each of them had its own needs and lived different realities, but in both cases, their regional leaders saw the Project as a great opportunity for growth and institutional strengthening.

Loreto

It is the largest region in Peru and the seventh in South America. The most important watercourse of the Amazon River basin originates in its territory. This land has long been inhabited by indigenous peoples who spread throughout the entire Amazon rainforest, which is why it is a multilingual region with a population estimated to be over 160,000 people. Like the rest of the Amazon, this area suffers constantly from the pressures of agricultural, oil, and other activities, which put the legal certainty of the peoples at risk, as well as the future of generations to come.

- **Loreto surface area:**
36'885,195 hectares
- Represents **28.7% of the national territory** and **51% of the Peruvian Amazon.**

- **Surface area of Natural Protected Areas:**
8,891,468.32, of which 24.11% is in Loreto and classified under 7 different types (Private Conservation Area, Regional Conservation Area, Permanent Protection Forest, National Park, Community Reservation, National Reservation, and Reserved Zone).
- **42% of the native communities of Peru live in this region.**
- **It is home to 32 indigenous or native communities:**
Achuar, Arabela, Ashaninka, Asheninka, Awajún, Bora, Chamicuro, Chapra, Ikitu, Jíbaro, Kakataibo, Kandozi, Kapanawa, Kichwa, Kukama Kukamiria, Maijuna, Matsés, Muniche, Murui-Muinan, Ocaina, Omagua, Resígaro, Secoya, Shawi, Shipibo-Konibo, Shiwilu, Ticuna, Urarina, Vacacocha, Wampis, Yagua, and Yine.
- **30 indigenous or native languages are spoken.**
- **Recognized communities:** 1207
- **Communities with a title:** 746
- **Pending titles:** 461





“In order to grant the titles, you need time and staff to carry out this task; and we are on it. We have managed to update and amend ownership titles. Communities are like a puzzle; everyone has to fit in. In this stage, we have mainly focused on completing the titles that were left pending from the Cuatro Cuencas Project (Four Basins Project). It is a lot of office work. And each community is different. Each one has its own problems. It takes time. When you think it is almost complete, another problem comes up. It is not that easy.”

**María Alejandra
Saldaña Eguren**

**Legal Specialist - Cooperator of
the Directorate of Physical and
Legal Consolidation of Agrarian
Property (Disafilpa).**



At the end of 2017, the Regional Government of Loreto was completing the titling project in the Cuatro Cuencas native communities, which sought to grant titles in the largest ancestral lands, around the Pastaza, Corrientes, Tigre, and Marañón rivers.

This area with high levels of biodiversity has been impacted by oil-related activities. In addition, other important processes were underway, such as Saweto and the one promoted by the United Nations Development Program (UNDP). However, by then, the active role of the Regional Government was needed to expedite all the processes that were pending due to lack of staff and financial resources. Thus, in early 2018, with the support of The Tenure Facility, the Peruvian Society for Environmental Law, the Interethnic Association for the Development of the Peruvian Rainforest (Aidesep), the Regional Organization of Indigenous Peoples of the East (Orpio), and the Regional Government of Loreto began to streamline these processes.

A UNIQUE MOMENT

Fernando Arévalo
Specialist in Indigenous Peoples
SPDA Loreto

To date, 1207 native communities have been recognized in Loreto, but only 746 have been granted their titles. As a result, Loreto is one of the departments with the greatest demand for land legal certainty in the country. However, the competent authority does not have the capacity to deliver its services to all the towns on time, generating uncertainty and discomfort in the population.

The Titling Project for Indigenous Territories in Peru found in Loreto a tense situation between the National Government, the Regional Government of Loreto, and indigenous organizations because the titling processes had not been completed due to lack of funds. In this context, the Project contributed to building the capacities of the officials at the Regional Directorate of Agriculture (Dral) and at the Directorate of Physical and Legal Consolidation of Agrarian Property (Disafilpa). It supported the implementation of a server to store the information of the basic mapping of communities developed by the authority and provided advice to internal experts from within Disafilpa.

With these actions, it was possible to update the maps of native and peasant communities to complete over 40 pending processes regarding titling, expansion, and amendments of native communities, which account for more than 700,000 hectares. The long-held dream of the peoples in the native communities, such as Francisco Bolognesi (located on the banks of the Tigre River), was finally fulfilled when they obtained their land ownership title after more than four decades of waiting. And the fact that the President of the Republic presented them with their titles made this event very special. This title ceremony was possible thanks to the coordination amongst the regional and national authorities, and indigenous organizations. In this sense, this highlights the relevance of the participation and empowerment of organizations as stewards of the rights of their communities.

The fact that the regional and national authorities, and indigenous organizations have been able to coordinate and organize these processes has been one of the Project's achievements because it has reduced tensions amongst these actors. These tensions caused protests by indigenous peoples. Now, monthly meetings are held between representatives of indigenous organizations and the national and regional authorities in order to improve the titling processes. Something which had never occurred before. However, it is still not enough to close the gap in the titling of Native Communities, since it is still necessary to clarify rules related to land legal certainty and to ensure that the drafting of those regulations is the result of multidisciplinary and participatory processes.





“To hold such title means to protect our forest, our life, and the future that our parents once dreamed of for us. This is where my children are growing. But, in addition, it means building a community and a region that is better preserved and free from pollution and abuse.”

**Luis
García**

**Presidente de la
Comunidad Nativa
Francisco Bolognesi**

The main problem in the region of Loreto was staff. There were not enough resources to carry on with the titling process. The ownership titles had been granted but had not been registered in the public registries.

By 2017, there were 120 pending processes; only 10 communities were registered in the public registries and no one was in charge of dealing with these pending processes. Nor was there an effective system to store all the maps of the region. For different reasons, and mostly due to disorder and lack of resources, all the data that had been generated in the recent processes was lost.

Thus, the Project trained specialists and hired specialized personnel to streamline all documentation. At the same time, a server and other IT equipment were provided to organize and store the information of the Directorate of Physical and Legal Consolidation of Agrarian Property. This has made it possible to have real-time information on the titling gap of native communities in the region; this information was not available to them in 2018. In the two and a half years of intense office work, it was possible to improve land tenure legal security for 72 native communities.



“The demand from the native communities is quite high, they come every day. Some want recognition, others titles. We have to confirm there is no overlap, check with Sernanp, with the Ministry of Culture, with the National Forest and Wildlife Service. These steps are taken in compliance with the rules. Demand is high and logistics are low, as is staff.

It takes days to reach a community. It involves personnel, logistics, budget. We don't have the means. There is a lot to do. We need more technical and logistical staff. It takes 2 or 3 days to reach a community like Achuar; this is the biggest bottleneck and the reason we cannot move forward. With the full support of the Project and other organizations, we have delivered many titles. Behind this is hard work. It is not easy, it takes time, money, office work. We do not have computers and the Internet connection is slow in Iquitos. In spite of everything, we keep on going with what we have.”

**Sergio
Donayre Ramírez**

Director of the Loreto Regional
Agricultural Directorate.

Main problems for titling native communities in Loreto:

- Limited budget and few staff from the Regional Agricultural Directorate devoted to granting titles to native communities.
- Community authorities dissatisfied with the Titling Drawings and ask that they be corrected, but do not have the resources for traveling and correspondence.
- Scarce official information on the titling processes of native communities in the region, due to the absence of technical capacities to store and update the data generated.
- 16,000,000 hectares in Loreto do not have any kind of title, plus 461 native communities are waiting for their titles.



“We have a huge backload of documents. We have 1207 recognized communities, but 400 communities are still waiting for us to serve them. Without the support of all the institutions, we would have a strong social conflict. The Project has allowed us to calm down the claims regarding titles.

I am about to finish a study which shows that 100% of community members is satisfied with the titling process. Having a title is fulfilling. But it brings no satisfaction in other areas of concern. Communities not only want their titles but more land. Moreover, we lack resources. Titling in itself is a process that they resort to with great expectation.”

Warren Guerrero

Director
DISAFILPA

At the same time, indigenous organizations were the most interested in expediting this sensitive and long-awaited issue.

Hence, through the Project, bridges were built for indigenous organizations to work hand in hand with the regional government. To this end, training, tools, advice, logistics, and more were provided so that indigenous leaders could exercise their role as stewards and promoters of the titling processes. They had meetings with the directors of the Regional Government on a regular basis in order to coordinate the work, analyse progress, and thus accompany the entire processes. Organizations (Aidesepe and Orpio) became key allies.



“Since this project was implemented, we have made significant progress. Without titles, we become more vulnerable as there is a massive number of people who want to use the forest: loggers, farmers, ranchers.

More than 20 million hectares of forest are held by indigenous communities. We protect the forest and fight against climate change. The indigenous territory is going to become a fundamental actor. Communities should be given the maximum amount of territory based on ancestral possession and also on our conservationist spirit. We are the key ally of the State and they still don't realize it.”

Jorge Pérez Rubio

President of the Regional
Organization of Eastern
Indigenous Peoples
(Orpio).



Madre de Dios

This region of Peru is home to different civilizations, both native to this area and coming from other regions, which interact in an increasingly complex social context. For this reason, the search for legal certainty of the native communities' territories is vital. This is especially true considering that the balance amongst biodiversity, life, and the forest in this region is jeopardized by informality and disorder, together with the abandonment and neglect of indigenous peoples.

- **Madre de Dios surface area:** 8'530,100 hectares
- Represents approximately **11% of the Amazon region** and **6.6% of the national territory.**
- More than **3.8 million hectares are Natural Protected Areas (NPA)**, representing **44.93% of the territory.**
- **It is one of the most biodiverse regions in the world**, in addition to being the biodiversity capital of Peru.
- **Different indigenous peoples coexist:** 3 natives to the region (Harakmbut, Ese'ejá and Machigengas) and 4 communities which settled in Madre de Dios (Yine, Amahuaca, Shipibo-Conibo and the Kiwcha).

- There are **34 recognized native communities** that manage approximately **390,832 hectares** as territory, i.e., **4.6% of the surface area of the Madre de Dios** region.
- The **registration and titling** of Native Communities in the region **began in 1974.**
- By 2013, only **6 communities had registered** and geo-referenced titles. To date, out of the **34 recognized native communities, 26 have a land title.**
- According to the document "Baseline Study of Socio-environmental Conflicts in Specific Landscapes of the Peruvian Amazon", **627 cases of overlapping titles were reported in the region of Madre de Dios in 2013.**



The work in this region started a little earlier. Since 2013, the Peruvian Society for Environmental Law has been strengthening an alliance with the Native Federation of the Madre de Dios River and Tributaries, in order to empower this organization as the main actor pushing initiatives forward to strengthen its affiliated communities. They were trained, advised, and provided with logistics and resources. This alliance continues to this day and the Project has been key in consolidating the success of this synergy which strived for good land management and legal certainty for peace and prosperity of indigenous peoples.

The Project in Madre de Dios began with a pilot program implemented between 2015 and 2017. This work was carried out in the midst of an adverse political context. At the time, the Regional Government of Madre de Dios implemented a policy that went against the defence of the environment and thus promoted activities such as informal mining and the construction of trails facilitating illegal activities.

Despite the above, the pilot project managed to boost legal certainty in five Native Communities (Shiringayoc, Shintuya, Puerto Luz, Boca Pariamanu, and Tipishca). Moreover, the pilot strengthened the capacities of the regional forest oversight authority and of the Native Federation of the Madre de Dios River and Tributaries (Fenamad) in key issues such as the defence of Indigenous Peoples in Voluntary Isolation and Initial Contact (PIACI) and the territories of native communities.

The pilot was instrumental in enhancing and validating SPDA's strategy as it showed how relevant it is to include indigenous organizations in the land secure processes. The project allowed Fenamad to lead the field work to geo-reference and delimit communities, as well as to settle overlapping issues that had gone unresolved for years. It proved that the participation of the indigenous

organization enables native communities to engage and trust both the process and the authorities. In addition, it facilitated access to the communities where field work had to be carried out.

Fenamad's power of representation vis-à-vis the authorities and Native Communities was strengthened during the pilot period and throughout the first stage of the project. In addition, the project enhanced the existing relationship with the Regional Government of Madre de Dios by signing collaboration agreements involving three key areas of the Regional Government: the Regional Agricultural Directorate (DRA), the Directorate of Physical and Legal Consolidation of Rural Property (Dsflpr), and the Regional Directorate of Forest and Wildlife. These three offices did not have any logistics, budget, and personnel devoted to the processes involving native communities. On the other hand, computers and submeter GPS equipment were purchased for field visits. In addition, a legal defence system was implemented to defend the territorial rights of the Native Communities and the PIACI. Finally, an indigenous territorial web multiplatform was created.





“ ”

“In 2014, the titling processes of native communities were literally tucked away in a corner of the Office of the Consolidation Directorate, i.e. the competent body to carry out the entire titling process. No one touched these files. I went to work for the directorate and tried to help, but unfortunately for the communities, the priority was the titling of agricultural land. The Regional Agricultural Directorate may have wanted to do more, but there was simply no more budget.

There were many problems: communities were not included in the cadaster; concessions, agricultural lands, and even lands of other communities were overlapping; and there were many pending processes. For example, 90% of the titled communities were not registered in the national maps database at the National Superintendence of Public Registries. We unveiled many problems and have gradually been solving them.”

**Shiomara
Yabar**

**Lawyer, Peruvian Society of
Environmental Law (SPDA).
Madre de Dios Office**

"PARTICIPATION OF INDIGENOUS WOMEN IN THE LEGAL LAND CONSOLIDATION PROCESSES"

Ileana Rojas
Lawyer, SPDA

Indigenous women in Peru are subject to multiple oppressions and this is evidenced in many ways. One of them is their limited access to community land tenure. The parcelling criteria benefit male community members over women; hence, the latter have limited access to the enjoyment of community services. Likewise, based on traditional gender assignments of family plots, male offspring inherit better quality land or larger plots of land. This stems from the belief that male children can better manage the land and that women should have access to land through marriage.

However, indigenous organizations have begun to pay close attention to gender inequality within community spaces. For this reason, the Native Federation of the Madre de Dios River and Tributaries (Fenamad) considered it vitally important to include indigenous women and youth in leadership positions in all processes by implementing a gender policy that ensures the participation of indigenous women at all levels of this federation.

With the support of The Tenure Facility, the Project analysed the gender approach used in the formalization procedures of community lands.

To this end, it prioritized 9 communities located in Madre de Dios, Loreto and Ayacucho. This research was overseen by the National Organization of Andean and Amazon Indigenous Women of Peru (Onamiap), an organization of indigenous women in Peru. The analysis carried out by ONAMIAP shows that it is necessary to strengthen and continue generating spaces for indigenous women to participate in decision-making processes and to build their capacities to exercise leadership at different levels, not just within their households. Securing indigenous participation is a great challenge; yet, it is even more so for indigenous women.





“This process has been very difficult. We have been fighting for our title since 2009 and finally got it. There are 36 families that are part of this native community. We depend strongly on the forest and that is why it is so important to secure our territory. The real problem we faced was the invasion by farmers. We have come to terms after years of fighting. We are all very happy about this. Personally, this process has allowed me to learn a lot, to gain more knowledge about many issues, especially women’s rights. We need to empower ourselves to set an example for others and be able to replicate this experience in other communities.”

**Noemí
Fernández
Saavedra**

President, Tipishca
Native Community



Main problems for land tenure of native communities in Madre de Dios:

Little official information on the titling processes of native communities in the region. Regional strikes burned down the building of the Regional Agrarian Directorate and as a result official titling information was lost. Many official regional files and databases were also lost in the fire.

Unawareness and lack of clear guidelines on how to resolve conflicts related to the overlapping of rights in communities seeking to consolidate their property.

Regional Government lacks organizational and logistical capacities to achieve efficient regional management.

Little or no allocation of resources and budget to offices dealing with legal certainty.

However, given the indifference of previous administrations, the cooperation agreement with the Regional Government of Madre de Dios was not signed until 2019. This agreement is essential to further guarantee the legal ownership of ancestral territory.

As a result, they not only had the indigenous organization as an ally, but they would also team up with regional authorities. However, the situation within the regional government was also a matter of concern. The Physical and Legal Consolidation of Rural Property (Dsfpr) did not have the funds for the titling of native communities. No staff was assigned to these processes. Much of the cadastral information was lost. And the documents were piling up in a corner of an office without anyone doing anything with them. As a result, the Project hired specialists in titling-related matters to support the technical department of the Regional Government. After a long wait, the land tenure processes of native communities were finally moving forward. Indigenous communities in Madre de Dios now hope to better protect their territory.



SOCIAL CONFLICTS AND RIGHTS OF INDIGENOUS PEOPLES IN MADRE DE DIOS

Eddy Peña
Peruvian Society of Environmental Law
(SPDA - Madre de Dios)

Madre de Dios is one of the regions where the overlapping of rights has been a long-neglected problem. As a result, conflicts have arisen and over time have become more complex and difficult to solve.

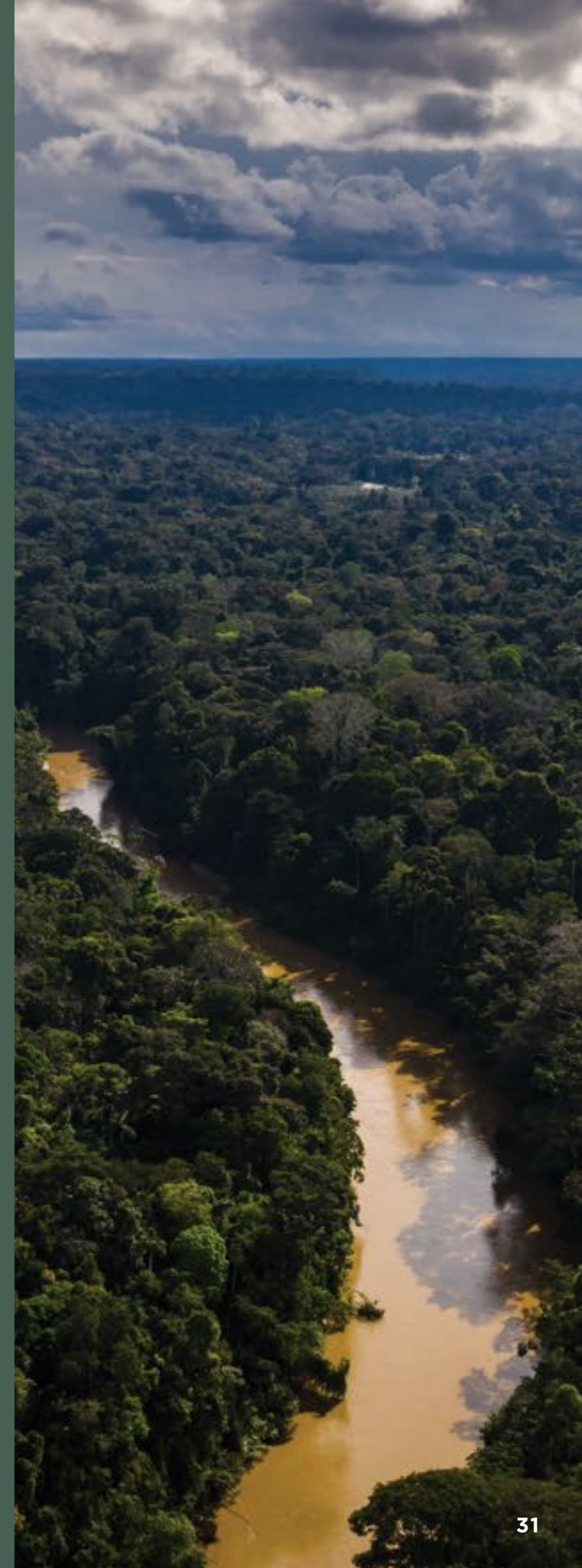
In 2013, the SPDA and Fenamad developed a baseline, which yielded the surprising figure of 627 cases dealing with overlapping of rights or other types of land conflicts. In this context, the Consolidation Directorate of the Regional Government had almost no budget to deliver services to these communities. There was no staff and there were no clear guidelines on how to resolve these conflicts.

This baseline thus became an instrument to guide decisions and prioritize the titling processes. Likewise, it enabled the implementation of a tripartite intervention strategy amongst Fenamad, Goremad, and SPDA. Its priority was to strengthen 2 key actors in the region: The Fenamad technical-legal department, and the Native Communities titling department of Goremad. The staff was trained and provided with state-of-the-art equipment to carry out effective field work.

Each community has its own way of interpreting and addressing the conflicts on its territories; there is no single recipe to tackle them all. Each one is unique and needs solutions tailored to the community's own dynamics and context.

Grassroot organizations represent and convey the claims of communities and thus have a key role to play. This is the case of Fenamad, which has been instrumental in streamlining the conflict resolution processes at the Native Communities enabling them to finally obtain their titles.

The results of these years of collaboration with Fenamad are enriching both technically and socially. Despite an adverse regional political context for legal certainty for indigenous communities, ten titling processes were completed. Leaders and organizations have also been strengthened, allowing for open dialogue and generating strategic alliances with State and private organizations to address the demands of indigenous peoples.





“The titling process in Peru is exhausting. You feel alone, fighting against everyone. On the one hand, you have the authorities, who tell you they have no logistics or budget to move the process forward. And, on the other hand, you feel unprotected fearing that someone can get into your house at any time.

With the title in hand, we can now apply for State programs or funds, and thus organize our life plan. Although communities were not familiar with the so-called title, we now understand that we have to adapt to these changes if we want to have a better future for our children. If we want to take out a loan from the bank, we will be asked to show our title. The title helps us in every step of the way.

We now wish to focus on other activities such as collecting chestnuts for export, developing ecotourism, and setting up fish farms for food security. We would also like to grow cacao and to set up micro-businesses. We are focusing on those activities now.”

**Julio César
Rolín**

**President, Boca
Pariamanu Native
Community.**



GENERAL CONCLUSIONS

Cooperation and synergy amongst NGOs, indigenous organizations, and the different levels of government are vital to remediate a situation of historical indifference until the State increases its capacities, resources, and logistics to serve Native Communities throughout the country. The Project has shown that, by generating alliances based on respect, processes can move forward despite hurdles and limitations. It is necessary to follow similar proposals to continue moving forward: on the one hand, having an institutional scaffold that allows us to recognize ourselves and act as an indigenous country, and, on the other, continuing to strengthen collective rights, particularly the legal certainty of indigenous peoples' territories. For all these reasons, the coming years are of the utmost importance.

Just as it is vital to strengthen the capacities of the different State bodies, it is crucial to ensure and strengthen the representativeness of indigenous organizations. These organizations should be capable of meeting the demands of the population and proposing alternative solutions while serving as means to ensure the State delivers its functions. We should bear in mind that they are the main allies of the State in looking after the forests and in safeguarding ancestral knowledge.

The path has been set and we must continue moving forward. There will undoubtedly be obstacles and challenges. The COVID-19 pandemic that has affected the Amazon is one of them. This crisis allows us to reflect on the relevance of the issues addressed by The Tenure Facility, SPDA, and allies, but it also faces us with the urgent need to carry on with this line of work and offset years of neglect by the State.





"Once we achieve legal certainty, we have to work to ensure food security and economic sustainability for our communities. If we do not achieve both, there is a high risk of falling into illegality because there will always be illegal loggers, miners or drug traffickers who will seek to take advantage of the poor economic conditions of the communities. We need to have access to funds and markets in order to activate our economy and continue protecting our forest."

**Julio
Cusurichi**

President of the Native Federation of the Madre de Dios River and its tributaries (Fenamad).

Editing:

Peruvian Society for
Environmental Law

Text:

Jack Lo

Document design:

Belén Sampietro

Photos:

Diego Pérez
Thomas Muller
Ángela Rodríguez
Spectabilis

The total or partial sale of this
publication is prohibited, however,
you can make use of it as long as you
correctly quote the authors.

The SPDA Biodiversity and Indigenous Peoples Program works to integrate the conservation of biological diversity into the country's sustainable development scheme. As a result, we expect to contribute to an environmentally sustainable and socially inclusive economic development, where the role played by key actors such as indigenous peoples and women is put in value.

This publication is possible within the framework of the "Titling of Indigenous Territories in Peru" project, financed by The Tenure Facility.

Sociedad Peruana de Derecho
Ambiental

President:

Jorge Caillaux

Executive Director:

Isabel Calle

**Biodiversity and Indigenous
Peoples Program Director:**

Silvana Baldovino

**Av. Prolongación Arenales 437,
San Isidro, Lima**

Phone: (+51) 612-4700

www.spda.org.pe

First digital edition, July 2020

ISBN: 978-612-4261-53-4 (PDF)

E-book - open access at:

[https://spda.org.pe/?](https://spda.org.pe/?wpfb_dl=4600)

[wpfb_dl=4600](https://spda.org.pe/?wpfb_dl=4600)

the
**TENURE
FACILITY**



JOINING FORCES

**Titling indigenous
territories in Peru**